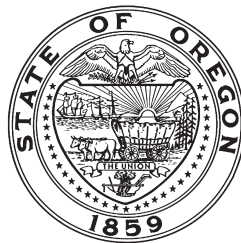


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

Volume 44, No. 7
July 1, 2005

For May 16, 2005–June 15, 2005



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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2004-2005 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 05-06

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN DESCHUTES, LAKE, WALLOWA, WASCO AND WHEELER COUNTIES DUE TO DROUGHT AND LOW WATER CONDITIONS.

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

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

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of the above-mentioned counties, I hereby declare a "state of drought emergency" in Deschutes, Lake, Wallowa, Wasco and Wheeler Counties and direct the following activities:

IT IS HEREBY ORDERED AND DIRECTED:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources that may be

available to mitigate conditions and to assist agricultural recovery in Deschutes, Lake, Wallowa, Wasco and Wheeler Counties.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for Deschutes, Lake, Wallowa, Wasco and Wheeler Counties as it determines is necessary in accordance with ORS 536.700 to 536.780.

III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected drought conditions in Deschutes, Lake, Wallowa, Wasco and Wheeler Counties.

IV. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist affected political subdivisions in Deschutes, Lake, Wallowa, Wasco and Wheeler Counties.

V. This Executive Order expires on December 31, 2005

Done at Salem, Oregon this 25th day of May, 2005.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

A CHANCE TO COMMENT ON PROPOSED CONSENT DECREE FOR REMEDIAL ACTION COSTS AT THE UNITED STATES FOREST SERVICE WORK CENTER IN SWEET HOME, OREGON

COMMENTS DUE: June 30, 2005

PROJECT LOCATION: United States Forest Service (USFS) Work Center and surrounding area in Sweet Home, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Decree regarding a portion of DEQ's remedial action costs relating to investigation of contamination at and near the USFS Work Center located at 4431 Highway 20 in Sweet Home. The Consent Decree is with the United States.

HIGHLIGHTS: Based on results of an Area Wide groundwater investigation, the USFS Work Center in Sweet Home was identified as a source of Trichloroethane (TCA) contamination of groundwater. The USFS agreed to reimburse DEQ for the costs of completing an investigation to determine the full nature and extent of contamination at and from the Work Center site. The work was conducted by DEQ and its contractor, Hart Crowser, Inc. DEQ subsequently determined that no remediation was needed due to the low levels of contamination and restrictions on groundwater use near the area. The Consent Decree would release the United States from liability for releases of hazardous substances at and from the Site as defined in the Decree.

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 June 30, 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 DEQ's Western Region office located at Eugene, Oregon.

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

A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT, PROPOSED REMEDIAL ACTION, AND DETERMINATION THAT CONTAMINATED SOIL GENERATED DURING REMEDICATION IS A CORRECTIVE ACTION MANAGEMENT UNIT (CAMU) ELIGIBLE WASTE AT THE FORMER CHARLES LILLY FACILITY IN PORTLAND, OREGON

COMMENTS DUE: August 1, 2005

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

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) requests public comment on its proposed cleanup decision regarding soil at the property located at 7737 N.E Killingsworth Street, Portland, Oregon (Lilly Property). The soil remedial action would be subject to a corrective action management unit (CAMU) determination for treatment and disposal of the contaminated soil at the Chemical Waste Management (CWM) Subtitle C landfill in Arlington, Oregon. DEQ is also proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with MJB Associates, LLC and Acme Scenic & Display, Inc. for implementation of the remedy.

HIGHLIGHTS: The Lilly Property was formerly owned by the Miller Products Company, W.R. Grace & Company, and Charles. H. Lilly Company, among others, and used to formulate various agricultural chemicals. During operations, hazardous substances were

released into the ground and groundwater at the property; such releases may extend onto and beneath adjacent properties but these proposals refer only to the property itself. Offsite contamination will be addressed in later actions.

The Prospective Purchaser Agreement will require MJB and Acme Scenic, jointly, to implement certain agreed-upon removal and remedial measures to address contamination at the Lilly Property. Remedial measures will include: abandonment of existing dry wells, removal and off-site treatment and disposal of the most contaminated soil at the CWM hazardous waste landfill, capping of remaining contaminated soil, installation of a new stormwater management system, engineering controls involving asphalt re-paving of the site, and implementation of institutional controls to maintain the asphalt cap and restrict future use of groundwater.

CAMU-eligible wastes are defined in 40 Code of Federal Regulations (CFR) 264.552(a)(1)(i) as: "all solid and hazardous wastes, and all media including groundwater, surface water, soils and sediments and debris, that are managed for implementing cleanup." The DEQ Regional Administrator with regulatory oversight where remediation is taking place may approve placement of CAMU-eligible wastes in a hazardous waste landfill provided the waste meets the appropriate treatment standards. The proposed treatment would involve stabilization of the soil to reduce the leachability of pesticides to regulatory thresholds, if feasible, or the lowest feasible leachate concentrations. The treated soil would then be landfilled at the CWM facility in Arlington, Oregon.

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

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

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments concerning the remedial action and the CAMU-eligible waste determination should be sent to Bob Williams at DEQ Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201. All comments must be received by DEQ by 5:00 pm August 1, 2005. Questions may be directed to Mr. Landman at the above address or by calling (503) 229-6461. Questions may be directed to Mr. Williams at the above address or by calling (503) 229-6802. The proposed Consent Judgment, Project Staff Report, CAMU eligibility memo, and DEQ file on the Lilly Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Bob Williams at (503) 229-6802.

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

THE NEXT STEP: DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment, remedial action, and CAMU-eligibility will be made after consideration of public comments.

OTHER NOTICES

PROPOSED NO FURTHER ACTION FOR FORMER OREGON STREET MALL SITE, BEND, OR

COMMENTS DUE: August 1, 2005

PROJECT LOCATION: 61 NW Oregon Street, Bend, OR

PROPOSAL: The Department of Environmental Quality is proposing to issue a decision regarding cleanup activities at the above referenced site based on approval of an investigation and removal actions conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: An underground storage tank (UST) containing weathered gasoline was encountered during demolition activities at the site. The UST is believed to have been used at the site prior to 1970 when the site contained a garage and auto sales company. The tank contents and soils in the tank pit were removed and disposed of at an off-site waste disposal facility. Samples of the tank contents confirmed the presence of weathered gasoline constituents, including lead. Confirmation samples collected from the tank pit and staging location contained no detectable gasoline-range hydrocarbons, indicating the removal action sufficiently removed TPH impacted soils. The constituents of concern, lead and selected gasoline organic compounds were either not detectable or detected at levels below the most stringent cleanup levels for a residential scenario.

Based on the findings to date DEQ is proposing a No Further Action determination at the site and believes that this determination is protective as defined in OAR-340-122-040.

COMMENT: The staff report recommending the proposed action may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246. Written comments should be sent by August 1, 2005 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

NO FURTHER ACTION REQUIRED ENVIRONMENTAL CLEANUP AT THE DIXONVILLE MILL SITE COMPLETE

PROJECT LOCATION: Roseburg Forest Products Dixonville Mill Site, 2320 Buckhorn Road, Dixonville, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) has determined that no further investigation or cleanup is required at the former Roseburg Forest Products (RFP) Dixonville Mill Site (excluding the wood waste land fill and log pond areas). Public notification is required by ORS 465.320.

HIGHLIGHTS: The former mill site is located in an agricultural area northeast of Dixonville in Douglas County, Oregon. The property was used as a softwood veneer mill and is now generally vacant.

In November 2003, a Phase 1 Environmental Site Assessment (ESA) was conducted at the former mill site. The ESA was subsequently revised in May 2004. Potentially impacted areas were recognized at the site and RFP chose to address these concerns by cleaning up the contamination. In August 2004, environmental samples were collected from several areas on the property. The analytical data indicate all parameters were below the DEQ regulatory criteria or established background concentrations, with the exception of arsenic and chromium in soil at the wigwam burner area and chromium in soil beneath the landfill.

In October 2004, RFP excavated approximately 71.5 tons of impacted soil from the wigwam burner area and confirmation samples were collected. Analytical results from the confirmation samples indicated arsenic and chromium were below the DEQ regulatory criteria. DEQ has concluded that there is no threat to human

health and the environment (excluding the wood waste land fill and log pond areas).

A more detailed description of the cleanup is presented in a DEQ staff report prepared for the site. The staff report is available for review at DEQ's Eugene office.

THE NEXT STEP: DEQ will issue a No Further Action Letter after July 1, 2005.

NOTICE OF PROPOSED NO FURTHER ACTION DETERMINATION, ALL DECK, INC. 3732 SW MOODY AVENUE, PORTLAND, OREGON

COMMENT PERIOD: July 1 to July 31, 2005

COMMENTS DUE: July 31, 2005

PROJECT LOCATION: 3732 SW Moody Avenue, Portland, Oregon

PROPOSAL: In accordance with ORS 465.320, the Oregon Department of Environmental Quality (DEQ) invites public comment on the proposed no further action determination for the All Deck, Inc. property.

From 1956 to 1995, the property was used for construction materials storage, truck storage, and various warehouse-based businesses. Currently, the property is owned by Trammell Crow Residential and is in the process of being redeveloped for urban residential use.

The site investigation results showed limited areas of petroleum-impacted soil. Approximately 1,800 tons of petroleum-impacted soil was excavated and transported offsite for disposal at a DEQ-approved landfill during the remedial excavation of the All Deck property in April and May of 2004. Remaining contamination is below risk-based concentrations (DEQ RBCs and EPA Region 9 PRGs) and does not pose an unacceptable risk to public health or the environment. Also, groundwater has not been significantly impacted. DEQ, therefore, is recommending that a no further action determination be made for the site.

HOW TO COMMENT: As required by ORS 465.320, DEQ invites public comment on the proposed approval of the cleanup action for the All Deck, Inc. property. Written comments should be sent to Heidi Blischke, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by July 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.

INFORMATION: The administrative record for the site is available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information regarding the cleanup at the site, contact DEQ Project Manager, Heidi Blischke at (503) 229-5556 or by email at blischke.heidi@deq.state.or.us. Additional information is also available at <http://www.deq.state.or.us/news/publicnotices/>.

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

PROPOSED NO FURTHER ACTION DETERMINATION RESIDENTIAL HEATING OIL RELEASE SITE 7000 N. COLUMBIA WAY, PORTLAND, OREGON

COMMENT PERIOD: July 1 to July 31, 2005

COMMENTS DUE: July 31, 2005

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is proposing no further action for a heating oil release that occurred at a residential property located 7000 N. Columbia Way in Portland, Oregon.

HIGHLIGHTS: Approximately 125 gallons of heating oil was released into the crawl-space of the residence. Soil has been excavated and removed from beneath and outside the residence. Except for narrow zone of inaccessible soil directly beneath the building foundation, soil samples confirm that contaminated soil was

OTHER NOTICES

removed to concentrations that are protective of human health and the environment.

HOW TO COMMENT: The project file is available for public review. To make schedule a review call (503) 229-6729. The DEQ project manager is Dana Bayuk, (503) 229-5543. Written comments should be sent to Dana Bayuk, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by July 31, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

PROPOSED NO FURTHER ACTION DETERMINATION WICKIUP JUNCTION GAS STATION 17000 BURGESS ROAD, LA PINE, OREGON

COMMENTS DUE: July 31, 2005

PROJECT LOCATION: 17000 Burgess Road, LaPine, Oregon
PROPOSAL: The Department of Environmental Quality is proposing a Conditional No Further Action (CNFA) determination following underground storage tank (UST) decommissioning and site investigation for the release of petroleum from an UST system at the facility. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: Contamination from petroleum products was discovered during decommissioning of four underground storage tanks in June, 1999. Site investigation activities, including the installation of groundwater monitoring wells, confirmed that groundwater was impacted by gasoline range hydrocarbons; a groundwater monitoring program was in place between 1999 and 2004. The full extent and magnitude of the contaminant plume has been delineated and the site investigation shows that contamination is not migrating off site. A request for risk-based closure, including institutional controls (deed restrictions), was recently submitted to the Department of Environmental Quality (Department) for review and comment. Based upon the information provided, the Department has determined that a Conditional No Further Action decision is appropriate for this site.

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

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

Phone: 541-388-6146, ext. 237

Fax: 541-388-8283

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

Please contact Mr. Klemz to schedule an appointment or to obtain a copy of the staff report. Written comments must be received by July 31, 2005

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

Board of Architect Examiners
Chapter 806

Date:	Time:	Location:
8-2-05	9 a.m.	Architect Board 205 Liberty St. NE, #A Salem, OR

Hearing Officer: Kim Arbuckle
Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.010, 671.020, 671.030, 671.100 & 671.220
Proposed Amendments: 806-010-0075, 806-010-0078
Last Date for Comment: 8-2-05, 1 p.m.
Summary: This rule amendment elaborates on with whom the agreement or contract may be between for providing architectural services.
Rules Coordinator: Carol Halford
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

Date:	Time:	Location:
8-2-05	9:30 a.m.	Architect Board 205 Liberty St. NE, #A Salem, OR

Hearing Officer: Kim Arbuckle
Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.020 & 671.041
Proposed Amendments: 806-010-0080, 806-010-0110
Last Date for Comment: 8-2-05, 1 p.m.
Summary: This rule amendment outlines the parameters for using a number in a firm name.
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 Examiners for Engineering and Land Surveying Chapter 820

Date:	Time:	Location:
9-13-05	10-10:30 a.m.	Engineering and Land Surveying Board 728 Hawthorne Ave. NE Salem, OR

Hearing Officer: Bob Neathamer
Stat. Auth.: ORS 672.005, 672.060, 672.129, 672.155, 672.255 & 670.310
Stats. Implemented: ORS 672.002 - 672.325
Proposed Adoptions: 820-040-0005
Proposed Amendments: 820-010-0325, 820-040-0030
Last Date for Comment: 9-13-05, 10:30 a.m.
Summary: OAR 820-010-0325 - Revises the Board's budget for the 05-07 biennium.

OAR 820-040-0005 - Creates definitions relating to the practice of engineering to assist registrants and the general public.

OAR 820-040-0030 - Revises the Rule to include an alternative method of obtaining licensure in the Traffic branch.

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

Board of Tax Practitioners
Chapter 800

Date:	Time:	Location:
7-22-05	9 a.m.	3218 Pringle Rd. SE, #120 Salem, OR 97302

Hearing Officer: Monica J. Leisten
Stat. Auth.: ORS 673.605 - 673.740 & 673.990
Stats. Implemented: ORS 673.605 - 673.740 & 673.990
Proposed Adoptions: 800-020-0022
Proposed Amendments: 800-001-0005, 800-010-0015, 800-010-0025, 800-015-0005, 800-015-0010, 800-020-0015, 800-020-0020, 800-020-0025, 800-020-0030, 800-025-0010, 800-025-0020, 800-025-0025, 800-025-0027, 800-025-0030, 800-025-0040, 800-025-0060, 800-030-0025, 800-030-0035
Last Date for Comment: 7-22-05, 5 p.m.
Summary: The *adoption* of OAR 800-020-0022 is to provide the Board of Tax Practitioners guidance and recourse when handling disciplinary actions pertaining to an applicant's conduct during an examination.

The *amendments* to the OARs are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies.

Rules Coordinator: Monica J. Leisten
Address: Board of Tax Practitioners, 3218 Pringle Rd. SE, # 120, Salem, OR 97302
Telephone: (503) 378-4034

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

Date:	Time:	Location:
7-15-05	9 a.m.	State Library Rm. 102 Salem, OR

Hearing Officer: Cheryl Lawrence
Stat. Auth.: ORS 243.061 - 243.302, 279A & B
Stats. Implemented: ORS 243, 659 & 743
Proposed Adoptions: 101-005-0075, 101-005-0105
Proposed Amendments: 101-005-0010, 101-005-0020, 101-005-0030, 101-005-0040, 101-005-0050, 101-005-0060, 101-005-0070, 101-005-0080, 101-005-0110, 101-005-0120, 101-005-0130

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 7-15-05, 3 p.m.

Summary: This rulemaking adopts new rules and amends current rules governing the procurement and contracting for vendor services, insurance benefits, and consultants of the Public Employees' Benefit Board (PEBB). Experience in using the rules for PEBB's contracting and procurement processes and changes, and clarification of ORS 279 A and B, dictates the need for revisions and clarification.

Rules Coordinator: Kristin Keith

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

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

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**Department of Agriculture
Chapter 603**

Date:	Time:	Location:
7-19-05	9 a.m.	ODA 635 Capitol St. NE Salem, OR
7-20-05	9 a.m.	Des. Cty. Rd. Dept. 61150 SE 27th St. Bend, OR
7-21-05	9 a.m.	OSU Ag. Service Center 10507 N McAlister Rd. La Grande, OR

Hearing Officer: Kathleen Wickman

Stat. Auth.: ORS 561.190, 570.450 & 570.405

Stats. Implemented: ORS 570.450

Proposed Amendments: 603-052-0850, 603-052-0860, 603-052-0870, 603-052-0880

Proposed Repeals: 603-052-0890, 603-052-0900, 603-052-0905, 603-052-0910, 603-052-0915, 603-052-0920, 603-052-0930

Last Date for Comment: 8-12-05

Summary: The proposed amendments would streamline the department's rules for production of rapeseed, including canola. The current 12 districts would be replaced by a general production area and four protected districts. Rapeseed/canola production in the general production area would be unregulated except for a requirement that seed be certified and treated and that rapeseed/canola not be grown in the same field more often than two years in every five. In protected districts rapeseed/canola production for oil would be prohibited except under special permit. Rapeseed/canola crops for seed, forage and covercrop would be allowed under regulations mirroring current requirements including 2 to 3 mile isolation from related crops with which rapeseed/canola will cross-pollinate. The proposed protected districts would be: all the counties in the Willamette Valley, 3 counties in Central Oregon, 3 counties in NE Oregon, and a 3-mile wide strip of Malheur Co. along the Idaho border. These proposed rules would be reviewed in 2007.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97310

Telephone: (503) 986-4583

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

Date:	Time:	Location:
8-18-05	10 a.m.	1656 Walker Farm Rd. Mosier, OR

Hearing Officer: Bryce Molesworth

Stat. Auth.: ORS 576.304(2), 576.325(2)(a)(b) & (4)(c), 576.355 & ORS 576; Other Auth.: OAR 669-001-0000

Stats. Implemented: ORS 576.325 & 576.355

Proposed Amendments: 669-010-0025, 669-010-0030

Last Date for Comment: 8-18-05, close of hearing

Summary: This amendment will revise the due date for Fresh Market cherries to allow for estimated payments of at least 75% of the

amount due for the crop year on the due date with the balance due within one month to avoid late penalties and interest and corrects a typographical error.

Rules Coordinator: Dana Branson

Address: Department of Agriculture, Sweet Cherry Commission, 2667 Reed Rd., Hood River, OR 97031

Telephone: (541) 386-5761

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

Date:	Time:	Location:
7-19-05	10:30 a.m.	1535 NW Edgewater St. Salem, OR

Hearing Officer:

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.231, 447.247, 455.110 & 455.112

Proposed Amendments: 918-460-0015

Proposed Repeals: 918-460-0015(T)

Last Date for Comment: 7-22-05, 5 p.m.

Summary: This rulemaking removes Chapter 29 of the 2004 Oregon Structural Specialty Code and replaces it with Chapter 29 of the 1998 Oregon Structural Specialty Code, as amended by the division.

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310

Telephone: (503) 373-7438

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Date:	Time:	Location:
7-19-05	9:30 a.m.	1535 NW Edgewater St. Salem, OR

Hearing Officer: Richard J. Baumann

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.905, 479.910 & 479.915

Proposed Amendments: 918-282-0365

Last Date for Comment: 7-24-05, 5 p.m.

Summary: This rules are necessary to enable experienced applicants to qualify to take the Class "B" Limited Energy Technician license examination.

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310

Telephone: (503) 373-7438

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**Department of Corrections
Chapter 291**

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-130-0011, 291-130-0080

Proposed Amendments: 291-130-0005, 291-130-0006, 291-130-0020, 291-130-0030, 291-130-0050, 291-130-0060

Proposed Repeals: 291-130-0010, 291-130-0070

Proposed Ren. & Amends: 291-130-0040 to 291-130-0016

Last Date for Comment: 7-18-05

Summary: The department has upgraded its inmate telephone system to provide for advances in technology. The upgrade changes the way in which inmates may access and use the new telephone system. These rule modifications are necessary to establish new standards governing the use of the telephones by inmates.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030 & 423.075

Proposed Amendments: 291-062-0100, 291-062-0110, 291-062-0120, 291-062-0130, 291-062-0140, 291-062-0150, 291-062-0160

Last Date for Comment: 7-18-05

Summary: These rule modifications are necessary to provide further clarification for inmate selection, compliance credit for inmates on transitional leave, and modification of the Inmate Work Crews rule as it relates to eligibility for work crews and unfenced minimum housing for inmates in an alternative incarceration program.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075; Other Auth.: Article I Sec. 41, OR Const.

Stats. Implemented: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

Proposed Amendments: 291-077-0010 – 291-077-0035

Last Date for Comment: 7-18-05

Summary: These rule amendments are necessary to more clearly define how and what non-monetary incentives that encourage positive institutional behavior are made available to inmates. Other amendments are necessary to provide clarification and consistency regarding the waiting periods for performance award point eligibility and inmate participation in prescribed programming.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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

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

Proposed Amendments: 291-063-0010, 291-063-0016, 291-063-0050

Last Date for Comment: 7-25-05

Summary: These rule amendments are necessary to update the eligibility requirements for inmates that may be approved for short-term transitional leave or emergency leave.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Fish and Wildlife Chapter 635

Date: 8-5-05	Time: 8 a.m.	Location: ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303
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Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232, 497.112, 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232, 497.112, 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

Proposed Amendments: Rules in 635-008, 635-045, 635-051, 635-052, 635-053, 635-054, 635-060, 635-100

Last Date for Comment: 8-5-05

Summary: Amend rules regarding the harvest of game birds, including 2005-06 season dates, open areas, and bag limits. The Aleutian Canada goose will be delisted from the state list of Threatened and

Endangered Species. Changes may be made to allow the hunting of the Aleutian Canada goose. Changes may also be made to department Wildlife Area regulations.

Lastly, housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

Date: 8-5-05	Time: 8 a.m.	Location: ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR
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Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Proposed Adoptions: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Amendments: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Proposed Repeals: Rules in 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039

Last Date for Comment: 8-5-05

Summary: Amend rules to adopt sport fishing regulations for fin-fish, shellfish, and marine invertebrates for 2006.

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

Department of Human Services, Child Welfare Programs Chapter 413

Date: 7-21-05	Time: 8:30 a.m.	Location: Rm. 255 500 Summer St. NE Salem, OR
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Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Proposed Amendments: 413-055-0105

Last Date for Comment: 7-21-05

Summary: OAR 413-055-0105 is being amended to correct a typographical error that occurred at the April 1, 2005 permanent rule filing. This rule may also be changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E48, Salem, OR 97301

Telephone: (503) 945-6067

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

Date: 7-15-05	Time: 10:30 a.m.–12 p.m.	Location: Rm. 137B 500 Summer St. NE Salem, OR
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Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-141-0000, 410-141-0020, 410-141-0060, 410-141-0080, 410-141-0180, 410-141-0220, 410-141-0263, 410-141-0300, 410-141-0420

Last Date for Comment: 7-15-05, 12 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to certain clients. OMAP will make the following amendments: 410-141-0020 to clarify language and intent and to make rule precedence consistent; 410-141-0060 and 410-141-0080 to clarify psychiatric residential treatment services; and, 410-141-0000, 410-141-0180, 410-141-0220, 410-141-0263, 410-141-0300, and 410-141-0420 to take care of necessary house-keeping corrections.

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:	Time:	Location:
7-15-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-127-0000, 410-132-0000

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Home Health Services program and the Private Duty Nursing Services program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-127-0000 in the Home Health Services program and 410-132-0000 in the Private Duty Nursing Services program to remove outdated information and clarify language.

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:	Time:	Location:
7-15-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Repeals: 410-129-0000, 410-131-0000, 410-140-0000

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Speech-language pathology, Audiology, and Hearing Aid Services program (Div. 129), the Physical and Occupational Therapy Services program (Div. 131) and the Visual Services program (Div. 140) rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for certain services provided to clients. OMAP will repeal 410-129-0000, 410-131-0000 and 410-140-0000 to remove inaccurate text.

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:	Time:	Location:
7-15-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-136-0200

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Transportation Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for certain services provided to clients. OMAP will amend rule 410-136-0200 to ensure payment for ambulance providers when services, that are within the definitions provided in OMAP General Rules, have been rendered to clients. The revision will also clarify language regarding precedence for OMAP rules.

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:	Time:	Location:
7-15-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-142-0000, 410-142-0040, 410-142-0300, 410-142-0380

Proposed Repeals: 410-142-0320

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Hospice Services program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend rules as follows: 410-142-0000 to rename the rule and remove outdated information and clarify language; 410-142-0040, 410-142-0380 to remove outdated information and clarify language; 410-142-0300 to update hospice payment rates in compliance with federal regulation pursuant to communications received from the Centers for Medicare and Medicaid Services (CMS). Medicaid hospice payment rates are calculated based on the annual hospice rates established by CMS. These rates are authorized by section 1814 of the Social Security Act. OMAP will repeal 410-142-0320 to remove unnecessary billing information from rule.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

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Date:	Time:	Location:
7-15-05	10:30 a.m.–12 p.m.	Rm. 137 B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-148-xxxx

Proposed Amendments: 410-148-0000, 410-148-0020, 410-148-0040, 410-148-0060, 410-148-0080, 410-148-0140, 410-148-0260, 410-148-0280, 410-148-0300

Proposed Repeals: 410-148-0100

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The EPIV Program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP will amend 410-148-0000, 410-148-0020, 410-148-0040, 410-148-0060, 410-148-0080, 410-148-0140, 410-148-0260, 410-148-0280 and 410-148-0300. OMAP will adopt 410-148-xxxx and repeal 410-148-0100. These actions will reflect the HIPAA national coding standard changes for EPIV services from a fee-for-service payment methodology to a per diem methodology. OMAP will update terminology, remove duplicative language and reorganize rules in order to clarify intent and take care of necessary housekeeping corrections.

Rules Coordinator: Darlene Nelson

NOTICES OF PROPOSED RULEMAKING

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-147-0000
Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Services program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-147-0000 to remove outdated and unnecessary information.

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065

Proposed Amendments: 410-122-0020, 410-122-0080, 410-122-0186, 410-122-0190, 410-122-0202, 410-122-0205, 410-122-0320, 410-122-0325, 410-122-0340, 410-122-0500, 410-122-0560, 410-122-0590, 410-122-0630, 410-122-0720, 410-122-0184

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The DMEPOS program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP will amend rules as follows: 410-122-0020, 410-122-0186, 410-122-0202, 410-122-0205, 410-122-0320, 410-122-0325, 410-122-0340, 410-122-0590, 410-122-0630 and 410-122-0720 to reflect technical changes, code updates, word clarification and to clarify intent; 410-122-0184 (Repairs, Maintenance, Replacement and Delivery) 410-122-0190 (Miscellaneous DME and Supplies), and 410-122-0560 (Urological Supplies) to rename the rules and to clarify language and intent; and, 410-122-0080, 410-122-0500 to clarify language and intent.

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-120-0025, 410-120-1395, 410-120-1397, 410-120-1505, 410-120-1510, 410-120-1855

Proposed Amendments: 410-120-0000, 410-120-0250, 410-120-1140, 410-120-1160, 410-120-1180, 410-120-1195, 410-120-1200, 410-120-1210, 410-120-1230, 410-120-1260, 410-120-1280, 410-120-1300, 410-120-1320, 410-120-1340, 410-120-1350, 410-120-1360, 410-120-1380, 410-120-1385, 410-120-1390, 410-120-1400,

410-120-1460, 410-120-1560, 410-120-1570, 410-120-1580, 410-120-1600, 410-120-1680, 410-120-1700, 410-120-1860, 410-120-1865, 410-120-1870, 410-120-1875, 410-120-1880, 410-120-1920, 410-120-1940, 410-120-1960, 410-120-1980

Proposed Repeals: 410-120-1290, 410-120-1420, 410-120-1440, 410-120-1480, 410-120-1500, 410-120-1520, 410-120-1540, 410-120-1565, 410-120-1640, 410-120-1660, 410-120-1685, 410-120-1720, 410-120-1820

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The General Rules program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. Nearly all 410-120 rules will be affected by this filing. The following is a short description of changes:

Adoptions: 410-120-0025: administration framework for the medical assistance programs and interrelationships between managed care contractors, their participating providers and OMAP's fee-for-service providers. 410-120-1395: program integrity activities related to medical assistance programs. 410-120-1397: overpayment recovery, recoupment activities and added text from other repealed rules. 410-120-1505: program audit parameters, requirements and processes and text from repealed rule. 410-120-1510: federal regulations governing fraud and abuse. 410-120-1855: OMAP clients' rights and responsibilities.

Amendments: 410-120-0000: to add numerous definitions and clarify emergency transportation; 410-120-1160: provider responsibility for compliance with OMAP rules, and Office of Mental Health and Addiction Services (OMHAS) responsibility for alcohol and drug inpatient hospital services; 410-120-1200: exclusion of clinical trials and demonstration projects and exceptions to exclusion of DHS' waived Home and Community Based personal care services; 410-120-1260: enrollment responsibilities as a result of the National Provider Identification (NPI) and Electronic Data Interchange (EDI) rules required by Health Insurance Portability and Accountability Act (HIPAA); 410-120-1280: billing practices affected by NPI and EDI requirements; 410-120-1320: payment authorization in relationship to client's benefit package; 410-120-1340: payment practices affected by NPI and EDI requirements, and medical assistance programs applicable rate setting; 410-120-1380: to include contractual requirements applicable to OMAP enrolled providers; 410-120-1460: OMAP's ability to immediately suspend an enrolled provider's billing where public harm or inappropriate expenditure dictates, and add text from repealed rules; 410-120-1400, 410-120-1560 and 410-120-1600: to add text from repealed rules. Most rules will be amended to take care of necessary housekeeping corrections.

Repeals: Most text will still exist and be moved to other rules.

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065

Proposed Amendments: 410-120-1295

Last Date for Comment: 7-15-05, 12 p.m.

Summary: The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP will amend OAR 410-120-1295 to add clarification of requirements for hospitals and Fully Capitated Health Plans (FCHPs) as well as add the name of a new hospital to the reimbursement documents, FCHP Non-Contracted DRG Hospital Reimbursement Rates.

NOTICES OF PROPOSED RULEMAKING

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-130-0200, 410-130-0220, 410-130-0255, 410-130-0585, 410-130-0587, 410-130-0680
Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Medical-Surgical Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP will amend the following OARs: 410-130-0200 to add/remove new/deleted HCPCS codes for services requiring PA; 410-130-0220 to reflect CPT and HCPC code additions and deletions, add Physical Therapy codes no longer covered, add group education as not covered, and remove intranasal flu vaccine as not covered; 410-130-0255 to add vaccines covered by the Vaccines for Children's Program; 410-130-0585 to add language on services included in family planning; 410-130-0587 to clarify Family Planning Clinics must be enrolled with the Office of Family Health and to bill all supplies at acquisition cost; and 410-130-0680 to state that PET scans require PA. OMAP will also amend these rules to take care of necessary housekeeping corrections.

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-123-1040, 410-123-1240
Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Dental Program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP will amend OAR 410-123-1040 to remove incorrect language regarding billing and duplicative language. OMAP will amend OAR 410-123-1240 to reflect changes in OMAP's billing requirements for paper claims. Dental paper claim formats currently process using the Tartan System which has been set for decommission end of July 2005. DHS plans to process dental claims on an Optical Claims Reader (OCR) system. Currently OMAP is processing six different versions of dental claim forms (1994, 1996, 1998, 2000, 2002 and 2004). The OCR system will be programmed to process only the dental claim forms identified in 410-123-1240, effective August 1, 2005.

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: 7-15-05 **Time:** 10:30 a.m.–12 p.m. **Location:** Rm. 137 B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-125-0080
Last Date for Comment: 7-15-05, 12 p.m.

Summary: The Hospital Services Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services rendered to clients. OMAP will amend OAR 410-125-0080 to update prior authorization requirements.

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,
Public Health
Chapter 333**

Date: 7-22-05 **Time:** 2 p.m. **Location:** 3420 Cherry Ave. NE, #110
Keizer, OR 97303

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 441 & 442
Stats. Implemented: ORS 441 & 442
Proposed Amendments: 333-535-0025, 333-535-0061, 333-535-0080, 333-535-0085, 333-535-0090, 333-535-0100, 333-535-0110, 333-535-0115, 333-535-0120, 333-535-0260, 333-535-0270, 333-535-0300, 333-535-0310
Last Date for Comment: 7-22-05, 5 p.m.

Summary: Amends hospital rules to reflect current industry and technology standards, new department terminology, and correct formatting and punctuation. Corrects miscellaneous references to new building code regulations generated by the International Building Code (IBC) adopted by the State of Oregon in October 2004.

OAR 333-535-0025, Medical/Surgical Patient Care Unit: (2)(m) Clarifies that common use showers are not required when bathing facilities are provided within the patients private toilet rooms.

OAR 333-535-0061, Psychiatric Patient Care Units & Rooms: (3) Clarifies that only hospitals that have a psychiatric program are required to have psychiatric services and at least one psychiatric hold room. (7)(g) Clarifies that wood or vinyl combustible wall surfaces are not allowed.

OAR 333-535-0080, Emergency Department: (2)(d) Clarifies that treatment rooms that are a minimum of 250 sq. ft. can be subdivided into 120 sq. ft. minimum treatment cubicles. (Exclusive of toilets, waiting areas and toilets.) (2)(e) Revises the term "x-ray view boxes" to "image readers." This revision allows the use of computer screens and digital imaging to be used in certain areas as necessary.

OAR 333-535-0085, Hospital Immediate Care-Minor Emergency Facilities: (2)(k) Requires patient designated toilets to be readily available or within the clinic space.

OAR 333-535-0090, Laboratory Suite: (1)(f) Modifies current requirement on a hand wash sink to be conveniently located in or near the blood draw area.

OAR 333-535-0100, Imaging Facilities: (3)(c) Modifies the term "film reading" to "image reading" to allow x-rays to be read either by film or digital source. (9)(m) Deletes the reference to receptacle size for film processor hot and cold water use. This reference is no longer necessary.

OAR 333-535-0110, Surgical Facilities: (3)(a) Revises the term "x-ray film illuminators" to "image readers" to allow either x-ray film illuminators or digital imaging reads to be used. (3)(c) Eliminates the reference to a support room for pump equipment adjacent to a cardiovascular surgery room. This room is no longer necessary for the equipment now required. (4)(o) Corrects the term "outpatient" recovery to "phase one" recovery within the outpatient surgery area. Also requires hand wash stations to be installed at a rate of one sink

NOTICES OF PROPOSED RULEMAKING

for every six recovery beds. (4)(p) Revises the term “dedicated” recovery space to “phase 2” to further define this area as a step down recovery space. (4)(x) Requires hand wash stations in a post recovery area at a rate of one sink for every six beds.

OAR 333-535-0115, Endoscopy Facilities: (2)(F) Clarifies Table 5 to be in OAR 333-535-0300.

OAR 333-535-0120, Obstetrical Facilities: (2)(C)(v) Requires a window in each patient room as required by OAR 333-535-0025.

OAR 333-535-0260, Sanitary Environment: (4) Clarifies that if a Clean Utility Room is used for clean storage only, a hand wash sink is not necessary. (6) Requires a toilet for each 15 patients served by common bathing rooms.

OAR 333-535-0270, Details and Finishes: (1) and (2) Corrects references to current codes. (2)(C) Clarifies the locations and conditions that require patient toilet room doors to swing out. (2)(J) Clarifies distance of handrail to wall. (2)(K) Clarifies soap dishes can be surface mounted. (2)(O)(iii) Finishes incomplete sentence to indicate ceilings can be minimum of 7'-6". (2)(b)(C) Adds floors in operating and “C” section rooms, clean core areas and recovery areas (except step-down recovery areas), to the list of rooms requiring non-slip flooring. (2)(D) Adds clean core areas to rooms that require smooth wall surfaces. Clarifies “orange peel” texture is not allowed. (2)(G) Ceilings in surgery, delivery and nursery rooms, clean core areas and radiographic dark rooms to have gypsum board type ceilings only.

OAR 333-535-0300, Mechanical Requirements: (1)(a) Adds a reference to NFPA 99. (2)(e) Adds invasive special procedure rooms to those requiring no duct lining. Omits a reference to ASTM C65 that no longer applies. (2)(f) Eliminates the reference to asbestos insulation, no longer necessary. (4)(a) Requires the submittal of air change rates as listed in Table 4. (4)(b) Revises terminology to current terms. (4)(c) Clarifies exhaust fan locations to be outside the building. (4)(d) Clarifies the use of laminar flow diffusers in operating rooms. Clarifies the locations of equipment above the operating room ceiling and requires humidity control and smoke ventilation in anesthetizing areas as per NFPA 99. (4)(e) Clarifies the proper location for air supply ducts in intensive care nurseries, airborne infections isolation rooms and LDR Rooms. (4)(j)(D) Clarifies a manometer indicating light is required in a staffed area when the HVAC manometer is in a remote location. (4)(p)(C) Clarifies rule to indicate exhaust fans are located outside the building. (5)(c)(B) Limits the distance of hot water piping circulation systems to 30 feet to an outlet. (5)(e)(C) Restricts overhead drainage piping above intensive care and pharmacy areas. (5)(e)(H) Adds a requirement for a plumbing drain trap at a hot lab where radioactive materials are processed. (5)(f)(B) Clarifies medical gas testing per NFPA 99. Revises Table 2 at critical care areas at cardiac catheterization. Clarifies areas and connection to footnotes. Refer to Table 2 at footnote 10/, added a requirement to install a mechanism to monitor the negative air pressure in an airborne infectious isolation room. Refer to Table 2 at footnote 12/, deleted an outdated reference to OAR 333-088-0085. Refer to Table 2 added footnote 20/, regarding exhaust systems for sterilizers. Refer to Table 5, added step-down recovery and related oxygen and vacuum requirements.

OAR 333-535-0310, Electrical Requirements: (1)(a) Clarifies references to NFPA Codes. (1)(b) Includes emergency generators in items to be tested to function as required. (4)(a) Indicates bare bulb light fixtures are not allowed in public buildings. (4)(c) Clarifies patients to be inpatients. (5) Clarifies hospital grade outlets to be used in outpatient waiting rooms. (5)(b) Omits an outdated reference to Article 517. (5)(c) Updates an outdated reference to NFPA 99. (6)(b) Omits an outdated reference to Section 517-90. (6)(e) Creates a rule requiring electronic faucets in critical care areas and selected kitchen equipment to be on emergency power. (7)(c) Adds recovery and prep to areas where patients are under constant supervision. (7)(d) Requires cardiac catheterization, outpatient surgeries, special procedure rooms, triage, admission and discharge areas, as well as psychiatric patient areas to have a nurses’ emergency call system (7)(e)

Requires a nurse call system in Critical Care, Pre-Op and Recovery Areas to have an emergency resuscitation alarm system to summon assistance outside the unit. (7)(f) Requires each operating room to have a call system for emergency communication that can be operated without the use of hands but not foot activated. (8)(a) Clarifies the flow alarm on an emergency generator fuel tank is only required when the tank is remote from the generator. (8)(d) Revises the length of time required to have emergency generators operate from eight (8) hours to ninety-six (96) hours per NFPA 110.

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:	Time:	Location:
7-22-05	2 p.m.	3420 Cherry Ave. NE, #110 Keizer, OR 97303

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441 & 442

Proposed Amendments: 333-700-0130

Last Date for Comment: 7-22-05, 5 p.m.

Summary: Outpatient renal dialysis facility construction requirements were written to protect the public with infection control and fire and life safety regulations. State Building Code changes in October 2004 revised references in the existing dialysis rules. These proposed changes will correct the rule language to reflect the revised State Building Code language.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

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

Date:	Time:	Location:
7-19-05	9 a.m.	500 Summer St. Rm. 137d Salem, OR

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410, 443.450, 409.010 & 409.050

Stats. Implemented: ORS 410 & 443.450

Proposed Amendments: 411-048-0000, 411-048-0130

Last Date for Comment: 7-22-05

Summary: OAR 411-048-0000 and 411-048-0130 in the Contract RN rules are proposed for permanent amendment in order to be consistent with the Residential Care Facility (RCF) OARs last updated 04/01/04. SPD Contract RNs will no longer provide services (assessment and monitoring) to clients living in the Residential Care Facility setting. The setting description “(RCF)” is being removed from the “Purpose” statement in 411-048-0000 of the Contract RN Service OARs and ‘Residential Care Facility’ has been added to the “Service Limitations” section in 411-048-0130.

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

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

Date:	Time:	Location:
8-4-05	10 a.m.–12 p.m.	Office of State Fire Marshal 4760 Portland Rd. NE Salem, OR 97303

Hearing Officer: Bob Albers

Stat. Auth.: ORS 465.106

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 465.106

Proposed Amendments: 837-090-1145

Last Date for Comment: 8-8-05

Summary: The rule is being modified to reduce the Petroleum Load Fee collected on each load of petroleum products withdrawn in the state and each load imported in to the state from \$4.75 to \$2.50. The purpose of the fee reduction is to reduce a current cash carryover. Once the cash carryover is reduced it will be necessary to increase the fee to maintain program funding levels. The rule modification sets a fee collection schedule for current and future bienniums.

Rules Coordinator: Pat Carroll

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

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

Department of Public Safety Standards and Training Chapter 259

Stat. Auth.: ORS 181.640, 181.644, 181.650, 181.651, 181.653, 181.665, 181.652 & 181.667

Stats. Implemented: ORS 181.640, 181.644, 181.650, 181.651, 181.653, 181.665, 181.652 & 181.667

Proposed Amendments: 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0045, 259-008-0065, 259-008-0066, 259-008-0068, 259-008-0070, 259-008-0075, 259-008-0085, 259-008-0090, 259-009-0005, 259-009-0025, 259-009-0062, 259-009-0065, 259-009-0067, 259-009-0085, 259-009-0087, 259-009-0090, 259-012-0005, 259-012-0010, 259-012-0015, 259-020-0030, 259-040-0000

Last Date for Comment: 7-22-05

Summary: Housekeeping issue. Amend all rules containing the phrase "and/or" and revise language to read either "and" or "or" as appropriate.

Rules Coordinator: Bonnie Salle

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

Telephone: (503) 278-2431

Stat. Auth.: ORS 181.610 & 181.640

Stats. Implemented: ORS 181.610 & 181.640

Proposed Adoptions: 259-009-0060

Last Date for Comment: 7-22-05

Summary: Requires minimum standards for employment as a Fire Service Professional; requires minimum age of 18 for certification as a Fire Service Professional.

Rules Coordinator: Bonnie Salle

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

Telephone: (503) 378-2431

Department of State Lands Chapter 141

Date:	Time:	Location:
8-12-05	10 a.m.-12 p.m.	Land Board Rm. Dept. of State Lands 775 Summer St. NE, Ste. 100 Salem, OR 97301

Hearing Officer: John Lilly or designee

Stat. Auth.: ORS 183, 273 & 273.045; Other Auth: OR Const., Art. VIII, §§ 2 & 5

Stats. Implemented: ORS 196, 197 & 197.180

Proposed Adoptions: 141-095-0005, 141-095-0010, 141-095-0015

Proposed Repeals: 141-095-0000

Last Date for Comment: 10-11-05

Summary: The proposed rules adopt and implement the Department of State Lands' revised state agency land use coordination program pursuant to the requirements of ORS 197.180 and OAR 660, Division 030.

Text of the proposed rules will be available approximately July 5, 2005 from the Department of State Lands, and on the department's web site: www.oregonstatelands.us

Rules Coordinator: Nicole Kielsmeier

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

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

Department of Transportation Chapter 731

Stat. Auth.: ORS 244.010 - 244.400, 279A.065, 279A.070, 279A.140, 279B.075, 279C.110 & 279C.115

Stats. Implemented: ORS 244.010 - 244.400, 279A.030, 279A.050, 279A.065, 279A.070, 279A.140, 279B.015, 279B.025, 279B.065, 279B.075, 279B.080, 279B.085, 279B.090, 279B.270 & 279B.280

Proposed Adoptions: 731-146-0010, 731-146-0012, 731-146-0015, 731-146-0020, 731-146-0025, 731-146-0030, 731-146-0040, 731-146-0050, 731-146-0060, 731-146-0070, 731-146-0080, 731-146-0090, 731-146-0100, 731-146-0110, 731-146-0120, 731-146-0130, 731-146-0140, 731-147-0010, 731-147-0020, 731-147-0030, 731-147-0035, 731-147-0040, 731-147-0050, 731-147-0055, 731-147-0060, 731-148-0010, 731-148-0020, 731-149-0010

Proposed Repeals: 731-010-0030

Last Date for Comment: 7-21-05

Summary: Chapter 794, Oregon Laws 2003 (HB 2341) replaced ORS Chapter 279, the Public Contracting Code, with Chapters 279A, 279B and 279C effective March 1, 2005. The law specifies that all rules adopted pursuant to ORS Chapter 279 expire March 1, 2005. Therefore, ODOT is adopting OAR Chapters 146, 147, 148 and 149 to adopt the Department of Justice new model public contracting rules, which replace the existing model contract rules and additional provisions that apply to ODOT contracts. These rules cover general provisions related to public contracting; the selection process for architectural, engineering and land surveying and related services; procurement of goods and services; and public contracts for construction services. The current rule, adopting model rules, OAR 731-010-0030 was suspended effective March 1, 2005.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Department of Veterans' Affairs Chapter 274

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125 & 407.225

Proposed Amendments: 274-020-0345, 274-045-0080

Proposed Repeals: 274-020-0345(T), 274-045-0080(T)

Last Date for Comment: 7-21-05

Summary: This rule replaces and supersedes the Temporary Rules 274-020-0345(T) and 274-045-0080(T) filed on June 3, 2005, and effective upon filing through November 30, 2005.

This proposed amendment rule revises the requirement that, in order to obtain a home loan through the Department, the veteran borrower must have equity in the property at the time of purchase. This proposed amendment will also help the loan program provide loans to a larger number of veterans and remain solvent.

Rules Coordinator: Herbert D. Riley

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

Telephone: (503) 373-2055

NOTICES OF PROPOSED RULEMAKING

Occupational Therapy Licensing Board Chapter 339

Date: 7-28-05 **Time:** 11 a.m. **Location:** Salem Hospital Room
Salem, OR

Hearing Officer: Board Members
Stat. Auth.: ORS 675.320(10) & (11)
Stats. Implemented:

Proposed Adoptions: 339-010-0016
Proposed Amendments: 339-010-0005, 339-010-0050, 339-020-0010, 339-020-0020, 339-020-0100
Proposed Repeals: 339-020-0030, 339-020-0040, 339-020-0050, 339-020-0060, 339-020-0070
Last Date for Comment: 7-28-05

Summary: Makes continuing education (CE) rule the same for all categories (deleted exemption for new graduates; delete differences for licensees from other states). Creates separate section for applications for licensure that require CE for those who have not been licensed for up to three years. Requires a Re-Entry Program or retaking the Certification Exam for those not licensed for more than three years. Takes out "handicapped" language for Occupational Therapists working in education setting. Clarifies and makes minor changes to Continuation Education rules. Changes how mentorship is used only for Continuing Education points.

See the web site at www.otlb.state.or.us to see the actual changes under Current Issues and About the Board. They are also summarized in the June, 2005 Newsletter of the Board, also on the web site.

Rules Coordinator: Felicia Holgate
Address: Occupational Therapy Licensing Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0198

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Oregon Department of Aviation Chapter 738

Stat. Auth.: ORS 835.112, 192.430 & 192.440
Stats. Implemented: ORS 192.410 & 192.505
Proposed Amendments: 738-001-0035
Last Date for Comment: 7-21-05

Summary: The Oregon Department of Aviation proposes to amend its Public Records Access and Fees rule (OAR 738-001-0035). Currently the Oregon Department of Aviation provides copies of its board meeting packets (agenda and related materials) to interested persons at no charge. The amendment would establish a subscription fee for members of the public to receive these packets. This fee would cover the agency's cost (photocopies, envelopes and mailing costs) for twelve mailings. As an alternative to the subscription fee, members of the public could obtain these materials by e-mail for no charge.

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

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Oregon Liquor Control Commission Chapter 845

Date: 8-10-05 **Time:** 10 a.m.-12 p.m. **Location:** 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Katie Hilton
Stat. Auth.: ORS 471, 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.430(3)
Proposed Amendments: 845-006-0340
Last Date for Comment: 8-24-05

Summary: This rule describes how the Commission posts signs in licensed premises in order to maximize opportunities for minors to eat at licensed premises while minimizing their exposure to drinking environments. We intend to amend this rule to add movie theaters

as a type of operation for which the licensee must submit a written security plan. Proposed rule language would require a physical separation between minors and alcohol in licensed movie theaters. Staff also proposes to add a definition of movie theater to the rule.

Rules Coordinator: Katie Hilton
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222-7355
Telephone: (503) 872-5004

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Oregon Public Employees Retirement System Chapter 459

Date: 7-26-05 **Time:** 2 p.m. **Location:** Boardroom
PERS Headquarters
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 183.310 - 183.550 & 238.650
Stats. Implemented: ORS 238.320, 238.335, 238.330 & 238.715
Proposed Adoptions: 459-015-0000, 459-015-0001
Proposed Amendments: 459-015-0005, 459-015-0010, 459-015-0020, 459-015-0025, 459-015-0045, 459-015-0050, 459-015-0055, 459-015-0060
Proposed Repeals: 459-015-0015
Last Date for Comment: 8-31-05

Summary: ** This is a notice to extend the public comment period for the Division 15 Disability rules that were originally published in the October, 2004 Oregon bulletin. **

The statutory framework for PERS Chapter 238 plan members applying for a disability retirement allowance does not adequately set out major administrative and policy issues. While the program has generally been administered in a respected and efficient manner, some gray areas regarding the program have arisen over time. These rule changes would articulate the standards by which the disability program is administered, so members have consistent information.

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

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

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Date: 7-26-05 **Time:** 2 p.m. **Location:** Boardroom,
PERS Headquarters
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 183.310 - 183.550 & 238A.450
Stats. Implemented: ORS 238A.235
Proposed Adoptions: 459-076-0000, 459-076-0001, 459-076-0005, 459-076-0010, 459-076-0020, 459-076-0025, 459-076-0045, 459-076-0050, 459-076-0055, 459-076-0060
Last Date for Comment: 8-31-05

Summary: ** This is a notice to extend the public comment period for the Division 76 Disability rules that were originally published in the October, 2004 Oregon bulletin. **

House Bill 2020, the legislation that established the Oregon Public Service Retirement Plan (OPSRP), requires new administrative rules to clarify and implement its provisions; in this case related to disability benefits under ORS 238A.235.

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

Rules Coordinator: David K. Martin

NOTICES OF PROPOSED RULEMAKING

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
Telephone: (503) 603-7713

Date:	Time:	Location:
7-26-05	2 p.m.	Boardroom, PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238.410 & 238.650
Stats. Implemented: ORS 238.410, 238.415 & 238.420
Proposed Amendments: 459-035-0001
Last Date for Comment: 8-5-05

Summary: In 2002, the PERS Board adopted amendments to OAR 459-035-0001 that defined a "Dependent Domestic Partner of a PERS Retiree." Persons that fit within that definition are eligible to participate in the PERS-sponsored health insurance plan. The definition, in part, requires that a PERS retiree claims the dependent on the PERS retiree's most recent federal tax return.

However, recent amendments to the Internal Revenue Code ("IRC") through the 2004 Working Families Tax Relief Act ("Act"), P.L. 108-311, impacted who is eligible to be claimed as a dependent on a federal tax return. The key change was the to limit on gross income that a person can earn and still be claimed as a dependent: the dependent must have gross income less than the exemption amount under section 151(d) (for 2004, that was \$3,100).

As a result of the new law, a taxpayer cannot claim a domestic partner as a dependent on a federal tax return if the domestic partner's income exceeds \$3,100. Because the PERS definition of "Dependent Domestic Partners of PERS Retirees" relies on the dependent to be claimed on the retiree's federal tax return but does not set an income threshold, the change in federal law limits the number of people eligible for PERS-sponsored health care.

A separate section of the Act preserved the definition of "dependent" for the purposes of employer-provided medical care reimbursements in conforming amendments to section 105 of the IRC. If the domestic partner's income is the only reason why the domestic partner cannot be claimed as a dependent on the taxpayer's return, the domestic partner continues to be considered "dependent" for purposes of section 105(b).

The rule modifications would allow all persons who qualified as "Dependent Domestic Partners of PERS Retirees" under OAR 459-035-0001 before Congress passed the Act to continue to qualify by shifting to the definition of "dependent," defined in IRC section 105(b). Staff recommends this broader approach, but encourages public comment on whether a different definition should be adopted so the PERS Board can consider the merits of all approaches.

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

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

Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690, 192.502, 237, 237.171, 237.191, 237.263, 238.410, 238.465(3), 238.630(5), 238.705, 238.650 & 238A.450

Stats. Implemented: ORS 237.410 - 237.520, 237.610 - 237.620, 237.950 - 237.980, 192.410 - 192.505, 238, 238.005 - 238.750, 238A.330 & 238A.400

Proposed Amendments: 459-001-0015, 459-001-0025, 459-001-0035, 459-005-0010, 459-005-0150, 459-005-0210, 459-005-0215, 459-005-0220, 459-005-0599, 459-007-0050, 459-007-0060, 459-009-0020, 459-009-0070, 459-009-0120, 459-010-0010, 459-010-0011, 459-010-0012, 459-010-0030, 459-010-0165, 459-010-0205,

459-011-0200, 459-013-0060, 459-014-0030, 459-015-0030, 459-015-0035, 459-015-0040, 459-020-0015, 459-020-0050, 459-020-0055, 459-035-0150, 459-045-0000, 459-045-0001, 459-060-0000, 459-080-0150, 459-080-0250

Last Date for Comment: 8-5-05

Summary: PERS staff undertook an overall review of the agency's administrative rules to clean up errors in citations, spelling, cross-references, etc. These non-substantive rule modifications are to be addressed as part of this rulemaking.

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

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

Oregon State Lottery Chapter 177

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

Stats. Implemented: ORS 167.117 & 167.164

Proposed Amendments: 177-100-0010, 177-100-0180

Last Date for Comment: 7-25-05

Summary: ORS 167.164 prohibits the manufacture or possession of gray machines in Oregon unless a manufacturer is approved by rules adopted by the Lottery. ORS 167.117(9)(c)(C). OAR 177-100-0010 is being amended to add a definition of "service" and "video lottery terminal." OAR 177-100-0180 is being amended to clarify the process and requirements for Lottery approval, including requirements for background investigations and audits.

Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

Oregon University System Chapter 580

Date:	Time:	Location:
7-18-05	10 a.m.	1431 Johnson Ln. Eugene, OR 97403

Hearing Officer: Bob Simonton

Stat. Auth.: ORS 240 & 351.070

Stats. Implemented: ORS 240 & 351.070

Proposed Adoptions: 580-050-0350, 580-050-0360

Proposed Amendments: 580-050-0000, 580-050-0020, 580-050-0032

Last Date for Comment: 7-20-05

Summary: *Changes to Current Rules:*

580-050-0000 - Provides definition of terms used throughout Division 50.

580-050-0020(2) - Extends renewal of retainer agreements from one to two years.

580-050-0020(3) - Increases from \$25,000 to \$75,000 authority for the vice chancellor for finance and administration (VCFA) or designee to award contracts to consultants on retainer list; allows VCFA to award contracts between \$75,000 and \$200,000 to consultants pursuant to specified procedure; and for contracts over \$200,000, permits award after competitive bidding.

580-050-0032 - Increases maximum amount under retainer agreement to \$500,000.

New Sections:

580-050-0350 - Permits negotiation when offer exceeds cost estimates.

580-050-0360 - Permits offers by facsimile and electronic means.

Rules Coordinator: Marcia M. Stuart

NOTICES OF PROPOSED RULEMAKING

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5795

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 238A.025

Proposed Adoptions: 580-021-0029

Last Date for Comment: 7-22-05

Summary: This rule establishes career development leave as an OUS policy, with implementation rules under the authority of each university. The employer policy fulfills requirements of ORS 238A.025(3)(d), granting up to one calendar year of unpaid leave that does not constitute a break in service for members of the Public Employees Retirement System Chapter 238 pension plan.

Rules Coordinator: Marcia M. Stuart

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5749

Oregon University System, Western Oregon University Chapter 574

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Proposed Amendments: 574-050-0005, 574-031-0000, 574-031-0010, 574-031-0020, 574-031-0030, 574-031-0040, 574-032-0000, 574-032-0010, 574-032-0020, 574-032-0030, 574-032-0040, 574-032-0050, 574-032-0060, 574-032-0070, 574-032-0080, 574-032-0090, 574-032-0100, 574-032-0110, 574-032-0120, 574-032-0130, 574-032-0150, 574-032-0160

Last Date for Comment: 7-25-05

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees and updates to Division 31 and 32 for student conduct and the student judicial process.

Rules Coordinator: Debra L. Charlton

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

Telephone: (503) 838-8175

Oregon Youth Authority Chapter 416

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 162.135, 162.185, 419C.478 & 420A.120

Proposed Amendments: 416-420-0000, 416-420-0010, 416-420-0020, 416-420-0030

Proposed Repeals: 416-420-0040, 416-420-0050

Last Date for Comment: 7-22-05

Summary: The OYA has amended this rule to update language and reorganize its rule divisions. Relevant text moved to new Division 410. 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 97301-3765

Telephone: (503) 378-3864

Stat. Auth.: ORS 420A.025

Stats. Implemented:

Proposed Repeals: 416-380-0000, 416-380-0010, 416-380-0020, 416-380-0030, 416-380-0040, 416-380-0050, 416-380-0060, 416-380-0070

Last Date for Comment: 8-3-05

Summary: These rules are being repealed in that relevant language is contained in other legal documents. The notice to repeal these rules

was originally filed May 9, 2003 and the Certificate showing adoption of the repeal was held pending repeal of other rules. 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 97301-3765

Telephone: (503) 378-3864

Secretary of State, Elections Division Chapter 165

Date:

7-25-05

Time:

9-9:30 a.m.

Location:

Public Service Bldg.
255 Capitol St. NE
Basement B
Salem, OR

Hearing Officer: Fred Neal

Stat. Auth.: ORS 246.150, 260.156, 260.159 & 260.200

Stats. Implemented: ORS 246.021, 260.159 & 260.200

Proposed Amendments: 165-012-0230

Last Date for Comment: 7-25-05, 5 p.m.

Summary: This rule amendment exempts state candidate and committees that are only filing annual supplemental reports for elections occurring before 2004 from the requirement to file those supplemental reports electronically.

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

Teacher Standards and Practices Commission Chapter 584

Date:

7-15-05

Time:

2 p.m.

Location:

TSPC Conference Rm.
Salem, OR

Hearing Officer: Victoria Chamberlain

Stat. Auth.: ORS 342.165

Stats. Implemented: ORS 342.120 - 342.143, 342.147, 342.153, 342.165 & 342.223 - 342.232

Proposed Adoptions: 584-060-0052, 584-060-0062

Proposed Amendments: 584-001-0005, 584-010-0010, 584-017-0130, 584-017-0140, 584-017-0150, 584-017-0170, 584-017-0185, 584-019-0005, 584-020-0040, 584-036-0015, 584-036-0055, 584-060-0012, 584-060-0013, 584-060-0051, 584-060-0071

Proposed Repeals: 584-019-0045, 584-060-0061

Last Date for Comment: 7-15-05, 5 p.m.

Summary: 584-001-0005: Model Rules of Procedure. Updates rule to include provisions of APA.

584-010-0010: Approval of Education Programs for Teachers, Administrators and Personnel Service; Increase period of time between site reviews from five to seven years.

584-017-0130: Middle Level Authorization: Adds middle-level endorsements in Language Arts, Social Science and Science to Initial and Continuing Teaching Licenses.

584-017-0140: High School Authorization: Clarifies scope of middle-level endorsement on a high school authorization.

584-017-0150: Selected Subject Matter and Specialty Endorsements;

584-017-0170: Adding Endorsements to Existing Initial and Continuing Teaching Licenses;

584-017-0185: Evidence of Effectiveness. Revises work sample requirements to clarify evidence that must be presented.

584-019-0005: Model Rules of Procedure. Incorporates updated statutes and administrative rules.

NOTICES OF PROPOSED RULEMAKING

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

584-019-0045: Filing Petition for Reconsideration or Rehearing is condition of Judicial Review of Final Orders of TSPC in Contested Cases (Repeals)

584-036-0015: Basic and Standard Teaching License with Authorizations and Endorsements: Adds middle school endorsement to Basic or Standards Teaching License, removes obsolete language, renumbers sections.

584-036-0055: Fees, Forfeiture, and Expedited Service. Corrects errors and reconciles with underlying fee statute.

584-060-0012: Initial Teaching License Requirements. Makes clarifying amendments to new rules for the Initial Teaching License.

584-060-0013: Renewal of the Initial Teaching License. Makes clarifying amendments to new rules for the Initial Teaching License.

584-060-0051: Levels of Teaching Authorized: Clarifies addition of middle-level endorsement requirements in licensure sections of the administrative rules.

584-060-0052: Adding Authorization Levels to Existing Initial/Continuing Teaching Licenses;

584-060-0061: Endorsements of Specialties. (Repeals)

584-060-0062: Adding Endorsements to Existing Initial/Continuing Teaching Licenses. Creates new rule for language relating to adding endorsements to teaching licenses to improve rule clarity.

584-060-0071: Endorsements Requiring Multiple Levels.

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

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

Telephone: (503) 378-6813

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Veterinary Medical Examining Board Chapter 875

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.020, 686.045 & 686.065

Proposed Adoptions: 875-001-0015, 875-005-0000, 875-005-0005, 875-005-0010, 875-010-0000, 875-010-0006, 875-010-0016, 875-010-0021, 875-010-0026, 875-010-0090, 875-010-0095

Proposed Amendments: 875-001-0000, 875-001-0005, 875-010-0045, 875-010-0050, 875-010-0065, 875-015-0020, 875-015-0030, 875-015-0050, 875-020-0030, 875-020-0040, 875-020-0055, 875-030-0010, 875-030-0040

Proposed Repeals: 875-001-0010, 875-001-0020, 875-001-0030, 875-010-0010, 875-010-0030, 875-010-0055, 875-010-0060, 875-010-0070, 875-010-0075, 875-010-0080, 875-010-0085, 875-015-0000, 875-020-0000

Last Date for Comment: 7-22-05

Summary: These amendments are needed to update standards to conform with current practices.

Rules Coordinator: Lori V. Mäkinen

Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0224

Water Resources Department Chapter 690

Date:
8-16-05

Time:
12-1 p.m.

Location:
OWRD
Conference Rm. 124b
725 Summer St. NE
Salem, OR

Hearing Officer: Teri Hranac

Stat. Auth.: ORS 539.130

Stats. Implemented: ORS 539

Proposed Amendments: 690-030-0085

Last Date for Comment: 8-18-05, 5 p.m.

Summary: The Water Resources Department is proposing to amend rules relating to contests in the adjudication of water rights (OAR Chapter 690, Division 30). The proposed rules under OAR Chapter 690, Division 30 would allow claimants in an adjudication proceeding to add or change points of diversion to water uses covered under a claim so long as the change does not cause injury to another claimant or water right holder and so long as the new diversion points are downstream of the original diversion point. Without this rule amendment, claimants in an adjudication would otherwise have to wait until the adjudication was completed in order to make this kind of change to their water right.

Rules Coordinator: Debbie Colbert

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

Telephone: (503) 986-0878

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Date:
8-17-05

Time:
12-1 p.m.

Location:
OWRD
Conference Rm. 124b
725 Summer St. NE
Salem, OR

Hearing Officer: Lisa Juul

Stat. Auth.: ORS 537.230 & 537.630

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

Proposed Amendments: 690-315-0010, 690-315-0070, 690-315-0080

Last Date for Comment: 8-18-05, 5 p.m.

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

Rules Coordinator: Debbie Colbert

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

Telephone: (503) 986-0878

ADMINISTRATIVE RULES

Board of Examiners for Engineering and Land Survey Chapter 820

Adm. Order No.: BEELS 2-2005(Temp)
Filed with Sec. of State: 6-9-2005
Certified to be Effective: 6-9-05 thru 12-5-05
Notice Publication Date:
Rules Amended: 820-010-0325
Subject: Revises the Board's budget for the 05-07 biennium.
Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0325

Budget

The amount of \$1,820,150 is established for the biennium beginning July 1, 2005, as the intended limit for payment of expenses from fees, monies or other revenue, including Miscellaneous Receipts, collected or received by the Board. The expenditure limitation includes an operating budget of \$1,564,012 and an examination budget of \$250,000.

Stat. Auth.: ORS 670.310 & 672.155

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 2-2002, f. & cert. ef. 5-15-02; BEELS 4-2003, f. 5-14-03, cert. ef. 7-1-03; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2005(Temp), f. & cert. ef. 6-9-05 thru 12-5-05

Adm. Order No.: BEELS 3-2005(Temp)

Filed with Sec. of State: 6-9-2005

Certified to be Effective: 6-9-05 thru 12-5-05

Notice Publication Date:

Rules Adopted: 820-010-0203

Subject: This rule would allow a professional engineer in the State of Oregon who is practicing in geotechnical engineering to use the title of "geotechnical," "soils engineer," or "foundation engineer" until the prior practice process has been completed by the Board per OAR 820-010-0200(6).

Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0203

Use of Geotechnical Titles

The title "Geotechnical engineer", "soils engineer", "soil engineer", or "foundation engineer" can be used by a professional engineer in the State of Oregon that is practicing in these fields of engineering until such date that the prior practice process has been completed by the Board per OAR 820-010-0200(6).

Stat. Auth.: ORS 670.310, 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2005(Temp), f. & cert. ef. 6-9-05 thru 12-5-05

Board of Examiners of Licensed Dietitians Chapter 834

Adm. Order No.: BELD 1-2005

Filed with Sec. of State: 5-23-2005

Certified to be Effective: 7-22-05

Notice Publication Date: 7-1-05

Rules Adopted: 834-010-0019

Rules Amended: 834-010-0010, 834-010-0015, 834-010-0025, 834-010-0030

Subject: 834-010-0019 gives the Board assurance that an other-state-licensed dietitian satisfies the Board's requirements for technical competency. The other (amended) rules implement gubernatorial streamlining objectives.

Rules Coordinator: Doug Van Fleet—(971) 673-0190

834-010-0010

Qualifications for Licensure

(1) Applicants who are currently registered by the CDR are deemed to have met the academic requirements of ORS 691.435(2).

(2) Each applicant must satisfactorily complete continuing education requirements as set forth by the CDR.

(3) Each applicant for licensure shall agree to adhere to the Code of Ethics of the American Dietetic Association.

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

Stat. Auth.: ORS 691.405 - 691.535

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; LDB 2-1993, f. 11-30-93, cert. ef. 12-1-93; BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05

834-010-0015

Waiver

The Board may waive the examination requirements of OAR 834-010-0010.

Stat. Auth.: ORS 691

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05

834-010-0019

Licensed in Another State

An applicant licensed in another state must also be currently registered as a dietitian by the CDR to be eligible for licensure in Oregon.

Stat. Auth.: ORS 691

Stats. Implemented:

Hist.: BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05

834-010-0025

Application for Licensure

(1) Application for licensure must be submitted on the form and in the manner prescribed by the Board.

(2) Every application shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate nonrefundable application fee and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets the requirements of ORS 691.435 through 691.565.

(3) Applications are to be submitted to the address designated by the Board.

(4) Approved applications and all documents filed in support thereof shall be retained by the Board.

(5) The Board will not consider an application as officially submitted until the applicant pays the application fee in full.

(6) The executive officer of the Board will notify the applicant about any additional materials required.

(7) The application for a license shall contain such information as the Board may reasonably require.

Stat. Auth.: ORS 691

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05

834-010-0030

Issuance and Renewal of Licenses

An applicant may be issued a license based on compliance with requirements stated in ORS 691.405, et seq. and these rules. The Board may issue a license to any person who meets the requirements upon payment of the license fee prescribed:

(1) Licenses will expire on October 31 of odd numbered years, beginning in 1995.

(2) Licensee's renewal application must be postmarked or received in the Board Office during regular business hours on or before the expiration date in order to avoid the late renewal fee.

(3) Applicants for renewal of licenses must provide documentation of having met continuing education requirements by providing the Board a copy of the current CDR card or evidence of continuing education as required by the Board.

(4) A renewed license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(5) No person without a current, valid license from the Board may use the title of or imply that he/she has the title of "licensed dietitian."

Stat. Auth.: ORS 691.405 - 691.535

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; LDB 1-1992, f. & cert. ef. 3-13-92; LDB 2-1993, f. 11-30-93, cert. ef. 12-1-93; BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05

Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 5-2005

Filed with Sec. of State: 6-10-2005

Certified to be Effective: 6-10-05

Notice Publication Date: 5-1-05

Rules Amended: 850-010-0225

ADMINISTRATIVE RULES

Subject: This amendment updates the compendium for naturopathic physicians and pharmacists to prescribe and fill prescriptions that are within Oregon law.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-010-0225

Naturopathic Formulary Compendium

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed.

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;
- (11) Allopurinol;
- (12) Alprostadil;
- (13) Amino Acids;
- (14) Amino Aspirins;
- (15) Aminoglycosides;
- (16) Aminolevulinic Acid;
- (17) Aminophylline;
- (18) Aminosalicylic Acid;
- (19) Ammonium Chloride;
- (20) Ammonium lactate lotion 12%;
- (21) Amoxicillin;
- (22) Amoxicillin & Clavulanate;
- (23) Amphotericin B;
- (24) Ampicillin;
- (25) Ampicillin & Sulbactam;
- (26) Anastrozole;
- (27) Anthralin;
- (28) Atorvastatin;
- (29) Atropine;
- (30) Atropine Sulfate;
- (31) Auranofin;
- (32) Azelaic Acid;
- (33) Azithromycin;
- (34) Bacampicillin;
- (35) Bacitracin;
- (36) Baclofen;
- (37) Becaplermin;
- (38) Belladonna;
- (39) Benzodiazepines;
- (40) Benzoic Acid;
- (41) Benzonatate;
- (42) Betaine;
- (43) Betamethasone;
- (44) Bethanechol Chloride;
- (45) Bichloroacetic Acid*;
- (46) Bimatoprost Ophthalmic Solution 0.03%;
- (47) Biologicals;
- (48) Biphosphonate;
- (49) Bromocriptine;
- (50) Budesonide;
- (51) Buprenorphine;
- (52) Butorphanol;
- (53) Cabergoline;
- (54) Calcipotriene;
- (55) Calcitonin;
- (56) Calcitriol;
- (57) Carbamide Peroxide;
- (58) Carbidopa;
- (59) Carbol-Fuchsin;

- (60) Captopril;
- (61) Cefaclor;
- (62) Cefdinir;
- (63) Cefibuten;
- (64) Cefadroxil;
- (65) Cefditoren;
- (66) Cefixime;
- (67) Cefonicid Sodium;
- (68) Cefpodoxime Proxetil;
- (69) Cefprozil;
- (70) Ceftibuten;
- (71) Cefuroxime;
- (72) Celecoxib;
- (73) Cellulose Sodium Phosphate;
- (74) Cenestin;
- (75) Cephalexin;
- (76) Cephadrine;
- (77) Chirocaine*;
- (78) Chloramphenicol;
- (79) Chloroquine;
- (80) Citrate Salts;
- (81) Clarithromycin;
- (82) Clindamycin;
- (83) Cloquinol;
- (84) Clostridium botulinum toxin (ab);
- (85) Cloxacillin;
- (86) Codeine;
- (87) Colchicine;
- (88) Colistimethate;
- (89) Collagenase;
- (90) Condylox;
- (91) Cortisone;
- (92) Coumadin;
- (93) Cromolyn Sodium;
- (94) Cyanocobalamin;
- (95) Cycloserine;
- (96) Danazol;
- (97) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (98) Demeclocycline Hydrochloride;
- (99) Desmopressin;
- (100) Desoxyribonuclease;
- (101) Dexamethasone;
- (102) Dextran;
- (103) Dextromethorphan;
- (104) Dextrose;
- (105) Dextrothyroxine;
- (106) Dicloxacillin;
- (107) Dihydroergotamine Migranal;
- (108) Didanosine;
- (109) Dimethyl Sulfone (DMSO);
- (110) Digitalis;
- (111) Digitoxin;
- (112) Digoxin;
- (113) Dinoprostone;
- (114) Diphylline;
- (115) Dirithromycin;
- (116) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (117) DMSA;
- (118) Doxercaliferol;
- (119) Doxycycline;
- (120) Dronabinol;
- (121) Dyclonine;
- (122) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (123) Electrolyte Solutions;
- (124) Emtricitabine;
- (125) Ephedrine;
- (126) Epinephrine*;
- (127) Epinephrine (auto-inject);
- (128) Ergoloid Mesylates;
- (129) Ergonovine Maleate;
- (130) Ergotamine;
- (131) Erythromycins;

ADMINISTRATIVE RULES

- (132) Erythropoietin;
(133) Estradiol;
(134) Estriol;
(135) Estrogen-Progestin Combinations;
(136) Estrogens, Conjugated;
(137) Estrogen, Esterified;
(138) Estrone;
(139) Estropipate;
(140) Ethyl Chloride;
(141) Etidronate;
(142) Famciclovir;
(143) Fentanyl;
(144) Fibrinolysin;
(145) Flavoxate;
(146) Fluconazole;
(147) Fludrocortisone Acetate;
(148) Flunisolide;
(149) Fluorides;
(150) Fluoroquinolones;
(151) Fluoroquinolines;
(152) Fluorouracil;
(153) Fluticasone propionate;
(154) Fluvastatin;
(155) Gaba Analogs;
(156) Gabapentin;
(157) Galantamine H. Br.;
(158) Ganciclovir;
(159) Gentamicin;
(160) Gentian Violet;
(161) Griseofulvin;
(162) Guaifenesin;
(163) Heparin — subcutaneous, sublingual and heparin locks;
(164) Hexachlorophene;
(165) Homatropine Hydrobromide*;
(166) Human Growth Hormone;
(167) Hyaluronic Acid;
(168) Hyaluronidase;
(169) Hydrocodone;
(170) Hydrocortisone;
(171) Hydrogen Peroxide;
(172) Hydromorphone;
(173) Hydroquinone;
(174) Hydroxychloroquine;
(175) Hydroxypolyethoxydodecane*;
(176) Hyoscyamine;
(177) Imiquimod Cream (5%);
(178) Immune Globulins*;
(179) Insulin;
(180) Interferon Alpha b w/Ribavirin;
(181) Iodine;
(182) Iodoquinol;
(183) Iron Preparations;
(184) Isosorbide Dinitrate;
(185) Isotretinoin;
(186) Itraconazole;
(187) Kanamycin Sulfate;
(188) Ketoconazole;
(189) Lactulose;
(190) Lamivudine;
(191) Letrozole;
(192) Leucovorin Calcium;
(193) Levalbuteral;
(194) Levodopa;
(195) Levonorgestrel;
(196) Levorphanol;
(197) Levothyroxine;
(198) Lincomycin;
(199) Lindane;
(200) Liothyronine;
(201) Liotrix;
(202) Lisinopril;
(203) Lisuride;
(204) Lithium;
(205) Lovastatin;
(206) Mebendazole;
(207) Meclizine;
(208) Medroxyprogesterone;
(209) Medrysone;
(210) Mefloquine;
(211) Megestrol Acetate;
(212) Mercury, Ammoniated;
(213) Mesalamine;
(214) Metformin;
(215) Methadone;
(216) Methimazole;
(217) Methoxsalen;
(218) Methscopolamine;
(219) Methylegonovine;
(220) Methylprednisolone;
(221) Methylsulfonylmethane (MSM);
(222) Methyltestosterone;
(223) Methysergide;
(224) Metronidazole;
(225) Miglitol;
(226) Minerals (Oral & Injectable);
(227) Minocycline;
(228) Misoprostol;
(229) Monobenzone;
(230) Morphine;
(231) Mupirocin;
(232) Nafarelin acetate;
(233) Naloxone;
(234) Natamycin;
(235) Nateglinide;
(236) Nicotine;
(237) Nitroglycerin;
(238) Novobiocin;
(239) Nystatin;
(240) Olsalazine;
(241) Omeprazole;
(242) Opium;
(243) Over the Counter (OTC);
(244) Oxacillin;
(245) Oxamniquine;
(246) Oxaprozin;
(247) Oxtriphylline;
(248) Oxycodone;
(249) Oxygen;
(250) Oxymorphone;
(251) Oxytetracycline;
(252) Oxytocin*;
(253) Pancrelipase;
(254) Papain;
(255) Papavarine;
(256) Paramethasone;
(257) Paregoric;
(258) Penciclovir;
(259) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(260) Penicillin;
(261) Pentosan;
(262) Pentoxifylline;
(263) Pergolide;
(264) Permethrin;
(265) Phenazopyridine;
(266) Phenylethylamine;
(267) Phenylephrine*;
(268) Physostigmine;
(269) Pilocarpine;
(270) Pimecrolimus Cream 1%;
(271) Podophyllum Resin;
(272) Polymyxin B Sulfate;
(273) Polysaccharide-Iron Complex;
(274) Potassium Iodide;
(275) Potassium Supplements;
(276) Pramoxine;
(277) Pravastatin;
(278) Prednisolone;
(279) Prednisone;
(280) Pregabalin;

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- (281) Progesterone;
- (282) Progestins;
- (283) Propionic Acids;
- (284) Propylthiouracil;
- (285) Prostaglandins;
- (286) Proton Pump inhibitor;
- (287) Pyrazinamide;
- (288) Pyrethrins;
- (289) Quinidine;
- (290) Quinilones;
- (291) Quinines;
- (292) Quinolines;
- (293) Quinine Sulfate;
- (294) Rauwolfia Alkaloids;
- (295) Rho(D);
- (296) Rifabutin;
- (297) Rifampin;
- (298) Risendronate;
- (299) Salicylamide;
- (300) Salicylate Salts;
- (301) Salicylic Acid;
- (302) Salsalate;
- (303) Scopolamine;
- (304) Selenium Sulfide;
- (305) Silver Nitrate;
- (306) Simvastatin;
- (307) Sodium Polystyrene Sulfonate;
- (308) Sodium Thiosulfate;
- (309) Spirolactone;
- (310) Stavudine;
- (311) Spectinomycin;
- (312) Sucralfate;
- (313) Sulfasalazine;
- (314) Sulfonamide/Trimethoprim/Sulfones;
- (315) Tazarotene topical gel;
- (316) Tacrolimus;
- (317) Tenofovir;
- (318) Testosterone;
- (319) Tetracycline;
- (320) Theophylline;
- (321) Thiabendazole;
- (322) Thyroid;
- (323) Thyroxine;
- (324) Tiagabine;
- (325) Tibolone;
- (326) Tiludronate;
- (327) Tinidazole;
- (328) Tobramycin;
- (329) Topical steroids;
- (330) Tramadol;
- (331) Trandolapril;
- (332) Troleandomycin;
- (333) Tretinoin;
- (334) Triamcinolone;
- (335) Triamterene;
- (336) Trichloroacetic Acid*;
- (337) Trioxsalen;
- (338) Triptans;
- (339) Troleandomycin;
- (340) Undecylenic Acid;
- (341) Urea;
- (342) Urised;
- (343) Ursodiol;
- (344) Valacyclovir;
- (345) Vancomycin;
- (346) Verapamil;
- (347) Vidarabine;
- (348) Vitamins (Oral & Injectable);
- (349) Yohimbine;
- (350) Zalcitabine;
- (351) Zidovudine;
- (352) Zolpidem;
- (353) Local Anesthetics:
 - (a) Benzocaine*;
 - (b) Bupivacaine*;

- (c) Chloroprocaine*;
 - (d) Dyclonine*;
 - (e) Etidocaine*;
 - (f) Lidocaine*;
 - (g) Lidocaine (non-injectable dosage form);
 - (h) Mepivocaine*;
 - (i) Prilocaine*;
 - (j) Procaine*;
 - (k) Tetracaine*.
- (354) Vaccines:
- (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus Inactivated*;
 - (p) Poliovirus-Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;
 - (u) Tetanus Toxoid*;
 - (v) Typhoid*;
 - (w) Varicella*;
 - (x) Yellow Fever*;
- (355) SkinTests:
- (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.

Stat. Auth.: ORS 685.125

Stat. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 11-2005

Filed with Sec. of State: 5-31-2005

Certified to be Effective: 6-1-05

Notice Publication Date:

Rules Amended: 839-025-0750

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

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

839-025-0750

Residential Prevailing Wage Rate Determinations

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

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

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

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

(d) *Special Prevailing Wage Rate Determination for Residential*

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Project, Hampden Lane, Project #2004-05, dated July 13, 2004 for the period of July 15, 2004 through June 30, 2005.

(e) *Special Prevailing Wage Rate Determination for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004 for the period of October 15, 2004 through June 30, 2005.

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

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

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

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

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

Columbia River Gorge Commission Chapter 350

Adm. Order No.: CRGC 1-2005

Filed with Sec. of State: 5-17-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 2-1-05

Rules Adopted: 350-081-0010, 350-081-0012, 350-081-0014, 350-081-0016, 350-081-0018, 350-081-0020, 350-081-0030, 350-081-0032, 350-081-0034, 350-081-0036, 350-081-0038, 350-081-0040, 350-081-0042, 350-081-0044, 350-081-0046, 350-081-0050, 350-081-0052, 350-081-0054, 350-081-0060, 350-081-0070, 350-081-0072, 350-081-0074, 350-081-0076, 350-081-0078, 350-081-0080, 350-081-0082, 350-081-0084, 350-081-0086, 350-081-0090, 350-081-0092, 350-081-0094, 350-081-0096, 350-081-0098, 350-081-0100, 350-081-0102, 350-081-0104, 350-081-0106, 350-081-0108, 350-081-0110, 350-081-0112, 350-081-0120, 350-081-0124, 350-081-0126, 350-081-0170, 350-081-0180, 350-081-0182, 350-081-0190, 350-081-0200, 350-081-0210, 350-081-0220, 350-081-0230, 350-081-0232, 350-081-0234, 350-081-0236, 350-081-0240, 350-081-0250, 350-081-0260, 350-081-0262, 350-081-0270, 350-081-0280, 350-081-0290, 350-081-0300, 350-081-0310, 350-081-0320, 350-081-0330, 350-081-0335, 350-081-0338, 350-081-0340, 350-081-0350, 350-081-0360, 350-081-0365, 350-081-0370, 350-081-0380, 350-081-0390, 350-081-0400, 350-081-0410, 350-081-0415, 350-081-0420, 350-081-0430, 350-081-0440, 350-081-0445, 350-081-0450, 350-081-0460, 350-081-0470, 350-081-0480, 350-081-0485, 350-081-0490, 350-081-0500, 350-081-0510, 350-081-0520, 350-081-0530, 350-081-0540, 350-081-0550, 350-081-0560, 350-081-0570, 350-081-0580, 350-081-0590, 350-081-0600, 350-081-0610, 350-081-0620, 350-081-0630

Subject: This rule implements the Management Plan for the Columbia River Gorge National Scenic Area that the Gorge Commission adopted revisions to on April 27, 2004. The land use ordinance will be effective in any Gorge county that does not have an effective land use ordinance implementing the Management Plan. The substantive standards are identical to the substantive standards in the Management Plan as revised. The procedural requirements for issuing land use decisions are similar to those contained in the current land use ordinance (Commission Rule 350-080). This rule will replace Commission Rule 350-080 in its entirety; however, Commission Rule 350-080 will not be repealed at this time.

Rules Coordinator: Nancy A. Andring—(509) 493-3323

350-081-0010

Purposes and Applicability

The purpose of this Land Use Ordinance is to implement the Management Plan for the Columbia River Gorge National Scenic Area with revisions adopted on April 27, 2004 and concurred with on August 3, 2004, and as subsequently amended.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0012

Affected Area

Commission Rule 350-081 shall apply to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, for which a county does not implement a land use ordinance consistent with the Management Plan. Commission Rule 350-081 becomes effective on July 1, 2005. Those portions of Commission Rule 350-081 pertaining to the General Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission. Those portions of Commission Rule 350-081 pertaining to the Special Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission and concurred with by the Secretary of Agriculture.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0014

Maps

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Columbia River Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0016

Review and Approval Required

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-081, when considered under the applicable procedural and substantive guidelines of this Rule.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0018

Uniform Application of Management Plan

(1) The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area Act.

(2) The Gorge Commission, Forest Service, and counties should strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision.

(3) In applying provisions of the Management Plan, the Gorge Commission and Forest Service may consider, but shall not be constrained by, county interpretations, state interpretation and application of state law

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and administrative regulations, or judicial decisions that do not directly involve the Management Plan.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0020

Definitions

As used in Commission Rule 350-081, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) Accepted agricultural practice: A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) Accessory structure/building: A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(3) Active wildlife site: A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) Addition: An extension or increase in the area or height of an existing building.

(5) Agency official: The federal, state, or local agency head or designee who has authority over a proposed project.

(6) Agricultural specialist (SMA): A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(7) Agricultural structure/building: A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(8) Agricultural use: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices. Agricultural use does not include livestock feedlots.

(9) Anadromous fish: Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(10) Anaerobic: A condition in which molecular oxygen is absent (or effectively so) from the environment.

(11) Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.

(12) Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.

(13) Archaeological resources: See cultural resource.

(14) Archival research: Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(15) Bed and breakfast inn: An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(16) Best management practices: Conservation techniques and management measures that:

(a) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

(b) Minimize adverse affects to groundwater and surface-water flow and circulation patterns; and

(c) Maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(17) Biodiversity (SMA): A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(18) Boat landing: Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(19) Buffer zone: An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(20) Building: Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.

(21) Camping or recreational vehicle: A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(22) Campsite: Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(23) Capability: The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(24) Canopy closure (SMA): For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

(25) Cascadian architecture (SMA): Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(26) Catastrophic situations (SMA): Forces such as fire, insect and disease infestations, and earth movements.

(27) Childcare center: A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(28) Columbia River Gorge National Scenic Area Graphic Signing System: Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(29) Commercial development/use: Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(30) Commercial forest products: These include timber for lumber, pulp, and firewood for commercial purposes.

(31) Commercial recreation: Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(32) Community facility: Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(33) Consulting parties (cultural resources): Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(34) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

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(35) Counties: The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(36) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(37) Creation (wetlands): A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(38) Cultivation: Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(39) Cultural resource: Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old. Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) Historic buildings and structures. Standing or above-ground buildings and structures that are at least 50 years old. Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(40) Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(41) Cut: An area where soil or earth is excavated or removed in conjunction with development activities.

(42) Dedicated site: An area actively devoted to the current use and as delineated on the site plan.

(43) Deer and elk winter range: Areas normally used, or capable of being used, by deer and elk from December through April.

(44) Destruction of wetlands: Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(45) Developed recreation: Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(46) Developed road prism (SMA): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(47) Development: Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(48) Diameter at breast height (dbh): The diameter of a tree as measured at breast height.

(49) Duplex: A building containing two dwelling units and designed for occupancy by two families.

(50) Dwelling, single-family: A detached building containing one dwelling unit and designed for occupancy by one family only.

(51) Dwelling unit: A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(52) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(53) Effect on treaty rights: To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(54) Emergency/disaster: A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(55) Emergency/disaster response: Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(56) Endemic: Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(57) Enhancement (natural resources): A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(58) Ephemeral streams (SMA): streams that contain flowing water only during, and for a short duration after, precipitation events.

(59) Ethnography: The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(60) Existing use or structure: Any use or structure that was legally established. "Legally established" means:

(a) The landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure;

(b) The use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and

(3) Any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(61) Exploration, development (extraction and excavation), and production of mineral resources: Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(62) Fill: The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(63) Finished grade: The final elevation of the ground level of a property after construction is completed.

(64) Fire break: A break in ground cover fuels, adjacent to and surrounding buildings.

(65) Footprint: The area that falls directly beneath and shares the same perimeter as a structure.

(66) Forbs: Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

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(67) Foreground (SMA): One-half mile on either side of a traveled road or trail.

(68) Forest health (SMA): A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(69) Forest practice (SMA): Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(70) Forest practice (GMA): Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(71) Forest products: Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(72) Forest stand structure (SMA): The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(73) Forest use: The growing, propagation, and harvesting of forest tree species and other forest products.

(74) Fully screened: A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(75) Grade (ground level): The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(76) Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(77) Hazard tree (SMA): A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(78) Height of building: The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(79) Herbaceous: A plant with no persistent woody stem above the ground, with characteristics of an herb.

(80) Herbs: Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines.

(Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(81) Historic buildings and structures: See cultural resource.

(82) Historic survey: Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(83) Horses, boarding of: The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(84) Hydric soil: A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(85) In-lieu sites: Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(86) Indian tribal government: The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(87) Indian tribes: The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm

Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(88) Industrial uses: Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products,

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service; or

(d) Production of electric power for commercial purposes.

(89) Interpretive displays: Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(90) Key components: The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(91) Key viewing areas: Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include: [Table not included. See ED, NOTE.]

(92) Land division: The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(93) Landscape setting: The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(94) Livestock feedlot: Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(95) Lot line adjustment: Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(96) Maintenance: Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure. Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(97) Mitigation: The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98) Mosaic (SMA): The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.

(99) Multifamily dwelling: A dwelling constructed or modified into two or more single-family units.

(100) Native species: Species that naturally inhabit an area.

(101) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102) Natural resources: Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(103) Natural resource specialist: A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104) Natural resource-based recreation (SMA): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(105) Nonprofit organization: An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

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(106) Not visually evident (SMA): A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107) Old growth (SMA): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108) Operational (SMA): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110) Other related major structure (SMA): A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111) Overstory (SMA): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112) Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

- (A) Is a unit of land solely created to establish a separate tax account;
- (B) Lies in different counties;
- (C) Lies in different sections or government lots;
- (D) Lies in different land use or zoning designations; or
- (E) Is dissected by a public or private road.

(113) Practicable: Able to be done, considering technology and cost.

(114) Preexisting: Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(115) Previously disturbed: An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(116) Project area: The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(117) Public use facility: Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(118) Rare plant species: Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(119) Recreation facility: A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(120) Reconnaissance survey: Actions conducted to determine if archaeological resources are present in an area that would be affected by a

proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.

(121) Recreation opportunity spectrum (ROS): A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) Roded Natural: Roded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roded areas dominated by human encounters and human-related structures.

(122) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semi-primitive areas with few facilities and developed sites.

(123) Regularly maintained: An area of land that has been previously disturbed and where periodic actions have been taken to:

(a) Keep the area clear of vegetation (e.g., shoulders, utility yards),

(b) Limit the height and type of vegetation (e.g., utility rights-of-way), and/or

(c) Establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(124) Rehabilitation (natural resources): A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(125) Remnant old forest (SMA): Large trees in the overstory that are well into the mature growth state (older than 180 years).

(126) Repair: Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure. Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(127) Resource-based recreation: Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(128) Restoration (wetlands): A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(129) Review uses: Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(130) Riparian area: The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(131) Road: The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

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(c) Structures that provide for continuity of the right-of-way, such as bridges.

(132) Scenic Area: The Columbia River Gorge National Scenic Area.

(133) Scenic travel corridor: Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(134) Secretary: The Secretary of Agriculture.

(135) Sensitive plant species: Plant species that are:

(a) Endemic to the Columbia River Gorge and vicinity;

(b) Listed as endangered or threatened pursuant to federal or state endangered species acts; or

(c) Listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program. In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(136) Sensitive wildlife species: Animal species that are

(a) Listed as endangered or threatened pursuant to federal or state endangered species acts;

(b) Listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(c) Listed as sensitive by the Oregon Fish and Wildlife Commission; or

(d) Considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon. In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(137) Service station: A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(138) Serviceable: Presently useable.

(139) Shall: Action is mandatory.

(140) Should: Action is encouraged.

(141) Shrub: A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance.

(Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(142) Sign: Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(143) Significant cultural resource (SMA): A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation".)

(144) Skyline: The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(145) Soil capability class: A classification system developed by the U.S. Department of Agriculture, Natural Resources Conservation Service to group soils as to their capability for agricultural use.

(146) Special habitat area: Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(147) Special streams: Streams that are primary water supplies for fish hatcheries and rearing ponds.

(148) Stand: A group of trees possessing uniformity in regard to type, age, vigor, or size.

(149) Story: A single floor level of a structure, as defined by the Uniform Building Code.

(150) Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses. For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(151) Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(152) Submit: To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(153) Subsurface testing: Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(154) Suitability: The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(155) Thinning (SMA): A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(156) Total canopy closure (SMA): For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(157) Travelers accommodations: Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(158) Treatment (SMA): For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(159) Treaty rights or other rights: Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(160) Tributary fish habitat: Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(161) Understory (SMA): For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(162) Undertaking: Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements.

(163) Unimproved lands: Lands that generally do not have developments such as buildings or structures.

(164) Upland: Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(165) Uses allowed outright: New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(166) Utility facility: Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

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(167) Vested right: The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(168) Viewshed: A landscape unit seen from a key viewing area.

(169) Visual quality objective (VQO): A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(170) Visually subordinate: A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(171) Water-dependent: Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(172) Water-related: Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(173) Wetlands: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(174) Wetlands functions: The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(175) Winery: An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(176) Wine sales/tasting room: A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-081-0108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(177) Woody plant: A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

[ED. NOTE: Table not included. Table is available from the agency.]

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0030

Standards for Applications

Complete Application Required: Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant submitted a complete land use application. A complete application is one that the Executive Director determines meets this Land Use Ordinance's requirements for:

- (1) A complete application form;
- (2) A complete site plan; and

(3) All applicable information specified in the various sections of this land use ordinance. Incomplete applications shall not be reviewed.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0032

Application for Review and Approval

(1) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-081-0032.

(2) The Executive Director shall accept and review the application pursuant to 350-081-0030 through 350-081-0046 for consistency with the appropriate guidelines of this rule.

(3) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(4) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices and the Forest Service.

(5) Applications for the review and approval of a proposed use or development shall provide the following information:

- (a) The applicant's name, address and telephone number;
- (b) The land owner's name, address and telephone number (if different from applicant's);
- (c) The county in which the proposed use or development would be located;
- (d) The section, quarter section, township and range in which the proposed development would be located;
- (e) The street address of the proposed use or development;
- (f) The tax lot number(s) and size in acres of the parcel(s) involved;
- (g) A description of the current land use for the parcel(s) involved and adjoining lands;
- (h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.
- (i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

- (A) North arrow.
- (B) Map scale.
- (C) Boundaries, dimensions, and size of the subject parcel.
- (D) Significant terrain features or landforms.
- (E) Groupings and species of trees or other vegetation on the parcel.
- (F) Location and species of vegetation that would be removed or planted.
- (G) Bodies of water and watercourses.
- (H) Location and width of existing and proposed roads, driveways, and trails.
- (I) Location and size of existing and proposed structures.
- (J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.
- (K) Location and depth of all proposed grading and ditching.
- (k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.

(l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-081-0630.

(m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans.

(n) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(o) The signature of the property owner on a statement that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application.

(6) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-081 or by the Executive Director:

(a) In the General Management Area, for all buildings visible from key viewing areas, pursuant to 350-081-0520(2)(n).

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(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-081-0520(1)(f), (2)(o), and (2)(bb).

(c) A grading plan that complies with the requirements of 350-081-0520(2)(aa)(A) and (B) is required for the following:

(A) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes over 10 percent shall include a grading plan;

(B) In the General Management Area, all proposed structural development on sites visible from key viewing areas and involving more than 200 cubic yards of grading, regardless of slope; and

(C) In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan.

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-081-0520(4)(d).

(e) Large-scale uses as defined by guideline 350-081-0540(1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-081-0540(1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-081-0540(1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-081-0084(1)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to 350-081-0560(1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to 350-081-0570(1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-081-0580(1)(b). Large-scale uses as defined by 350-081-0580(2) shall also include field survey information, pursuant to 350-081-0580(2)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to 350-081-0590(1)(b). Large-scale uses as defined by 350-081-0590(2) shall also include field survey information, pursuant to Commission Rule 350-081-0590(2)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to 350-081-0190(1)(h), and if applicable, 350-081-0190(1)(i).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-81-190(1)(q).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-081-0190(1)(k).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to 350-081-0270(1)(a).

(p) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling, pursuant to 350-081-0270(2)(j).

(q) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, clearing trees for new agricultural use, pursuant to 350-081-0270(2)(x).

(r) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, forest practices, pursuant to 350-081-0270(2)(y).

(s) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to 350-081-0340(4).

(t) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-081-0232(1)(g).

(u) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling necessary and accessory to agricultural use, pursuant to 350-081-0190(2)(c).

(v) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, farm labor housing, pursuant to 350-081-0190(2)(d).

(w) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to 350-081-0270(1)(b).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family

dwelling in conjunction with agricultural use pursuant to 350-081-0270(1)(c).

(y) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to 350-081-0270(1)(o).

(z) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to 350-081-0240.

(aa) In the General Management Area and Special Management Area, agricultural buildings, pursuant to 350-081-0090(2).

(bb) Other uses as deemed necessary by the Executive Director.

(7) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0034

Pre-Application Conference

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-081, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0036

Acceptance of Application

Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-070.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0038

Notice of Development Review

(1) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(a) The name of the applicant;

(b) The general and specific location of the subject property;

(c) A brief description of the proposed action;

(d) The deadline for rendering a decision; and

(e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

(a) The Forest Service, the applicable state, the four Indian tribal governments, and the applicable county and/or city; and

(b) Owners of property within a radius of the subject parcel(s) as determined by 350-081-0630; and

(c) Other agencies and interested parties which request a notice or which the Executive Director determines should be notified.

(5) The notice shall be posted at the Commission and shall be sent to the Forest Service offices, and the applicable county or city planning office(s) and libraries.

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(6) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(7) A copy of the notice shall be filed in the records of the Commission.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0040

Comment Period

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-081:

(1) Based on comments received and other applicable information, the Executive Director shall determine if a wildlife management plan pursuant to 350-081-0580(5), or a rare plant protection and rehabilitation plan pursuant to Commission Rule 350-081-0590(5) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four Indian tribal governments pursuant to 350-081-0540(1)(b) and (2)(b)(A).

(3) The State Historic Preservation Officers and the four Indian tribal governments shall have 30 days to submit comments on the cultural resources survey. Based on the survey results, comments received, and other applicable information, the Executive Director shall determine if an evaluation of significance pursuant to 350-81-540(3) is required.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0042

Decision of the Executive Director

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-081-0040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-081.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-081.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-081 within 72 days after acceptance of the application except in one or more of the following situations:

(a) The applicant consents to an extension of time.

(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-081-0040.

(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.

(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Executive Director shall mail a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-081-0040. The decision shall set forth the rights of appeal under Commission Rule 350-070.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-070. An

applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0044

Expiration of Approvals

(1) Notice Not Required: Expiration of any land use approval issued pursuant to this Management Plan shall be automatic. Failure to give notice of expiration shall not affect the expiration of a land use approval.

(2) Land Use Approvals without Structures: Any land use approval issued pursuant to this Management Plan for a use or development that does not include a structure shall expire two years after the date the land use approval was granted, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.

(3) Land Use Approvals with Structures: Any land use approval issued pursuant to this Management Plan for a use or development that includes a structure shall expire as follows:

(a) When construction has not commenced within two years of the date the land use approval was granted, or

(b) When the structure has not been completed within two years of the date of commencement of construction.

(4) Commencement of Construction: As used in subsection 3(a) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(5) Completion of Structure: As used in subsection 3(b) above, completion of the structure shall mean (1) completion of the exterior surface(s) of the structure and (2) compliance with all conditions of approval in the land use approval.

(6) Extension of Validity of Land Use Approvals: A request for extension of the time frames in subsections 2, 3(a) or 3(b), above, shall be submitted in writing before the applicable expiration date.

(a) A reviewing agency may grant one 12-month extension to the validity of a land use approval if it determines that events beyond the control of the applicant prevented commencement of the use or development (applicable to section 2 above) or commencement of construction (applicable to subsection 3(a) above) within the original two-year time frame.

(b) An agency may also grant one 12-month extension if it determines that events beyond the control of the applicant prevented completion of the structure (applicable to subsection 3(b) above) within the original two-year time frame.

(c) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

(d) Approval or denial of a request for extension shall be considered an administrative decision.

(7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the land use approval does not expire.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0046

Changes or Alterations to an Approved Action

Any change to a development action approved by the Executive Director pursuant to this rule shall be processed as new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-081 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

ADMINISTRATIVE RULES

350-081-0050

Development Eligible for Expedited Review

The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(1) Except in Open Space, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(2) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(3) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(4) Wire-strand fences other than those allowed outright, provided the fence complies with 350-081-0580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(5) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(6) Decks that are:

(a) uncovered;

(b) attached and accessory to existing dwellings; and

(c) 500 square feet or less in area and 30 inches or less in height above existing grade.

(7) Road closure gates.

(8) Signs, other than those allowed outright.

(9) Outdoor lights.

(10) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(11) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-081-0126(1), except all lot line adjustments for parcels designated Open Space, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(12) Lot line adjustments in the Special Management Area, subject to 350-081-0126(2).

(13) Demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(14) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(15) Trail reconstruction involving up to 1,000 feet of trail re-route.

(16) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(a) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(b) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(c) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(d) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(17) The following underground utility facilities: New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(18) The following aboveground and overhead utility facilities:

(a) Modify existing aboveground and overhead utility facilities or develop new aboveground and overhead utility facilities including building

and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(b) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(c) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(19) Replace an existing mobile home in a mobile home space within a mobile home park, provided:

(a) The mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of existing use or structure and 350-081-0082(1) through (4);

(b) The replacement mobile home shall be in the same location as the mobile home to be replaced;

(c) The height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced; and

(d) The mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(20) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(21) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0052

Resource and Treaty Rights Protections Guidelines

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

(a) Scenic:

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) The colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C) Structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-081-0112.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

(b) Cultural:

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-081-0540(1)(c)(A) or historic survey, pursuant to 350-081-0540(1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction shall be applied as conditions of approval for all development approved under the expedited development review process.

(c) Recreation: The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

(d) Natural:

(A) Wetlands, Streams, Rivers, Ponds, and Lakes The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

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(B) Sensitive Wildlife and Sensitive Plants

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines

(aa) The sensitive wildlife area or site is not active; or

(bb) The proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance. For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants.

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0054

Procedures for Expedited Review Process

(1) Applications:

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-081-0054.

(b) The Executive Director shall accept and review the application pursuant to 350-081-0054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-081-0032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

(2) Acceptance of Application:

(a) Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness, and if complete, shall accept the application for review.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

(3) Notice of Development Review:

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(A) The name of the applicant;

(B) The general and specific location of the subject property;

(C) A brief description of the proposed action;

(D) The deadline for rendering a decision; and

(E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) Comment Period: Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

(5) Written Decision:

(a) In making a decision on a proposed use or development the Executive Director shall:

(A) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(B) Consider information submitted by the applicant and all other relevant information available;

(C) Consider all comments submitted pursuant to 350-081-0054(4); and

(D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-081.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-081.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-070. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

(6) Notice of Decision and Opportunity to Appeal:

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-081-0054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-070.

(7) Expiration of Approvals. Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-081-0044, above).

(8) Changes or Alterations to an Approved Action. Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-081-0046, above).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0060

Emergency/Disaster Response Actions

(1) General Guidelines

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-081-0020(54), are allowed in all GMA/SMA land use designations, subject to the notification requirements in "Notification Requirements" (subsection 2, below).

(b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

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(c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the Executive Director or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

(2) Notification Requirements

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-081-0020(54), are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(C) Notification shall be furnished to the Executive Director or the Forest Service for federal agency actions.

(D) At a minimum, the following information shall be required at the time of notification:

(i) Nature of emergency/disaster event.

(ii) Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

(iii) Location of emergency/disaster response activities.

(iv) Estimated start and duration of emergency/disaster response activities.

(v) Contact person and phone number for the parties conducting emergency/disaster response actions.

(E) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

(b) Upon notification of an emergency/disaster response action, the Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(B) Notify the Oregon or Washington Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(C) Notify the Forest Service, the Oregon Historic Preservation Office or the Office of Washington Office of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

(c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

(3) Post-Emergency/Disaster Response Development Review Application Requirements

(a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.

(b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

(c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

(d) Applications shall include the following information:

(A) Applicant's name and address.

(B) Location of emergency/disaster response.

(C) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(D) A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:

(i) North arrow and scale.

(ii) Boundaries, dimensions and size of subject parcel(s).

(iii) Bodies of water, watercourses, and significant landforms.

(iv) Existing roads and structures.

(v) New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(E) An exception to the scale requirements in subsection (3)(d)(D) above may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1 inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.

(B) A written decision with findings of fact and conclusions of law.

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources:

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. Such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements in 350-081-0520(3)(k).

(B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

(C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.

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(D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

(E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

(F) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA;

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance; or

(III) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials, deposits the spoil materials, or (re)contours the spoils materials. The applicant does not make this decision.

(iii) The Executive Director shall select the action in 350-081-0060(4)(a)(F)(i) that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to 350-081-0060(4)(a)(F)(i)(III) shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(G) In the Special Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA; or

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one (1) year of the date an applicant completes the grading.

(vi) This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, whichever comes first.

(b) Cultural Resources and Treaty Rights

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.

(B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Executive Director.

(i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards in 350-081-0540(1)(c)(D). Reconnaissance survey reports shall comply with the standards in 350-081-0540(1)(c)(G).

(ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the Executive Director when

(i) A reconnaissance survey is required; or

(ii) Cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.

(D) When written comments are submitted in compliance with 350-081-0060(4)(b)(C) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-081-0540(2)(a), and 0084(1)(b)(A) and (B).

(E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in 350-081-0540(1)(c)(G) and 350-081-0540(3)(a).

(F) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-081-0540(5)(a).

(G) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the final decision.

(H) The Executive Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the comments submitted by the SHPO, or those submitted by a tribal government regarding treaty rights, the Executive Director shall justify how the opposing conclusion was reached.

(I) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been not affected and one of the following conditions exists:

(i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

(ii) The emergency/disaster response action avoided cultural resources that exist in the project area.

(iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4); or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation and The Secretary of the Interior's Standards for Historic Preservation Projects.

(c) Natural Resources:

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in 350-081-0560 through 0600.

(C) Wetlands, Streams, Ponds, Lakes, Riparian Areas

(i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. These areas

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are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

(ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.

(II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in 350-081-0570(8)(a) and (b). Rehabilitation plans shall also satisfy the following:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

(II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

(D) Wildlife Habitat:

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-081-0580(4)(a) and (b). The wildlife agency shall respond within 15 days of the date the application is mailed.

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in 350-081-0580(5). Upon completion of the Wildlife Management Plan, the Executive Director shall:

(I) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(II) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

(III) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(E) Deer and Elk Winter Range

(i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-081-0580(6).

(F) Rare Plants:

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon or Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

(ii) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

(iii) The rare plant protection process may conclude if the Executive Director, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plant buffer zone.

(iv) If the Executive Director, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measure that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision order and the rare plant protection process may conclude.

(v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse effects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards in 350-081-0590(5).

(vi) The Executive Director shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the state natural heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(vii) The Executive Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

(d) Recreational Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

(5) Post-Emergency Construction

(a) The following review uses are allowed in all land use designations in accordance with 350-081-0030 through 0046, 350-081-0070 through 0126 (as applicable), and 350-081-0520 through 0620.

(A) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures per-

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forming an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0070

Exempt Land Uses and Activities

(1) These policies repeat and respond to direction in Section 17 of the Scenic Area Act that the Management Plan not affect certain uses that take place in the Scenic Area.

(2) The Gorge Commission and Forest Service shall, in the Management Plan and in the implementation actions, protect treaty and other rights of Indian tribes. Nothing plan may interfere with the exercise of those rights.

(3) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(4) Rights to surface or ground water shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

(5) Water transportation activities on the Columbia River or its tributaries shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. The term "activities" includes those facilities necessary for navigation.

(6) The operation, maintenance, and modification of existing transmission facilities of the Bonneville Power Administration shall be exempt from regulation under the Management Plan or land use ordinances adopted by the counties or the Gorge Commission pursuant to the Scenic Area Act.

(7) Neither the Management Plan nor land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act may affect laws, rules, or regulations pertaining to hunting or fishing.

(8) Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective perimeters outside the boundaries of the Scenic Area.

(h) The operation, maintenance, and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission under the Scenic Area Act.

(i) In the GMA, the rights and responsibilities of non-federal timber landowners under the Forest Practices Acts of Washington and Oregon, or under county regulations that supersede those acts, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0072

Prohibited Land Uses and Activities

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(1) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(2) New industrial development in the Scenic Area outside of the Urban Areas.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0074

Uses Allowed Outright

All Land Use Designations Except Open Space and Agriculture — Special.

(1) The following uses may be allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space and Agriculture — Special:

(a) In the General Management Area, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline, cultivation and vegetation removal may be allowed in conjunction with a home garden.

(b) In the Special Management Area, agricultural uses within previously disturbed and regularly worked fields or areas.

(c) Forest practices in the General Management Area that do not violate conditions of approval for other approved uses and developments.

(d) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(e) Accessory structures 60 square feet or less in area and 10 feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or utility facilities.

(f) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(g) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(2) The following transportation facilities:

(a) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are:

(A) The same location and size as the existing structures and

(B) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(b) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(c) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(d) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the Manual for Uniform Traffic Control Devices and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(e) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are:

(A) Located inside rights-of-way that have been disturbed in the past; and

(B) Constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(f) New guardrails and guardrail ends, provided the structures are:

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(A) Located inside rights-of-way that have been disturbed in the past; and

(B) Constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(g) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(h) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(i) Resurface or overlay existing paved roads, provided the activity does not:

- (A) Increase the width of a road;
- (B) Disturb the toe of adjacent embankments, slopes or cut banks; or
- (C) Change existing structures or add new structures.
- (D) Apply dust abatement products to non-paved road surfaces.
- (j) Grade and gravel existing road shoulders, provided the activity does not:

- (A) Increase the width of a road;
- (B) Disturb the toe of adjacent embankments, slopes or cut banks; or
- (C) Change existing structures or add new structures.

(J) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(3) The following underground utility facilities:

(a) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(b) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided:

- (A) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;
- (B) No ditch for linear facilities would be more than 24 inches wide;
- (C) No excavation for non-linear facilities would exceed 10 cubic yards; and
- (D) No recorded archaeological site is located within 500 feet of the development. To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(4) The following aboveground and overhead utility facilities:

(a) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have:

(A) The same location and size as the existing facilities; and

(B) The same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(b) Replace existing utility poles, provided the replacement poles are:

(A) Located within 5 feet of the original poles;

(B) No more than 5 feet taller and 6 inches wider than the original poles; and

(C) Constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(c) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(d) Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridge line or parapet of the principal building.

(e) The following signs:

(A) Election signs. Removal must be accomplished within 30 days of election day.

(B) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(C) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual for Uniform Traffic Control Devices. Removal must be accomplished within 30 days of project completion.

(D) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the General Management Area and 2 square feet in the Special Management Area.

(E) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(F) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(G) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

(H) In the General Management Area, wind machines for frost control in conjunction with agricultural use.

(5) GMA and SMA Open Space: The following uses may be allowed without review in GMA and SMA Open Space. Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(6) The following transportation facilities:

(a) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are:

(A) The same location and size as the existing structures; and

(B) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(b) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are:

(A) The same location and size as the existing structures and

(B) The same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(c) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(d) Permanent public regulatory, guide, and warning signs, except those excluded below, provided

(A) The signs comply with the Manual for Uniform Traffic Control Devices; and

(B) The support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(e) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are

(A) Located inside rights-of-way that have been disturbed in the past; and

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(B) Constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(f) New guardrails and guardrail ends, provided the structures are:

(A) Located inside rights-of-way that have been disturbed in the past; and

(B) Constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(g) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(h) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(i) Resurface or overlay existing paved roads, provided the activity does not:

(A) Increase the width of a road;

(B) Disturb the toe of adjacent embankments, slopes or cut banks; or

(C) Change existing structures or add new structures.

(j) Apply dust abatement products to non-paved road surfaces.

(k) Grade and gravel existing road shoulders, provided the activity does not:

(A) Increase the width of a road;

(B) Disturb the toe of adjacent embankments, slopes or cut banks; or

(C) Change existing structures or add new structures.

(7) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(a) The following underground utility facilities:

(A) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(B) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided:

(i) No excavation would extend more than 12 inches beyond the depth and extent of the original excavation;

(ii) No ditch for linear facilities would be more than 24 inches wide;

(iii) No excavation for non-linear facilities would exceed 10 cubic yards; and

(iv) No recorded archaeological site is located within 500 feet of the development. To comply with (iv), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(b) The following aboveground and overhead utility facilities:

(A) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have:

(i) The same location and size as the existing facilities and

(ii) The same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the Historic Columbia River Highway Master Plan for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared

according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(B) Replace existing utility poles, provided the replacement poles are:

(i) Located within 5 feet of the original poles;

(ii) No more than 5 feet taller and 6 inches wider than the original poles; and

(iii) Constructed of natural wood, weathering steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iv) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(C) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the Manual for Uniform Traffic Control Devices. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0076

Agricultural Buffer Zones in the General Management Area

(1) All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use: [Table not included. See ED. NOTE.]

(2) Earth berms may be used to satisfy, in part, the setback guidelines. The berm shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees, and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.

(3) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and shall be continuous.

(4) The necessary berming and/or planting shall be completed during the first phase of development and maintained in good condition.

(5) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(6) A local government may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-81-078 have been satisfied.

[ED. NOTE: Table not included. Table is available from the agency.]

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0078

Variations

(1) In the GMA, when setbacks or buffers specified in the guidelines for the protection of scenic, cultural, natural, recreation, agricultural, or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that both of the following conditions exist:

(a) A setback or buffer specified in Commission Rule 350-081 to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.

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(b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

(2) In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:

(a) The land use designation otherwise authorizes a residence on the tract.

(b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.

(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(3) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-081-0610 upon a finding that all of the following conditions exist:

(a) The proposed project is a public-use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a scenic travel corridor.

(b) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.

(c) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.

(d) The variance is the minimum necessary to accommodate the use.

(4) In the GMA, the Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that all of the following conditions exist:

(a) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.

(b) The proposed use is dependent on resources present at the site.

(c) Reasonable alternative sites offering similar opportunities, including those in nearby Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(d) The proposed use is consistent with Chapter 4, Part I of the Management Plan.

(e) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(f) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0080

Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations

A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations (e.g., Columbia River Gorge National Scenic Area Final Interim Guidelines, original Management Plan), subject to the following standards:

(1) The applicant shall apply for the same development that was reviewed in the original decision.

(2) The development shall remain in its current location.

(3) The agency that currently has jurisdiction over the applicant's property shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current rules.

(4) The agency shall review the entire development to ensure that it would fully comply with all the current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources).

(5) The agency shall issue a new decision that supersedes the original decision.

(6) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0082

Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster: Except as provided in 350-081-0082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(a) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(b) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(c) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(d) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster. An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(a) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(b) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(A) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(B) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(C) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(c) The replacement structure shall be the same size and height as the original structure, provided:

(A) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(B) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(d) The replacement structure shall only be subject to the following scenic resources standards:

(A) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(B) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(C) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(i) Except as provided in 350-081-0082(3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation

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shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(ii) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(iii) To help determine how much vegetation may be required under 350-081-0082(3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(I) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(II) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(III) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(d) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(A) The Scenic Resources Implementation Handbook shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(B) The height of any new trees shall not be required to exceed 5 feet.

(C) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(D) The replacement structure shall be subject to 350-081-0082(2)(a)(A) and (B) if it would not comply with 350-081-0082(3)(a)(B) and (C).

(E) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-081.

(a) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(b) Expansion of Existing Industrial Uses in the GMA: Existing industrial uses in the GMA may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(c) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(d) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(A) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as

grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(B) The site has not maintained a required state permit.

(C) The site has not operated legally within 5 years before October 15, 1991.

(e) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(A) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(B) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures Except as provided in 350-081-0082(3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(a) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(b) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures: Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544e(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0084

Indian Tribal Treaty Rights and Consultation

Indian Tribal Treaty Rights and Consultation in the General Management Area.

(1) Tribal Government Notice:

(a) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(A) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(B) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:

(i) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(ii) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(iii) List tribal ceremonial fishing seasons in the project vicinity.

(iv) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(b) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(c) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Executive Director. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(2) Tribal Government Consultation:

(a) When substantive written comments are submitted to the Executive Director in a timely manner, the project applicant shall offer to meet with the Executive Director and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government. Consultation meetings should provide an opportunity for the project application and tribal representatives to identify

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potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(b) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.

(c) The Executive Director shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Executive Director.

(3) Conclusion of the Treaty Rights Protection Process:

(a) The Executive Director shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe. The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Executive Director must justify how it reached an opposing conclusion.

(b) The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

(c) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(4) Indian Tribal Treaty Rights and Consultation in the Special Management Area. For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0086

Buffers from Existing Recreation Sites

If new buildings or structures may detract from the use and enjoyment of established recreation sites, an appropriate buffer shall be established between the building/structure and the parcel.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0090

Agricultural Buildings

(1) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(2) To satisfy 350-081-0090(1), applicants shall submit the following information with their land use application:

(a) A description of the size and characteristics of current agricultural use.

(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).

(c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0092

Temporary Use — Hardship Dwelling

(1) A permit for the temporary placement of a mobile home may be granted under the following circumstances:

(a) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(b) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(c) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

(2) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.

(3) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(4) A new permit may be granted upon a finding that a family hardship continues to exist.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0094

Sewer and Water Services

(1) Sewer lines may be extended from an Urban Area into a rural area to serve:

(a) Areas with a documented health hazard.

(b) Recreation uses open to the public, only upon a demonstration by the local government that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an Urban Area boundary.

(2) New uses authorized in Commission Rule 350-081 may hook up to existing sewer and water lines in rural areas.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0096

Docks and Boathouses

(1) New, private docks and boathouses serving only one family and one property shall be allowed, up to 120 square feet in size.

(2) New, private docks and boathouses serving more than one family and property shall be allowed, up to 200 square feet in size.

(3) Public docks open and available for public use shall be allowed.

(4) Boathouses may be allowed under 350-081-0096(1) and (2) only when accessory to a dwelling and associated with a navigable river or lake.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0098

Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as authorized in specified land use designations consistent with the following guidelines:

(1) A home occupation may employ only residents of the home.

(2) A cottage industry may employ up to three outside employees.

(3) No more than 25 percent of the total actual living space of the dwelling may be used for the home occupation or cottage industry.

(4) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

(5) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.

(6) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.

(7) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in this chapter.

(8) One non-animated, non-illuminated sign, not exceeding 2 square feet in area, may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.

(9) Parking not associated with residential use shall be screened so it is not visible from key viewing areas.

(10) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-081-0098 and 350-081-0100.

(11) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-081-0098 and 350-081-0100, except 350-081-0100(1)(d).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

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350-081-0100

Bed and Breakfast Inns

Bed and breakfast inns may be established as authorized in specified land use designations, consistent with the following conditions:

- (1) Guests may not occupy a facility for more than 14 consecutive days.
- (2) One non-animated, non-illuminated sign, not exceeding 4 square feet in area, may be permitted on the structure or within the yard containing the structure.
- (3) Parking areas shall be screened so they are not visible from key viewing areas.
- (4) In the SMA, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0102

Small-Scale Fishing Support and Fish Processing Operations

Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed on parcels designated GMA Residential, GMA Small Woodland, or GMA Small-Scale Agriculture, subject to the following conditions:

- (1) The operation shall comply with 350-081-0084(1). In addition, if the operation will be located on land designated Small Woodland, then it shall also comply with 350-081-0300, and 350-081-0310.
- (2) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.
- (3) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.
- (4) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River.
- (5) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.
- (6) The operation may only employ residents of the dwelling and up to three outside employees.
- (7) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.
- (8) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing agricultural building shall not be expanded and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.
- (9) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.
- (10) Docks may be allowed as follows:
 - (a) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.
 - (b) For multiple contiguous parcels each with an approved fishing support and fish processing operation, the area of the docks authorized in 350-081-0102(1)(j)(A) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.
- (11) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.
- (12) No retail sales may occur on the parcel.
- (13) The operation shall only support and process fish caught by residents of the dwelling and up to three outside employees.
- (14) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and/or local water quality and wastewater permits.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0104

Resource Enhancement Projects

(1) Applications for resource enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resource before and after the proposed enhancement project.

(2) In addition to other guidelines that protect scenic, cultural, recreation, and natural resources, quarry enhancement projects shall comply with the following guidelines:

(a) Application Requirements. In addition to other applicable requirements, land use applications for quarry enhancement projects shall include perspective drawings of the site as seen from key viewing areas as specified in 350-081-0520(2)(o) and a reclamation plan that provides all the applicable information specified in 350-081-0520(1)(f)(A) through (E), except:

(A) The words "pre-reclamation" and "post-reclamation" should replace the words "pre-mining" and "post-mining," respectively; and

(B) The appropriate state agency or local government does not have to approve the reclamation plan.

(b) Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

(c) Natural Resource Standard. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(d) Time Frames. The following time frames shall apply to quarry enhancement projects:

(A) All grading (e.g., excavating, filling and re-contouring) shall be completed within one (1) year of the date an applicant begins on-the-ground work.

(B) All landscaping shall be planted within one (1) year of the date an applicant completes the grading.

(C) An applicant may request one one-year extension to the one year grading time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after grading has commenced and before the one year grading time frame has expired.

(D) An applicant may also request one six-month extension to the one (1) year landscaping time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after landscaping has commenced and before the one-year landscaping time frame has expired.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0106

Disposal Sites for Spoil Materials from Public Road Maintenance Activities

(1) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) A reclamation plan that provides all the applicable information specified in 350-081-0520(1)(f)(A) through (E), except:

(A) The words "pre-disposal" and "post-disposal" should replace the words "pre-mining" and "post-mining" and

(B) The appropriate state agency or local government does not have to approve the reclamation plan.

(b) Perspective drawings of the site as seen from key viewing areas as specified in 350-081-0520(2)(o).

(c) Cultural resource reconnaissance and historic surveys, as required by 350-081-0540(1)(c)(A) and (B), respectively. Disposal sites shall be considered a "large-scale use" according to 350-081-0540(1)(c)(C).

(d) Field surveys to identify sensitive wildlife areas or sites and sensitive plants as described in 350-081-0580(2) and 350-081-0590(2).

(2) Siting Standard. The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area.

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(3) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to 350-081-0520(2)(bb). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(b) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to 350-081-0520(2)(cc). An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(c) Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0108

Commercial Events

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space or Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, commercial use, or dwelling listed in the National Register of Historic Places.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other impervious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-081-0076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-081-0310.

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0110

Columbia River Bridge Replacement

(1) Visual Quality: A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall be visually unobtrusive and harmonious with the surrounding Gorge landscape and the Columbia River. A replacement bridge shall:

(a) Utilize recessive dark natural or earth-tone colors for steel components of the bridge, a thin and open structural design that allows views through it to the extent practicable, and consistent design character and ornamental elements;

(b) Employ lighting that provides a safe and pleasant atmosphere for bicycles and pedestrians while not casting glare directly into the sky or onto the river.

(2) Historic Design Elements:

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall incorporate elements that reflect historic design features of Scenic Area roadways and bridges. The historic themes should be an integral component of the design of the bridge structure, incorporated from "shore to shore."

(b) A replacement bridge should include:

(A) Arches and/or other traditional structural forms in the bridge;

(B) Historic style benches, lighting, other pedestrian furnishings, and signage/graphic materials consistent with the USFS Graphic Signing System for the Scenic Area;

(C) Ornamental concrete or steel railings.

(3) Recreation and Pedestrian/Bicycle Access:

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall encourage and promote pedestrian and bicycle use, for recreational enjoyment and to enhance multi-modal transportation connections between the Urban Areas it connects.

(b) The bridge shall include facilities for pedestrians and bicyclists that:

(A) Are permanent;

(B) Are wide enough to safely accommodate and encourage walking, bicycling, and other uses;

(C) Meet safety standards to prevent conflicts among automobiles, trucks, pedestrians, bicyclists, and other users;

(D) Provide multiple sitting and viewing areas with significant upstream and downstream views;

(E) Are safe to approach from both the north and south ends of the bridge and provide strong multi-modal connections, both east-west and to the nearby Urban Areas.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0112

Signs

(1) GMA Sign Provisions:

(a) Except for signs allowed without review pursuant to 350-081-0074, all new signs must meet the following guidelines unless these guidelines conflict with the *Manual for Uniform Traffic Control Devices for public safety, traffic control or highway construction signs*. In such cases, the standards in the Manual for Uniform Traffic Control Devices shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Signs shall be colored to blend with their setting to the maximum extent practicable.

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(C) Backs of all signs shall be unobtrusive, nonreflective, and blend in with the setting.

(D) Spotlighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the Manual for Uniform Traffic Control Devices, the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

(2) SMA Sign Provisions:

(a) New signs shall be allowed as specified in the applicable land use designation.

(b) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-081-0074, all new signs shall meet the following guidelines and be consistent with the Manual for Uniform Traffic Control Devices:

(A) Signs shall be maintained in a neat, clean, and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) The backs of all signs shall be visually unobtrusive, non-reflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to 350-081-0112(2)(a) through (d):

(A) The Columbia River Gorge National Scenic Area Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive, specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(f) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to 350-081-0112(2)(a) through (e) and 350-081-0112(2)(h):

(A) Any sign advertising or relating to a business that is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the counties.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(g) The following signs are prohibited:

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning, or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning, or safety.

(h) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

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

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0120

Consolidation of Lots

(1) A unit of land shall be consolidated with adjacent lands in the same ownership if:

(a) In Oregon, the subdivision within which the unit of land is located is undeveloped pursuant to ORS Chapter 92; or

(b) In Washington, if the unit of land is smaller than the current minimum parcel size and is located within a final plat that is older than five years from the date of filing.

(2) No portion of a consolidated plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision.

(3) Section 1 shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.

(4) To carry out this section, counties shall develop their own procedures for consolidating units of land pursuant to this provision, including amending plats, vacating plats, replatting, or other similar legal action.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0124

Land Divisions and Cluster Development

(1) New land divisions in the SMA are not allowed, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines in the Management Plan.

(2) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land shall be subject to the guidelines in Commission Rule 350-081.

(3) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

(4) Where authorized in 350-081-0170 through 350-081-0510, a land division in the GMA may create parcels smaller than the designated minimum size and may include a bonus, as specified under 350-081-0124(6) below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the local government must find that clustering new dwellings will provide a siting opportunity not available through conventional parcel-by-parcel development. These opportunities include siting the new dwellings to:

(a) Be located in areas with screening vegetation or other features that reduce visibility of development as seen from key viewing areas.

(b) Avoid significant landscape features.

(c) Protect the existing character of the landscape setting.

(d) Reduce interference with movement of deer or elk in winter range.

(e) Avoid areas of known cultural resources.

(f) Consolidate road access, septic drainfields, or other development features to reduce impacts associated with grading or ground disturbance.

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(g) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites, or other natural resources.

(h) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.

(5) In the GMA, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. The local government shall ensure permanent protection for open areas created by cluster development. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.

(6) In the GMA, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.

(7) In the GMA, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.

(8) In the GMA, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0126

Lot Line Adjustments

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the minimum density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided

(I) the parcel to be enlarged would not become eligible for a subsequent land division and

(II) the amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources. (Note: There is no specified minimum parcel size for parcels designated Open Space.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel. (Note: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(2) The following guidelines shall apply to lot line adjustments in the SMA.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.

(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided:

(i) The parcel to be enlarged would not become 40 acres or greater and

(ii) The amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0170

Agricultural Land Designations

Commission Rule 350-081-0170 through 350-081-0240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0180

Uses Allowed Outright — Agricultural Land

The uses listed in “Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special” are allowed without review on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0182

Uses Allowed through the Expedited Development Review Process — Agricultural Land

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

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Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0190

Review Uses — Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-081-0092).

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula: [Formula not included. See ED. NOTE.]

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-081-0540(1)(e).

(j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-081-0190(1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(n) Structures associated with hunting and fishing operations.

(o) Towers and fire stations for forest fire protection.

(p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-081-0076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-081-0310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-081-0210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

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(w) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-081-0520 through 350-081-0620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-081-0270(2)(x).

(b) Forest uses and practices, as allowed for in 350-081-0270.

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation: [Formula not included. See ED. NOTE.]

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-081-0190(2)(c)(C).

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to mini-mize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in “Agricultural Buildings” (350-081-0090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in “Home Occupations and Cottage Industries” (350-081-0098). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in “Bed and Breakfast Inns” (350-081-0100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-081-0620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. “Primarily” means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in “Temporary Use — Hardship Dwelling” (350-081-0092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(z) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any inter-mixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in “Disposal Sites for Spoil Materials from Public Road Maintenance Activities” (350-081-0106).

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

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0200

Review Uses with Additional Approval Criteria — Large-Scale or Small-Scale Agriculture

The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620) and the “Approval Criteria for Specified Review Uses,” (350-081-0220) below.

(1) Utility facilities and railroads necessary for public service upon a showing that:

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(a) There is no practicable alternative location with less adverse effect on agricultural or forest lands, and

(b) The size is the minimum necessary to provide the service.

(2) Home occupations or cottage industries in existing residential or accessory structures, subject to the guidelines in "Home Occupations and Cottage Industries" (350-081-0098).

(3) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(4) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(5) Wine sales/tasting rooms, in conjunction with an on-site winery.

(6) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(7) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-081-0520.

(8) Personal-use airstrips, including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted (except for aircraft emergencies) to use by the owner; invited guests on an infrequent and occasional basis; and commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal — use airstrip other than those owned or controlled by the owner of the airstrip.

(9) Aquaculture.

(10) Recreation development, subject to the recreation intensity class provisions (350-081-0610) and Recreation Development Plan (Management Plan, Part III, Chapter 1).

(11) Boarding of horses.

(12) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(13) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-081-0100) and provided that the residence:

(a) Is included in the National Register of Historic Places, or

(b) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(c) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(14) Nonprofit, environmental learning or research facilities.

(15) Expansion of existing school or place of worship.

(16) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-081-0102).

(17) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any inter-mixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-081-0106).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0210

Approval Criteria for Life Estates — Large-Scale or Small-Scale Agriculture Designations

A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using Guideline 350-081-0190(1)(h).

(2) Upon termination of the life estate, the original or second dwelling shall be removed.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0220

Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture

The uses identified in 350-081-0200, may be allowed only if they meet both of the following criteria:

(1) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.

(2) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0230

Uses Allowed Outright for Lands Designated Agriculture-Special

The following uses may be allowed on lands designated Agriculture-Special without review:

(1) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

(2) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.

(3) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.

(4) Temporary livestock facilities, such as portable livestock pens and corrals.

(5) New fences that exclude livestock from lands that are not part of an existing livestock operation.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0232

Review Uses for Lands Designated Agriculture-Special

The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-081-0520 through 350-081-0620) and "Approval Criteria for Review Uses on Lands Designated Agriculture-Special" (350-081-0234).

(1) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(2) New fences, livestock watering facilities, and corrals.

(3) Soil, water, and vegetation conservation uses.

(4) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(5) Fish and wildlife management uses, educational activities, and scientific research.

(6) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(7) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that

(a) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and

(b) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-081-0190(1)(q). The buffer guidelines for non-agricultural dwellings (350-081-0076) may be waived if they would prevent the optimum siting of a dwelling.

(8) Recreation uses, subject to the provisions for recreation intensity classes (350-081-0610).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0234

Approval Criteria for Review Uses on Lands Designated Agriculture-Special

(1) A range conservation plan pursuant to 350-081-0240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken. Range conservation plans are described under 350-081-0240.

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(2) The Executive Director shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the local government. The Executive Director shall record and address any written comments submitted by the state heritage program in its development review order.

(3) Based on the comments from the state heritage program, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture — Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage program, the local government shall justify how it reached an opposing conclusion.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0236

Uses Prohibited on Lands Designated Agriculture-Special

Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:

(1) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening the soil.

(2) Removal or clearing of native grasses, shrubs, and trees.

(3) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.

(4) Barns, silos, and other agricultural buildings.

(5) Irrigation systems.

(6) Exploration, development, and production of mineral resources.

(7) Utility facilities, public use facilities, and roads.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0240

Range Conservation Plans

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.

(b) Preserve native trees and shrubs.

(c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(3) Range conservation plans shall include the following elements:

(a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.

(b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.

(c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferral periods and sequence. Management plans shall project livestock movements for at least 3 years.

(d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0250

Forest Land Designations

Commission Rule 350-081-0250 through 350-081-0310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA Forest on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0260

Uses Allowed Outright — Forest Land

The uses listed in 350-081-0074(1) are allowed without review on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0262

Uses Allowed through the Expedited Development Review Process — Forest Land

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0270

Review Uses — Forest Land

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state’s forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the “Approval Criteria for the Siting of Dwellings on Forest Land” (350-081-0310) and “Approval Criteria for Fire Protection” (350-081-0300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel’s enrollment in the appropriate state’s forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the “Approval Criteria for the Siting of Dwellings on Forest Land” (350-081-0310) and “Approval Criteria for Fire Protection” (350-081-0300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-081-0190(1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the “Approval Criteria for Fire Protection” in 350-081-0300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. “Auxiliary” means a use or alteration of a structure or land that provides help or is directly associated with

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the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-081-0300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-081-0300) and the standards in "Agricultural Buildings" (350-081-0090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-031-0300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-081-0190(1)(k) and the "Approval Criteria for Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(q) Recreation development, subject to the guidelines established for the recreation in-tensity classes (350-081-0610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-081-0310) and "Approval Criteria for Fire Protection" (350-081-0300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(w) On lands designated Large or Small Woodland, life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-081-0320).

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in "Commercial Events" (350-081-0108).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-081-0520 through 350-081-0620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-081-0190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-081-0620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

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(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the "Home Occupations and Cottage Industries" guidelines in 350-081-0098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(v) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-081-0106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. (350-081-0270(2)(y)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of 350-081-0270(2)(x)(D)(i-iv) below and subject to guideline 350-081-0270(2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-081-0270(2)(y)(D)(i) and (vii).

(ii) Applicable guidelines of 350-081-0550, 350-081-0600 and 350-081-0620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-081-0032) and subject to the additional guidelines in 350-081-0270.

(A) The following information, in addition to general site plan requirements (350-081-0032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-081-0270(2)(y)(D) and 350-081-0270(2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

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(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-081-0032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-081-0270(2)(y)(C)(i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-081-0270(2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-081-0530(2)(c).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-081-0270(2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as set forth in Natural Resources guidelines in 350-081-0270(2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-081-0600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-081-0270(2)(y)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0280

Review Uses with Additional Approval Criteria--Commercial Forest Land, or Large or Small Woodland Designations

The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 and 0620) and the "Approval Criteria for Specified Review Uses" (350-081-0290).

(1) Utility facilities and railroads necessary for public service upon a showing that:

(a) There is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources; and

(b) The size is the minimum necessary to provide the service.

(2) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-081-0098).

(3) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(4) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(5) Wine sales/tasting rooms, in conjunction with an on-site winery.

(6) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(7) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-081-0520.

(8) Aquaculture.

(9) Boarding of horses.

(10) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(11) Expansion of existing nonprofit group camps, retreats, or conference centers.

(12) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-081-0100) and provided that the residence:

(a) Is included in the National Register of Historic Places; or

(b) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation; or

(c) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(13) Nonprofit, environmental learning or research facilities.

(14) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-081-0102).

(15) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any inter-

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mixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-081-0106).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0290

Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland

The uses identified under 350-081-0280, may be allowed only if they meet all of the following criteria:

(1) The owners of land that is designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision.

(2) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(3) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands.

(4) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and will comply with the "Approval Criteria for Fire Protection" (350-081-0300).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0300

Approval Criteria for Fire Protection in GMA Forest Designations

All uses, as specified, shall comply with the following fire safety guidelines:

(1) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(2) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(3) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(4) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.

(5) Within 1 year of the occupancy of a dwelling, the local government shall conduct a review of the development to assure compliance with these guidelines.

(6) Telephone and power supply systems shall be underground whenever possible.

(7) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(8) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrester.

(9) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(10) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4-inch mesh metal screen that is noncombustible and corrosion resistant.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0310

Approval Criteria for Siting of Dwellings on Forest Land in the GMA

The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(1) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(2) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing nonforest uses, adjacent dwellings, or land productivity.

(3) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings should be located on gentle slopes and in any case not on slopes that exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty of gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

(4) A local government may grant a variance to the siting guidelines contained within this section upon a demonstration that the guidelines in "Variances from Setbacks and Buffers" (350-081-0078) have been satisfied.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0320

Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland

A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using 350-081-0190(1)(h); or

(2) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with 350-081-0270(1)(a); or

(3) On lands designated Small Woodland, the proposed dwelling complies with 350-081-0270(1)(b); and

(4) Upon termination of the life estate, the original or second dwelling shall be removed.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0330

Open Space Designations

Commission Rule 350-081-0330 through 350-081-0340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0335

Uses Allowed Outright — Open Space

The uses listed in "Uses Allowed Outright, GMA and SMA Open Space" are allowed without review on lands designated Open Space.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0338

Uses Allowed through the Expedited Development Review Process — Open Space

The uses listed in "Expedited Development Review Process" (350-081-0050) may be allowed with review through the expedited development review process on lands designated Open Space.

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Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0340

Review Uses — Open Space

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Repair, maintenance, operation, and improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with the guidelines in "Lot Line Adjustments" (350-081-0126).

(2) Review Uses — Specific Lands Designated Open Space:

(a) The following uses may be allowed on lands designated GMA-Open Space for Gorge Walls and Canyonlands subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Livestock grazing.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in "All Lands Designated Open Space".

(b) The following uses may be allowed on lands designated GMA-Open Space for the Mosley Lakes Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in "All Lands Designated Open Space".

(c) The following uses may be allowed on lands designated GMA-Open Space for the Chenoweth Table Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610), after consultation with the Oregon Natural Heritage Program.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space".

(d) The following uses may be allowed on lands designated GMA-Open Space for the Squally Point Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes

(350-081-0610) after consultation with the Oregon Natural Heritage Program.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(C) Except as limited by (d)(A), above, all those uses allowed in "All Lands Designated Open Space".

(e) The following uses may be allowed on lands designated GMA-Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610), after consultation with the Washington Natural Heritage Program and Washington Department of Fish and Wildlife.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space".

(f) The following uses may be allowed on lands designated GMA-Open Space for the Balch Lake Wetlands Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Fish and Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Fish and Wildlife.

(D) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-081-0610) after consultation with the Washington Department of Fish and Wildlife.

(E) All those uses allowed in "All Lands Designated Open Space".

(g) The following uses may be allowed on lands designated GMA-Open Space for the Mouth of Wind River Wildlife Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Fish and Wildlife.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for recreation intensity classes (Part I, Chapter 4: Recreation Resources), after consultation with the Washington Department of Fish and Wildlife.

(G) All those uses allowed in "All Lands Designated Open Space".

(h) The following uses may be allowed on lands designated GMA-Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in "All Lands Designated Open Space".

(3) The following new uses may be allowed on lands designated SMA-Open Space subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-081-0520 through 350-081-0620):

(a) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-081-0270(2)(y) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities

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(e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(c) Low-intensity recreation uses and developments, including educational and interpretive facilities, consistent with 350-081-0620.

(d) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks

(f) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(A) Noxious weed infestation is new and eradication is still viable.

(B) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(i) Displacement of native and traditionally gathered plants;

(ii) Degradation of wildlife habitat and forage;

(iii) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;

(iv) Limitation of recreational uses.

(C) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.

(4) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development on lands designated SMA-Open Space, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0350

Residential Land Designations

Commission Rule 350-081-0350 through 350-081-0390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0360

Uses Allowed Outright--Residential Land

The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture — Special" are allowed without review on lands designated Residential.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0365

Uses Allowed through the Expedited Development Review Process — Residential Land

The uses listed in "Expedited Development Review Process" (350-081-0050) are allowed with review through the expedited development review process on lands designated Residential.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0370

Review Uses — Residential Land

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-081-0520 through 350-081-0620):

(a) One single-family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land, or forest land. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-081-0300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-081-0124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 0590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

(2) The following uses may be allowed on lands designated SMA-Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-081-0520 through 350-081-0620):

(a) One single-family dwelling per legally created lot or consolidated parcel. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with Management Plan SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(g) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-081-0100).

(h) Community parks and playgrounds.

ADMINISTRATIVE RULES

- (i) Road and railroad construction and reconstruction.
- (j) Forest practices, as specified in 350-081-0270(2).

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-081-0270(2)(x).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0380

Review Uses with Additional Approval Criteria--Residential Land

The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-081-0520 through 350-081-0620) and "Approval Criteria for Specified Review Uses," (350-081-0390).

(1) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(2) Schools within an existing church or community building.

(3) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this section, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(4) Utility facilities and railroads.

(5) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-081-0098).

(6) Fire stations.

(7) Recreation development, subject to compliance with 350-081-0610.

(8) Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities.

(9) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, pursuant to the guidelines in "Bed and Breakfast Inns" (350-081-0100).

(10) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(11) Wine sales/tasting rooms in conjunction with an on-site winery, under the following conditions.

(12) The use shall comply with the guidelines in "Home Occupations and Cottage Industries" (350-081-0098), with the following exceptions:

(a) The use may employ an unlimited number of outside employees.

(b) The wine sales/tasting room may include interior and/or exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(c) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine sales/tasting room.

(d) The exterior space may be a veranda, patio, or other similar type of structure.

(13) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-081-0102).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0390

Approval Criteria for Specified Review Uses on Lands Designated Residential

The uses identified in 350-081-0380, may be allowed only if they meet all of the following:

(a) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust, and odors.

(b) The proposed use will not require public services other than those existing or approved for the area.

(c) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use comply with the buffer guidelines in "Agricultural Buffer Guidelines" (350-081-0076).

(d) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-081-0300).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0400

Rural Center

Commission Rule 350-081-0400 through 350-081-0420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0410

Uses Allowed Outright — Rural Center

The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" are allowed without review on lands designated Rural Center and Commercial.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0415

Uses Allowed through the Expedited Development Review Process — Rural Center

The uses listed in "Expedited Development Review Process" (350-081-0050) are allowed with review through the expedited development review process on lands designated Rural Center and Commercial.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0420

Review Uses — Rural Center

The following uses may be allowed within Rural Centers, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:

(1) One single-family dwelling per legally created parcel.

(2) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 350-081-0240(1)(c).

(3) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(b) The height of any individual accessory building shall not exceed 24 feet.

(4) The temporary use of a mobile home in the case of a family hardship, pursuant to guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092):

(a) Duplexes.

(b) Fire stations.

(c) Libraries.

(d) Government buildings.

(e) Community centers and meeting halls.

(f) Schools.

(g) Accredited childcare centers.

ADMINISTRATIVE RULES

(h) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use:

- (A) Grocery stores.
- (B) Variety and hardware stores.
- (C) Shops, offices, and repair shops.
- (D) Personal services such as barber and beauty shops.
- (E) Travelers' accommodations, bed and breakfast inns.
- (F) Restaurants.
- (G) Taverns and bars.
- (H) Gas stations.
- (I) Gift shops.

(5) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-081-0098):

- (a) Utility facilities and railroads.
- (b) Recreation development, subject to compliance with 350-081-0610.
- (c) Places of worship.

(6) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(7) Land divisions, subject to the standards and minimum lot sizes in Policies 6 and 7 in the "Land Use Policies" in Part II, Chapter 5: Commercial Land of the Management Plan.

(8) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(9) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(10) Agricultural structures, except buildings, in conjunction with agricultural use.

(11) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-081-0090).

(12) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(13) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(14) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0430

Commercial Land

Commission Rule 350-081-0430 through 350-081-0460 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0440

Uses Allowed Outright — Commercial Designations

The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" are allowed without review on lands designated Commercial.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0445

Uses Allowed through the Expedited Development Review Process — Commercial Designations

The uses listed in "Expedited Development Review Process" (350-081-0050) are allowed with review through the expedited development review process on lands designated Commercial.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0450

Review Uses — Commercial Designations

The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-081-0520 through 350-081-0620) and "Approval Criteria for Specified Review Uses," (350-081-0460):

- (1) Travelers' accommodations, bed and breakfast inns.
- (2) Restaurants.
- (3) Gift shops.
- (4) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-081-0098).

(5) One single-family dwelling per legally created parcel.

(6) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or 10 feet in height.

(7) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel, subject to the following standards:

(a) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(b) The height of any individual accessory building shall not exceed 24 feet.

(8) Utility facilities and railroads.

(9) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(10) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-081-0126).

(11) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(12) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

(13) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(14) Commercial events, subject to the guidelines in "Commercial Events" (350-081-0108).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0460

Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial

The uses identified under "Review Uses: Commercial Designations" may be allowed only if they meet the following two criteria:

(1) The proposal is limited to 5,000 square feet of floor area per building or use.

(2) The proposed use would be compatible with the surrounding area. Review for compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust and odors

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0470

Recreation

Commission Rule 350-081-0470 through 350-081-0510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0480

Uses Allowed Outright — Public Recreation and Commercial Recreation

The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" are allowed without review on lands designated Public Recreation and Commercial Recreation.

ADMINISTRATIVE RULES

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0485

Uses Allowed through the Expedited Development Review Process — Public Recreation and Commercial Recreation

The uses listed in “Expedited Development Review Process” (350-081-0050) are allowed with review through the expedited development review process on lands designated Public Recreation and Commercial Recreation.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0490

Review Uses — Public Recreation and Commercial Recreation

(1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-081-0520 through 350-081-0620) and compliance with 350-081-0610(5)(a) and (c) through (g), where applicable, of the “Approval Criteria for Recreation Uses” contained in the recreation intensity class guidelines (350-081-0610):

(a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-081-0610).

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the “Approval Criteria for Non-Recreation Uses in Public Recreation designations,” (350-081-0500), and (350-081-0520 through 350-081-0620):

(a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-081-0490(2)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in “Agricultural Buildings” (350-081-0090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (350-081-0096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-081-0520 through 350-081-0620) and compliance with 350-081-0610(5)(a) and (c)

through (g) of the “Approval Criteria for Recreation Uses” guidelines (350-081-0610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-081-0610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non--resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-081-0540) and natural resources (350-081-0560 through 350-081-0590).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the “Approval Criteria for Non-Recreational Uses in Commercial Recreation,” (350-081-0510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-081-0520 through 350-081-0620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 2.C below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in “Agricultural Buildings” (350-081-0090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in “Resource Enhancement Projects” (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in “Docks and Boathouses” (Part II, Chapter 7: General Policies and Guidelines).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in “Commercial Events” (350-081-0108).

(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-081-0500(1)(c), and in GMA Commercial Recreation, subject to compliance with 350-081-0510(1)(c).

ADMINISTRATIVE RULES

(6) Lot line adjustments may be allowed in GMA Public Recreation and GMA Commercial Recreation, subject to compliance with the guidelines in "Lot Line Adjustments" (350-081-0126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-081-0270(2).

(b) Public trails, consistent with the provisions in 350-081-0620.

(c) Public recreational facilities, consistent with the provisions in 350-081-0620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-81-190) or Forest Land (350-081-0270(2)), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-081-0098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-081-0104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-081-0190(2).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use — Hardship Dwelling" (350-081-0092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-081-0096).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0500

Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations

The uses identified in 350-081-0490(2) and (5), may be allowed if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structures and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0510

Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.

The uses identified in 350-081-0490(4) and (5), may be allowed if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of on-site buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0520

General Management Area Scenic Review Criteria

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

(a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-081-0032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

(e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable. At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

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(A) Whether the proposed mining is subject to state reclamation permit requirements;

(B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and

(C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements. The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

(2) Key Viewing Areas:

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) Each development shall be visually subordinate to its setting as seen from key viewing areas.

(c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

(d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas.

(ii) The degree of existing vegetation providing screening.

(iii) The distance from the building site to the key viewing areas from which it is visible.

(iv) The number of key viewing areas from which it is visible.

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements).

(ii) Retention of existing vegetation.

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

(iv) New landscaping.

(e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

(g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-081-0520(3).

(h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to

achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-081-0520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-081-0520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-081-0300(1)(a).

(l) Unless expressly exempted by other provisions in 350-081-0520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors.

(m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The Scenic Resources Implementation Handbook will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

(n) In addition to the site plan requirements in "Review Uses" 350-081-0520(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-081-0520(1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

(p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the design guidelines for the subject property's landscape setting.

(r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall

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be underground as a first preference unless it can be demonstrated to be impracticable.

(t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

(A) The facility is necessary for public service;

(B) The break in the skyline is seen only in the background; and

(C) The break in the skyline is the minimum necessary to provide the service.

(v) Overpasses, safety and directional signs, and other road and high-way facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

(A) The facility is necessary for public service; and

(B) The break in the skyline is the minimum necessary to provide the service.

(x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

(y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

(z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

(i) Existing and proposed final grades.

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated.

(iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

(i) Its purpose.

(ii) An estimate of the total volume of material to be moved.

(iii) The height of all cut banks and fill slopes.

(iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

(v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(vi) A description of any other interim or permanent erosion control measures to be used.

(bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to 350-081-0520 have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.

(C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-081-0520(1)(f) and (g)

(D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:

(i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.

(iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.

(iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.

(v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(cc) Unless addressed by 350-081-0520(2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.

(C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-081-0520(1)(f) and (g).

(dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(3) Landscape Settings: All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral:

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-081-0610) occurring infrequently in the landscape.

(b) Coniferous Woodland:

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir,

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western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland:

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening. For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained. For treeless portions or portions with scattered tree cover:

(iv) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vi) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(C) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-81-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland:

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential:

(A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-081-0520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential:

(A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-81-520(3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

(h) Village:

(A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in 350-081-0520(3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.

(G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires

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should be encouraged. Entry signs should be consistent with such architectural styles.

(H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.

(I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands:

(A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(B) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible. In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) Their designs emphasize retention and/or enhancement of native riparian communities,

(ii) Structures and parking areas are visually subordinate

(iii) They are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons, and Wildlands:

(A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities other-wise permitted in the underlying land use designation or for safety purposes.

(D) All structures shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive." Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified. New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

(A) Corbett Rural Center (Village);

(B) Skamania Rural Center (Village);

(C) West of Hood River Urban Area, east of Country Club Road (Rural Residential);

(D) Murray's Addition subdivision, The Dalles (Residential);

(E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential);

(F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential).¹

(4) Scenic Travel Corridors All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-081-0078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-081-0520(4)(b) above, to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the Columbia River Gorge National Scenic Area Corridor Visual Inventory (April 1990).

(f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-081-0520(2)(ee).

(g) Expansion of existing quarries may be allowed pursuant to 350-081-0520(2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-081-0520(2)(dd).

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0530

Special Management Area Scenic Review Criteria

(1) SMA Design Guidelines Based on Landscape Settings: The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(a) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape. The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows, as commonly found in the landscape setting, is encouraged.

(b) Coniferous Woodland and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.

(A) Buildings shall be encouraged to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

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(B) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(c) Residential: The Residential setting is characterized by concentrations of dwellings.

(A) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(B) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(d) River Bottomlands: River Bottomlands shall retain the overall visual character of a floodplain and associated islands.

(A) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(B) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(e) Gorge Walls, Canyonlands, and Wildlands: New developments and land uses shall retain the overall visual character of the natural-appearing landscape.

(A) Structures, including signs, shall have a rustic appearance, use nonreflective materials, have low contrast with the surrounding landscape, and be of a Cascadian architectural style.

(B) Temporary roads shall be promptly closed and revegetated.

(C) New utilities shall be below ground surface, where feasible.

(D) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(2) SMA Guidelines for Development and Uses Visible from KVAs:

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.

(c) The required SMA scenic standards for all development and uses are summarized in the following table: [Table not included. See ED. NOTE.]

(d) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

(e) Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(f) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing the degree of visibility, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas;

(ii) The degree of existing vegetation providing screening;

(iii) The distance from the building site to the key viewing areas from which it is visible;

(iv) The number of key viewing areas from which it is visible, and

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements);

(ii) Retention of existing vegetation;

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements); and

(iv) New landscaping.

(g) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors,

sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(h) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.

(i) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The Scenic Resources Implementation Handbook shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The Scenic Resources Implementation Handbook will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.

(l) The exterior of buildings on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The Scenic Resources Implementation Handbook will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the Implementation Handbook. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the Implementation Handbook.

(m) Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.

(n) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed 3 months.

(3) SMA Guidelines for KVA Foregrounds and Scenic Routes:

(a) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(b) Scenic highway corridor strategies shall be developed and implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents. For I-84, a new scenic corridor strategy shall be developed by the end of 2005.

(c) The goals of scenic corridor strategies shall include: 1) providing a framework for future highway improvements and management that meet Management Plan scenic guidelines and public transportation needs and creating design continuity for the highway corridor within the Scenic Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual designs, etc.) for typical projects that are consistent with Management Plan scenic resources provisions and an interdisciplinary, interagency project planning and development process.

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(d) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to applicable guidelines in 350-081-0530(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in the previous section and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and/or applicable guidelines from the previous section,

(ii) Reduction in project size;

(iii) Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

(iv) Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

(i) Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.

(ii) Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

(iii) Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

(iv) Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(e) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as seen from key viewing areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(f) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

(4) SMA Guidelines for Areas Not Seen from KVAs. Unless expressly exempted by other provisions in this chapter, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the Scenic Resources Implementation Handbook.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0540

General Management Area Cultural Resource Review Criteria

General Provisions for Implementing the Cultural Resources Protection Process.

(1) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date).

(2) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(3) Reconnaissance and Historic Surveys and Survey Reports:

(a) Reconnaissance survey requirements and exceptions:

(A) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-080-0504(1)(c)(A)(ii) below.

(B) A reconnaissance survey shall be required for all proposed uses, except:

(i) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(ii) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(iii) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved. The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(iv) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(v) Proposed uses that would occur on sites that have been adequately surveyed in the past. The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(vi) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

(I) Residential development that involves two or more new dwellings for the same project applicant.

(II) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.

(III) Public transportation facilities that are outside improved rights-of-way.

(IV) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.

(V) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances. Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists. The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(b) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(c) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant. For 350-081-0540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications,

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water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(d) Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(A) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(B) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(e) Reconnaissance Survey Reports for Small-Scale Uses The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(A) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(B) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(C) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(f) Reconnaissance Surveys for Large-Scale Uses:

(A) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(B) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(i) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(ii) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(iii) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(iv) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(g) Reconnaissance Survey Reports for Large-Scale Uses. The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(A) A description of the proposed use, including drawings and maps.

(B) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(C) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(D) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(E) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(F) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(G) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(4) Historic Surveys and Reports:

(a) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(b) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures,

or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(c) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(5) Cultural Resource Reconnaissance and Historic Surveys:

(a) Consultation and Ethnographic Research:

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-081-0040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed. All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate. All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results:

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process:

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-081-0540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

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(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone. Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected. An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(C) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(i) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(ii) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983). The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission. The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(6) Evaluation of Significance:

(a) Evaluation Criteria and Information Needs If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in How to Apply the National Register Criteria for Evaluation (U.S. Department of the Interior, no date) and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results:

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant:

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process:

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect:

(a) Assessment Criteria and Information Needs If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.9) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.8.

(B) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant.

(C) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on cultural resources include, but are not limited to:

(i) Physical destruction, damage, or alteration of all or part of the cultural resource.

(ii) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(iii) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(iv) Neglect of a significant cultural resource resulting in its deterioration or destruction.

(D) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(E) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of build-ings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance

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with The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results:

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process:

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(7) Mitigation Plans:

(a) Mitigation Plan Criteria and Information Needs Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use. Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.8(d), including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results:

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process:

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(8) Cultural Resources Discovered After Construction Begins The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute 273.705, 358.905 to 358.955, and Revised Code of Washington 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" and "Evaluation of Significance: Evaluation Criteria and Information Needs". Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant. A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(9) Discovery of Human Remains The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic. If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs".

(f) The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" are met and the mitigation plan is executed.

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

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

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350-081-0550

Special Management Area Cultural Resource Review Criteria

(1) General Guidelines for Implementing the Cultural Resources Protection Process:

(a) All cultural resource information shall remain confidential, according to Section 6(a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in 350-081-0550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in 350-081-0540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and 350-081-0550(4) shall be used by the Executive Director and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential effects to cultural resources.

(a) Literature Review and Consultation:

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Executive Director determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) Field Inventory:

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid. Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Executive Director for review.

(c) Evaluations of Significance:

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service or the Executive Director shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Executive Director determines that the inventoried cultural resources are significant.

(d) Assessment of Effect:

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Executive Director shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.8, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Requirements" of 36 CFR 800.8(a).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.9(b) to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

(e) Mitigation:

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects. These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Executive Director shall review all mitigation proposals for adequacy.

(5) Discovery During Construction. All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Executive Director if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a

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cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to 350-081-0550(4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to 350-081-0550(4)(e) if the Forest Service or the Executive Director determines that the cultural resource is significant.

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

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0560

General Management Area Wetland Review Criteria

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands:

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the Corps of Engineers Wetlands Delineation Manual (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(2) Commission Rule 350-081-0560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 0350-081, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-081-0560(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions; or

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer

zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-081-0560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-081-0560(6) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

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(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts. The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration: 2:1

(ii) Creation: 3:1

(iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones:

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous:

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and non-woody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans. Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

[Publications: Publications referenced are available from the agency.]
Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. eff. 7-1-05

350-081-0570

General Management Area Stream, Pond, Lake and Riparian Area Review Criteria

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas:

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(2) Commission Rule 350-081-0570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-081-0570(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

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(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-081-0074, 350-081-0570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-081-0570(6) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-081-0560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-081-0560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement. Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its

natural condition to the maximum extent practicable. When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required. The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones:

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-081-0560(7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

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(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-080-0580

General Management Area Sensitive Wildlife Review Criteria.

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife:

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission: [list not included. See ED. NOTE.]

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey A field survey to identify sensitive wildlife areas or sites shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-081-0580(4) and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order. Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached. The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone. Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the

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site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site. Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions. At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range:

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-080-0590

General Management Areas Rare Plant Review Criteria

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants:

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are:

(A) Endemic to the Columbia River Gorge and vicinity;

(B) Listed as endangered or threatened pursuant to federal or state endangered species acts; or

(C) Listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-081-0590(5), and reviewed under the applicable provisions of 350-081-0520 through 350-081-0620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan. If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-081-0078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-081-0590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order. Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

(5) Protection and Rehabilitation Plans: Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance. Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site as practicable. The project applicant shall

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ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

(6) Sensitive Plant Buffer Zones:

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants;

(B) Describes the biology of the sensitive plants; and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival. All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order. Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0600

Special Management Areas Natural Resource Review Criteria

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-81-032).

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas):

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands,

stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(i) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(ii) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

(i) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(D) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:

(i) The integrity and function of the buffer zones is maintained;

(ii) The total buffer area on the development proposal is not decreased;

(iii) The width reduction shall not occur within another buffer; and

(iv) The buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant:

(i) Identifies the precise location of the sensitive wildlife/plant or water resource,

(ii) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource; and

(iii) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

(b) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above)

(d) Wetlands Boundaries shall be delineated using the following:

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U. S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

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(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

(A) The proposed use must have no practicable alternative as determined by the practicable alternative test. Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question; and

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project; and

(iii) The proposed project minimizes the impacts to the wetland.

(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

(3) Wildlife and Plants:

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area. Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan, including all Priority Habitats listed in this Chapter. The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(A) Identify/verify the precise location of the wildlife and/or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following:

(I) The integrity and function of the buffer zones is maintained,

(II) The total buffer area on the development proposal is not decreased;

(III) The width reduction shall not occur within another buffer; and

(IV) The buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant,

(I) Identifies the precise location of the sensitive wildlife/plant or water resource;

(II) Describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource; and

(III) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(iii) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

(G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function. [Table not included. See ED. NOTE.]

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines:

(A) The sensitive wildlife area or site is not active; or

(B) The proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site; and

(C) The proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse affects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

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(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision. Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(4) Soil Productivity:

(a) Soil productivity shall be protected using the following guidelines:

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

(5) Practicable Alternative Test: An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes. A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

(6) Mitigation Plan: Mitigation Plan shall be prepared when:

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(b) There is no practicable alternative (see the "practicable alternative" test).

(c) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(d) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.

(e) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposite conclusion was reached.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(g) Mitigation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or

destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(B) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(C) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(D) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(E) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(7) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(8) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(9) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(e) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable:

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and purposes.

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(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the 'Practical Alternative Test'.

(C) Fish passage shall be protected from obstruction.

(D) Restoration of fish passage should occur wherever possible.

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materials, including slope, depth, width, length, cross-sectional profile, and gradient.

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed. Restoration: 2: 1: Creation: 3: 1: Enhancement: 4: 1.

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline (9)(f)(I). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0610

General Management Areas Recreation Resource Review Criteria

The following uses are allowable, subject to compliance with 350-081-0610(5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity)

(a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.

(b) Trails for hiking, equestrian, and mountain biking use.

(c) Pathways for pedestrian and bicycling use.

(d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).

(e) Scenic viewpoints and overlooks.

(f) Wildlife/botanical viewing and nature study areas.

(g) River access areas.

(h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.

(i) Entry name signs, not to exceed 10 square feet per sign.

(j) Boat docks, piers, or wharfs.

(k) Picnic areas.

(l) Restrooms/comfort facilities.

(2) Recreation Intensity Class 2 (Low Intensity):

(a) All uses permitted in Recreation Intensity Class 1.

(b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.

(c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.

(d) Entry name signs, not to exceed 20 square feet per sign.

(e) Boat ramps, not to exceed two lanes.

(f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 (Moderate Intensity)

(a) All uses permitted in Recreation Intensity Classes 1 and 2.

(b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.

(c) Interpretive signs, displays and/or facilities.

(d) Visitor information and environmental education signs, displays, or facilities.

(e) Entry name signs, not to exceed 32 square feet per sign.

(f) Boat ramps, not to exceed three lanes.

(g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.

(h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 (High Intensity):

(a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

(b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.

(c) Horseback riding stables and associated facilities.

(d) Entry name signs, not to exceed 40 square feet per sign.

(e) Boat ramps.

(f) Campgrounds for 175 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to three group campsite areas, in addition to allowed individual campsite units or parking area maximums allowed as described herein.

(5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the appropriate scenic, cultural, natural and recreation resource guidelines (350-081-0520 through 350-081-0620), and shall satisfy the following:

(a) Compliance with 350-081-0520 through 350-081-0610.

(b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.

(c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland:

(A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.

(B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.

(d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:

(A) The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities.

(B) To provide access for firefighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to firefighting equipment.

(e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.

(f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.

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(g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in 350-081-0084.

(h) For proposed projects that include interpretation of natural or cultural resources: A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.

(i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access): A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects:

(a) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.

(b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. To be considered a separate facility from other developments or improvements within the same recreation intensity class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from key viewing areas.

(d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from key viewing areas and satisfy requirements for perimeter and interior landscaped buffers.

(e) Parking areas providing more than 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

(f) Lineal frontage of parking areas and campsite loops to scenic travel corridors shall be minimized to the greatest extent practicable.

(g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

(h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from key viewing areas.

(j) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. Upon a determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Executive Director may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.

(k) A majority of trees, shrubs, and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).

(l) All structures shall be designed so that height, exterior colors, reflectivity, mass, and siting result in the structures blending with and not noticeably contrasting with their setting.

(m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or fewer, 20 feet for 50 vehicles or fewer, 30 feet for 100 vehicles or fewer, and 40 feet for 250 vehicles or fewer.

(n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas with more than 50 spaces. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.

(o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover, and other plant materials.

(p) Minimum required perimeter landscaped buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Executive Director, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any key viewing area.

(q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.

(r) All parking areas and campsites shall be set back from scenic travel corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from scenic travel corridors shall be measured from the edge of road pavements.

(s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.

(t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.

(u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with 350-081-0610(5)(i) in this chapter regarding provision of mass transportation access.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0620

Special Management Area Recreation Resource Review Criteria

(1) The following shall apply to all new recreation developments and land uses in the Special Management Area:

(a) New developments and land uses shall not displace existing recreational use.

(b) Recreation resources shall be protected from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects shall be required.

(c) New pedestrian or equestrian trails shall not have motorized uses, except for emergency services and motorized wheelchairs.

(d) Mitigation measures shall be provided to preclude adverse effects on the recreation resource.

(e) The facility guidelines contained in 350-081-0620(1) are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. Recreation developments or improvements to be considered a separate facility from other developments or improvements within the same recreation intensity class must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(f) New development and reconstruction of scenic routes (see Part III, Chapter 1 of the Management Plan) shall include provisions for bicycle lanes.

(g) The Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that:

(A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from National Scenic Area recreation demand studies shall be relied upon to meet the criterion in the absence of current applicable studies.

(B) The proposed use is dependent on resources present at the site.

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(C) Reasonable alternative sites offering similar opportunities, including those in Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with the goals, objectives, and policies in Chapter 4, Part 1 of the Management Plan.

(E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(G) Mass transportation shall be considered and implemented, if feasible, for all proposed variances to Recreation Intensity Class 4.

(2) Special Management Areas Recreation Intensity Class Guidelines

(a) Recreation Intensity Class 1 (Very Low Intensity) Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.

(B) The maximum site design capacity shall not exceed 35 people at one time on the site. The maximum design capacity for parking areas shall be 10 vehicles.

(C) The following uses may be permitted:

- (i) Trails and trailheads.
- (ii) Parking areas.
- (iii) Dispersed campsites accessible only by a trail.
- (iv) Viewpoints and overlooks.
- (v) Picnic areas.
- (vi) Signs.
- (vii) Interpretive exhibits and displays.
- (viii) Restrooms.

(b) Recreation Intensity Class 2 (Low Intensity) Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those that provide settings where people can participate in activities such as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.

(B) The maximum site design capacity shall not exceed 70 people at one time on the site. The maximum design capacity for parking areas shall be 25 vehicles.

(C) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2. The following uses may also be permitted:

- (i) Campgrounds with vehicle access.
- (ii) Boat anchorages designed for no more than 10 boats at one time.
- (iii) Swimming areas.

(c) Recreation Intensity Class 3 (Moderate Intensity) Emphasis is on facilities with design themes emphasizing the natural qualities of the area. Developments are complementary to the natural landscape, yet can accommodate moderate numbers of people.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as group socialization, nature appreciation, relaxation, cultural learning, and physical activity.

(B) The maximum site design capacity shall not exceed 250 people at one time on the site. The maximum design capacity for parking areas shall be 50 vehicles. The GMA vehicle capacity level of 75 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 10 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 3 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3. The following uses may also be permitted:

- (i) Campgrounds with improvements that may include water, power, sewer, and sewage dump stations.
- (ii) Boat anchorages designed for not more than 15 boats.
- (iii) Public visitor, interpretive, historic, and environmental education facilities.
- (iv) Full-service restrooms, may include showers.
- (v) Boat ramps.
- (vi) Riding stables.

(d) Recreation Intensity Class 4 (High Intensity) Emphasis is on providing roaded natural, rural, and suburban recreation opportunities with a high level of social interaction.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as socialization, cultural and natural history appreciation, and physical activity.

(B) The maximum design capacity shall not exceed 1,000 people at one time on the site. The maximum design capacity for parking areas shall be 200 vehicles. The GMA vehicle capacity level of 250 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 4 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

350-081-0630

Notice of Application Requirements

[ED. NOTE: Table not included. Table is available from the agency.]
Stat. Auth. ORS 196.150, RCW 43.97.015, 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 6-2005

Filed with Sec. of State: 5-27-2005

Certified to be Effective: 5-27-05

Notice Publication Date: 5-1-05

Rules Adopted: 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105

Rules Repealed: 125-145-0010(T), 125-145-0020(T), 125-145-0030(T), 125-145-0040(T), 125-145-0045(T), 125-145-0060(T), 125-145-0080(T), 125-145-0090(T), 125-145-0100(T), 125-145-0105(T), 125-145-0130(T)

Subject: These Permanent rules replace the Temporary rules filed to implement the provisions of Ballot Measure 37. The measure passed on November 2, 2004 with an effective date of December 2, 2004. "Ballot Measure 37 adds a new statute to ORS chapter 197. The measure specifies that the owner of private real property may be entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value."

The permanent rules contain changes made to the claim process to allow timelines to be met, and the rules have been simplified and clarified. These changes will facilitate the processing of Measure 37 Claims, and add clarity to the steps that applicants must follow to file a Claim.

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

125-145-0010

Purpose

The purpose of OAR chapter 125, division 145, is to establish procedures for filing and reviewing Claims against the State of Oregon under Measure 37.

Stat. Auth.: ORS 293.295 - 293.515
Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)
Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0020

Definitions

The following definitions apply to this division:

(1) **Agency** means any state officer, board, commission, council, department or Division of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) **Claim** means a written demand for compensation under Measure 37.

(3) **Claimant** means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

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(4) **Department** means the Department of Administrative Services.

(5) **Land Use Regulation** has the meaning provided in ORS 197 (Measure 37, 2004).

(6) **Lot** means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(7) **Measure 37** means Oregon Laws 2005, Chapter 1.

(8) **Parcel** means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(9) **Property** means the Lot or Parcel that is or includes the private real property that is the subject of a Claim.

(10) **Reduction in Fair Market Value** means the difference in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(11) **Registry** means the database of information about Claims required by OAR 125-145-0060.

(12) **Regulating Entity** means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0030

Submitting a Claim

(1) Claims must be submitted by an owner or an authorized agent on behalf of an owner. A Claim must contain sufficient information, as described in OAR 125-145-0040, for review of the Claim by the Department or a Regulating Entity and may be submitted on a form available from the Department at the address provided in this rule or from the Department's website.

(2) Claims must be submitted to the Department at:

1225 Ferry Street SE, U160
Salem, OR 97310-4292

Claims shall not be submitted by facsimile or electronically.

(3) A Claim is made under Section 4 of Measure 37 on the date a Claim is received by the Department.

(4) The Department may send written notice to the person who submitted the Claim noting the date that Claim was received by the Department, the Regulating Entity or Entities reviewing the Claim and the recipients of any notices sent to third parties under OAR 125-145-0080.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0040

Contents of a Claim

A Claim should contain the information described in this rule. A Claim that does not contain this information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The name, mailing address and telephone number of every owner of the Property, including but not limited to:

(a) Every lessee and lessor of the Property;

(b) Every person or entity holding a lien against, or a security interest in, the Property;

(c) Every person or entity holding a future, contingent, or other interest of any kind in the Property.

(3) A description of the interest in the Property held by each owner listed.

(4) The location, including a street address, if applicable, of the Property, including the city or county in which it is located, and the legal description of the Property, including reference to the township, range, section and tax lot number in which it is located.

(5) Evidence that the Claimant is an owner of the Property, including the date of acquisition by the Claimant, date of acquisition by any family member of the Claimant if the Claim is based on ownership by a family member and, if so, the chain of title from the family member to the Claimant, and the nature and scope of the Claimant's ownership.

(6) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions, and any other recorded or unrecorded interests applicable to the Property.

(7) Evidence or information describing any federal, state and local restrictions on the Property, including all applicable zoning, comprehensive plan and other land use and development regulations.

(8) An explanation, including a citation to each Land Use Regulation on which the Claim is based and evidence or information that demonstrates the following:

(a) The manner in which each cited Land Use Regulation restricts the use of the Property, compared with how the owner, or family member, if applicable, was permitted to use the Property under Land Use Regulations in effect at the time the owner, or family member, if applicable, acquired the Property; and

(b) The amount by which the restriction in use imposed by each cited Land Use Regulation has caused a Reduction in the Fair Market Value of the Property.

(9) Written permission from the Claimant and all other owners with a right to restrict access, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as necessary to enter the Property to appraise it and to verify information in the Claim.

(10)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge. I understand it is a crime under ORS 162.085 to certify the truth of a statement when I know the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both."

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(11) Evidence and information that may be submitted to address the requirements of this section include, but are not limited, to the following: the most recent tax assessor's maps; title reports; appraisal reports by certified appraisers; deeds; Covenants, Conditions & Restrictions; and affidavits.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0045

Additional Information

In addition to the information described in OAR 125-145-0040, the Department and Regulating Entity may consider additional information regardless of its inclusion in a Claim. Such additional information may include but is not limited to the following:

(1) An appraisal report of the Property prepared by a certified appraiser that addresses the Reduction in Fair Market Value of the Property resulting from enactment or enforcement of the cited Land Use Regulation(s) as of the date the Claim was filed;

(2) Information about any Land Use Regulation(s) on any owner's tax status, including without limitation any property tax deferrals or tax reductions related to the Land Use Regulation(s) cited in the claim;

(3) Information about any Land Use Regulation in effect at the time the Claimant, or Claimant's family member if applicable, acquired the property explaining how the use that is now not permitted by any Land Use regulation described in OAR 125-145-0040(7) was permitted at the time the owner acquired the property;

(4) Names and addresses of owners of all real property located within 100 feet of the Property if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone.

(5) Information about the Property including but not limited to its location, topography, soil types, vegetation or other natural resources or structures located on the property.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0060

Registry of Claims

The Department shall maintain a Registry of Claims. The Registry shall be accessible to the public electronically and at the location described in OAR 125-145-0030. The Registry shall be the means for providing public notice of Claims filed. Entry of information about a Claim in the Registry provides public notice that the Claim was filed and begins the comment period for third parties as described in OAR 125-145-0080. The registry shall contain at least the following information about each Claim as it becomes available:

ADMINISTRATIVE RULES

(1) The name of the Claimant, and the name of the person submitting the Claim, if different;

(2) The location of the Property, including the county and city in which it is located, street address and reference to its township, range, section and tax lot number;

(3) The amount of Reduction in Fair Market Value alleged in the Claim;

(4) The date the Claim was filed;

(5) The date the Claim was entered into the Registry;

(6) The disposition of the Claim, including whether granted or denied, and whether compensation was paid or whether the cited Land Use Regulation(s) was modified, removed or not applied;

(7) Additional information deemed appropriate by the Department.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0080

Third Party Participation

(1) The Department shall mail written notice of a Claim to any person or organization that has requested notice, to any person who is an owner of record of real property located within 100 feet of the Property, if the Property is located in whole or in part in an urban growth boundary, 250 feet of the Property if the Property is located outside an urban growth boundary and not within a farm or forest zone, and 750 feet of the Property if the Property is located in a farm or forest zone, any neighborhood, or community organization(s) whose boundaries include the site when the city or county in which the site is located provides to the Department or Regulating Entity, contact information for the organization(s).

(2) Any person or organization receiving notice under this rule, or any other person, may submit written comments, evidence and information addressing any aspect of the Claim.

(3) Comments, evidence and information from third parties must be submitted within ten (10) days of the date the notice under this rule is sent or information about the Claim first appeared in the Registry, whichever is later, and must be submitted to the location and in the manner described in OAR 125-145-0030. Comments, evidence and information will be submitted in a timely fashion if either postmarked on the tenth (10) day or actually delivered to the Department by the close of business on the tenth (10) day.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0090

Department Review and Decision Process, Forwarding Claim to Regulating Entities

(1) When a Claim is wholly based on Land Use Regulation(s) for which there is no Regulating Entity, the Department shall be the Regulating Entity for purposes of carrying out the process described in OAR 125-145-0100.

(2) Upon receipt of a Claim that is based in whole or in part on Land Use Regulation(s) for which there is a Regulating Entity, the Department shall forward the Claim to the Regulating Entity. When a Claim alleges that Land Use Regulations of multiple Regulating Entities restrict the use of the Property, the Department may consult with one or more Regulating Entities and may appoint a Lead Regulating Entity to issue the final decision required by OAR 125-145-0100. Each Regulating Entity shall provide the Lead Regulating Entity with a staff report addressing at least the issues listed in OAR 125-145-0100(3) with regard to its Land Use Regulation cited in the Claim.

(3) Upon review of the Claim, if the Department or the Regulating Entity determines that it lacks sufficient information to evaluate the Claim, the Department or Regulating Entity may notify in writing the person who submitted the Claim. The written notice shall specify the material or information that would enable the Department or Regulating Entity to evaluate the claim, and shall provide a time certain for Claimant, or the person who submitted the Claim on Claimant's behalf, to submit the material or information. Failure to submit the information requested by the Department or Regulating Entity within the time specified in the notice may result in denial of a Claim.

(4) The Department may issue the final order itself or jointly with the Regulating Entity, or it may authorize a Regulating Entity to issue a final order if, after consulting with the Regulating Entity as required by OAR

125-145-0100(6), the final order modifies, removes or does not apply the Land Use Regulation(s) on which the Claim is based.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0100

Regulating Entity Review and Decision Process

(1) A Regulating Entity that receives a claim from the Department, shall issue a staff report addressing at least the issues listed in subsection (2). The staff report shall be mailed to the Claimant, person who submitted the Claim, if different, and any third parties who submitted comments under OAR 125-145-0080, and shall be mailed or otherwise delivered to the Department and other Regulating Entities, if any.

(2) The staff report shall address the following issues:

(a) Whether the Claim was timely filed under Section 5 of Measure 37;

(b) Whether the Claimant is an owner under Section 11(c) of Measure 37;

(c) Whether the Claimant's request for compensation is based on the prior ownership of a family member under Section 11(A) of Measure 37;

(d) Whether any of the Land Use Regulations relied on in the Claim are exempt under Section 3 of Measure 37;

(e) Whether any of the Land Use Regulations relied on in the Claim restricted the use of the property permitted at the time the owner or family member, if applicable, acquired the Property;

(f) Whether any of the Land Use Regulations relied on in the Claim has the effect of reducing the fair market value of the property and the amount of any such reduction;

(g) Any other issue relevant to evaluation of the Claim, including without limitation the effect of any other land use regulation or other restriction on use of the Property; and

(h) The Regulating Entity's conclusions and recommendation for just compensation or to modify, remove or not apply any of the Land Use Regulation relied on in the Claim to allow a use permitted at the time the owner acquired the property.

(3) The Claimant or the Claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 may submit comments, evidence and information in response to the staff report. Such response must be filed no more than ten (10) days after the date the staff report is mailed to the Claimant and any third parties, at the location and in the manner described in OAR 125-145-0030. Such responses will be submitted in a timely fashion if either postmarked on the tenth (10) day, or actually delivered to the Department by the close of business on the tenth (10) day.

(4) The staff of the Regulating Entity shall issue a revised report following receipt of any submissions under subsection (3) of this rule.

(5) The Regulating Entity may recommend approval or denial of a claim based on the revised staff report and any comments, evidence and information submitted to the Department or the Regulating Entity.

(6) The Regulating Entity may issue a final order jointly with the Department, or the Regulating Entity may issue a final order after consultation with the Department if the decision is to modify, remove or not apply Land Use Regulation(s).

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & 197 (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

125-145-0105

The Record for Final Administrative Decisions on a Claim

Final administrative decisions approving or denying a Claim shall be based on a written record that includes the following, if available:

(1) The Claim;

(2) The contents of the Registry as to the Claim;

(3) Comments, evidence and information properly submitted by or on behalf of the Claimant or third parties;

(4) Staff reports, evidence and information submitted by the Department and the Regulating Entity;

(5) Response and rebuttal properly submitted by or on behalf of the Claimant or third parties; and

(6) Final decisions on the Claim by a Regulating Entity or the Department as provided in OAR 125-145-0090 and 125-145-0100.

Stat. Auth.: ORS 293.295 - 293.515

Stats. Implemented: ORS 293.306 & OL 2005, (Measure 37, 2004)

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05

ADMINISTRATIVE RULES

Adm. Order No.: DAS 7-2005

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

Certified to be Effective: 6-6-05

Notice Publication Date: 5-1-05

Rules Amended: 125-246-0100, 125-246-0560

Subject: On March 1, 2005, the Public Contracting Code began to operate, as mandated by HB 2341, and the related DAS Public Contracting Rules became effective. Certain solicitations and public contracts commenced prior to March 1, 2005, and continued after this effective date (Transitional Contracts).

Amendments to OAR 125-246-0100 and 246-0560 (Proposed Rule Amendments) address the application of law to and the amending of Transitional Contracts. The Proposed Rule Amendments were properly noticed, and comments were received before the noticed deadline. Inadvertently, the original text of these Proposed Rule Amendments was prematurely filed with the Secretary of State before the receipt of the comments and revisions of these Amendments. Also, in this time period, the Public Contracting Code was amended and affected both Transitional Contracts and Contracts entered into before March 1, 2005 (Old Contracts). The original filed text of the Proposed Rule Amendments now needs to be revised to reflect the comments and the amended Code. The revised Proposed Rule Amendments remain within the scope of the original notice.

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) Except for Section (5) of this Rule and OAR 125-246-0560(10), 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.

(5) Transitional and Old Contracts.

(a) "Transitional Contracts" means all Public Contracts first advertised before March 1, 2005, but not entered into until on or after March 1, 2005.

(b) "Old Contracts" means all Public Contracts entered into before March 1, 2005.

(c) Oregon Laws 2005, chapter 103, section 39 provides in part: "Statutes repealed by section 332, chapter 794, Oregon Laws 2003, and rules that expire under or are repealed effective March 1, 2005, pursuant to section 334, chapter 794, Oregon laws 2003, continue to apply to public contracts, and to the solicitation of public contracts, that are first advertised, but if not advertised then entered into, before March 1, 2005, to all protests

concerning those solicitations, and to the judicial review of those solicitations and protests. However, an amendment or change to the work, made on or after March 1, 2005, of a public contract must comply with those provisions of chapter 794, Oregon Laws 2003, and rules adopted thereunder that govern the authority to make those amendments or changes and that regulate those amendments or changes. As used in this subsection, "solicitation" means contracting processes that occur before contract formation." This provision is hereinafter referred to as "Section 39."

(d) Pursuant to Section 39, the rules repealed by section 332, chapter 794, Oregon Laws 2003 (Old Rules) will continue to apply to Transitional and Old Contracts, including: Solicitations, if any, as defined in Section 39 and Contract Administration as defined in the Old Rules, except for Amendments and the related authority for Amendments. (See OAR 125-246-0560(10))

(e) These Rules, Divisions 246 through 249 apply to Amendments and related authority for Amendments of Transitional and Old Contracts, as set forth in OAR 125-246-0560(10).

(f) Section (5) of this Rule applies retroactively to and is effective on March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030, 279A.065 & OL 2005, Ch. 103, Sec. 39

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05;

DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05

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;

(b) Special Rules for Amendments in Sections (3) through (9), applicable to different types of Contracts. These Special Rules supplement the General Rule, unless expressly stated otherwise; and

(c) A Rule for Transitional and Old Contracts in Section (10), as those Contracts are defined in OAR 125-246-0100(5).

(d) 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.

(e) 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:

Extra Work;

Additional Work;

Work to be done if certain situations are encountered; or

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)(A)(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)(A)(i); or

(ii) An Amendment that does not fall within the limitations of Subsection (a)(A)(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:

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(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)(A).

(C) Original Contract. The Original Contract was awarded either:

(i) Pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220; or

(ii) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100(5).

(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 ORS 291.047.

(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 either:

(I) Pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220; or

(II) For Transitional or Old Contracts only, in accordance with Old Rules, as the Contracts and Old Rules are defined in OAR 125-246-0100(5).

(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

(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.

(C) Legal Requirements. The Amendment is made consistent with applicable legal requirements.

(D) Writing. All Amendments to Contracts must be in Writing.

(E) 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

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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 sixty (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:

(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 orig-

inal 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:

(a) As permitted by the Price Agreement;

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(b) As permitted by any applicable Special Rule for Amendments, Sections (3) through (9); or

(c) 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.

(10) Rule for Amendments of Transitional and Old Contracts.

(a) "Transitional Contracts" and "Old Contracts" are defined in OAR 125-246-0100(5).

(b) An Authorized Agency must have authority to amend the Transitional or Old Contract in accordance with OAR 125-246-0170, including but not limited to delegations by rule, agreement, letter and policy as described in OAR 125-246-0170(1).

(c) An Authorized Agency may amend a Transitional or Old Contract by complying with one of the following four (4) processes:

(A) New Amendment Process. An Authorized Agency may apply Sections (1) through (9) of this Amendment Rule; or

(B) New Special Procurement Process. An Authorized Agency may amend through the Special Procurement Rules for Supplies and Services, as set forth in OAR 125-247-0285 through 125-247-0287; or

(C) Exclusive Amendment Process. This Process is not available for Personal Services Contracts. An Authorized Agency may amend an Original Contract with a Provider without competitive bidding and for additional Work or product which is reasonably related to the Scope of Work under the Original Contract, including Changes to Work, extra Work, field orders, or other change in the original Specifications that increases the Original Contract price, subject to the following conditions:

(i) The Original Contract:

(I) Was let by a competitive bidding or alternative Procurement process;

(II) Unit prices or additive alternates were provided that established the cost basis for the additional Work or product; and

(III) A binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(ii) The Original Contract was let pursuant to a declaration of emergency, in accordance with former ORS 279.015(4)(a) and 279.015(5) and former OAR 125-310-0030; or

(iii) The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the Original Contract and such regulations or ordinances, as provided in former ORS 279.318, either were not cited in the Original Contract or were enacted or amended after submission of the successful Bid or Proposal; or

(iv) The Original Contract was for the renovation or remodeling of a building.

(v) Except for Amendments entered into pursuant to Subsections (C)(i) to (iv), the aggregate increase resulting from all Amendments to a Contract must not exceed 20 percent of the initial Contract price. Contracts for the renovation or remodeling of buildings may have aggregate Amendments not exceeding 33 percent of the initial Contract price. Provided, however, that Amendments made pursuant to Subsection (C)(i) are not to be applied against either the 20 percent or the 33 percent aggregate limit on Contract Amendments. Provided, further, that Contracts amended pursuant to Subsections (C)(ii) or (iii) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(vi) If the Original Contract required the Contractor to provide a performance and payment bond, and the Authorized Agency has terminated the Contract and notified the surety of such termination, the Authorized Agency may allow the Contractor's surety an opportunity to provide a substitute Contractor to complete performance of the Original Contract. Such substitute performance, and any Amendment of the Original Contract that

makes a substitute Contractor a party to the Contract, and is not an award of a Public Contract for purposes of former ORS 279.015(1), must not be subject to the competitive procurement provisions of former ORS 279.005 through 279.111.

(D) Personal Services Amendment Process. This process is for Personal Services Contracts only.

(i) Contract Amendments must be made in writing.

(ii) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the Original Contract was exempt under former OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See former OAR 125-020-0310(4)(b)). Amendments must not be used to circumvent rules establishing approvals at certain monetary levels.

(iii) The State Procurement Office must approve an Amendment to a Contract unless approval of the amended Contract is not required under OAR 125-246-0170.

(iv) Except for Contracts related to Year 2000 services or Phased Development projects, Amendments to perform additional work related to information technology must not exceed 33% of the amount identified in the original Contract.

(v) The Attorney General must approve an amendment to a Personal Services Contract if the resulting Contract calls for payments of more than \$75,000, unless exempted by the Attorney General under ORS 291.045 and 291.047.

(vi) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(vii) A Contract Amendment form(s) will be provided by the State Procurement Office. The Authorized Agency may create Amendment form(s) as long as the Amendment form is approved by the State Procurement Office.

(viii) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective; and

(III) Issue the Award justification on ORPIN for Amendments that do not require State Procurement Office approval.

(ix) For Contract Amendments that require State Procurement Office approval, the Authorized Agency must submit the Contract Amendment package (one original and one copy of the Contract Amendment, a copy of the original Contract, copies of any previous Amendment(s), and the justification statement) to the State Procurement Office.

(x) The State Procurement Office will review and approve the Contract Amendment for compliance with applicable rules.

(d) Section (10) of this Rule applies retroactively to and is effective on March 1, 2005.

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; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05

Department of Agriculture Chapter 603

Adm. Order No.: DOA 14-2005

Filed with Sec. of State: 5-31-2005

Certified to be Effective: 5-31-05

Notice Publication Date: 5-1-05

Rules Amended: 603-011-0265

Subject: This amendment requires dairy cattle over 6 months of age to test negative for Tuberculosis prior to entering the State of Oregon. This amendment is necessary because Tuberculosis is becoming more prevalent in the United States, even in states previously declared free of Tuberculosis. Bovine Tuberculosis is a contagious bacterial infection of cattle that is contagious to humans. Since dairy animals are often long lived, infected animals can spread the disease to other dairy cattle.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0265

Importation of Bovines; Tuberculosis

In addition to an import permit and other disease control requirements, the following requirements must be met regarding bovine tuberculosis. Cattle which have had physical contact within the past 12 months

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with cattle originating in Mexico must be treated as cattle originating in Mexico.

(1) Bovines originating from within the United States:

(a) Tuberculosis testing is not required for:

(A) Bovines of beef breeds originating from states classified USDA accredited-free of bovine tuberculosis. Such bovines must be born in or resident in such a state for at least the previous 12 months;

(B) Bovines of any breed originating from herds classified USDA accredited-free of bovine tuberculosis. The accredited herd number and date of latest herd test must be shown on the health certificate.

(C) Bovines imported for slaughter:

(i) By direct delivery to a federally inspected slaughter establishment.

(ii) By direct consignment to an auction market to be sold for slaughter only.

(D) Bovines of any beef breed or bovines of dairy breeds that are sexually neutered, imported to be fed for slaughter from a state which is not classified USDA accredited-free of bovine tuberculosis:

(i) If the herd of origin is not under hold order, quarantine, or epidemiological study for tuberculosis, and has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, and there has been no contact with any such herd which has; or

(ii) If they are consigned directly to an Oregon registered dry feedlot.

On leaving the feedlot, bovines imported under this section must go to slaughter directly or through an auction market, to another registered dry feedlot, or out of state.

(E) Bovines of beef breeds imported for breeding purposes from a state which is not classified USDA accredited-free of bovine tuberculosis if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months and the herd of origin is not under hold order, quarantine, or epidemiological study for tuberculosis;

(F) Bovines of beef breeds imported for breeding from a state which is not classified USDA accredited-free of bovine tuberculosis and which has had a laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, if the area or herd from which they originate has been exempted from testing by the Oregon State Veterinarian in consultation with livestock health officials of the state of origin.

(b) Tuberculosis testing is required for:

(A) Bovines of beef breeds imported for breeding purposes from a state which is not classified USDA accredited-free of bovine tuberculosis and which has had a laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, except as exempted in paragraph (1)(a)(F) of this rule;

(B) Bovines of dairy breeds imported for breeding and/or dairy purposes and six-months of age or older within the 60-day period before entering the state. Imported dairy animals less than six-months of age and not tested must be officially identified with an ear tag and restricted at a designated facility until they are tested at no more than six-months of age.

(C) A retest at 60 to 120 days from date of first test may in some cases be required. The imported bovines may be retested in the state of origin or imported into Oregon and held under quarantine subject to retest;

(D) Bovines imported as transient rodeo stock must have had one negative tuberculosis test within 12 months prior to entry.

(c) Appeals of exemption decisions: Appeals of exemption decisions made under paragraph (1)(a)(F) of this rule must be filed with the Director of the Oregon Department of Agriculture within 10 working days of the decision. Review will be completed within 10 working days of the appeal. Review will include consultation with at least the Oregon State Veterinarian, the USDA Area Veterinarian in Charge for Oregon, and livestock health officials of the exporting state or country.

(2) Bovines originating in Canada: The regulations for importation of cattle from within the United States shall apply to areas of equivalent tuberculosis classification status as determined by the Ministry of Agriculture of Canada.

(3) Bovines originating in Mexico:

(a) Sexually neutered cattle must:

(A) Bear official Mexican government identification; and

(B) Be negative to a tuberculosis test upon crossing the border into the United States; and

(C) If imported for feeding purposes, be imported under prior written agreement with the Oregon State Veterinarian directly to a "Tuberculosis Qualified Pasture" after proof is provided of a negative tuberculosis test administered no less than 60 days after the initial test and after importation into the U.S. Movement out of the TQP may be to another TQP, an Oregon Registered Dry Feedlot, direct to slaughter, or to an out of state destination.

The TQP must have fencing adequate to prohibit commingling with breeding animals; or

(D) If imported for rodeo and recreational purposes, be held separate and apart from native cattle and retested negative 60 to 120 days following the first test. Such cattle which have been resident in another state for more than 60 days shall require evidence of a second negative retest for tuberculosis prior to entry into Oregon.

(b) Sexually intact cattle must:

(A) Be negative to the tuberculosis test upon crossing the border into the United States; and

(B) Be retested negative within 60 to 120 days following the first test; and

(C) Be retested negative within 360 to 420 days following the first test; and

(D) Be held separate and apart from native cattle until completion of all tests; and

(E) Not be imported for feeding purposes.

(c) Cattle originating on Mexican dairies shall not be imported for any purpose.

Stat. Auth.: ORS 596.341

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 1108(29-76), f. & ef. 9-21-76; AD 3-1984, f. & ef. 1-20-84; AD 9-1993(Temp), f. & cert. ef. 7-23-93; AD 7-1994, f. & cert. ef. 7-12-94; DOA 12-2003(Temp), f. & cert. ef. 3-17-03 thru 9-1-03; DOA 33-2003, f. & cert. ef. 9-18-03; DOA 14-2005, f. & cert. ef. 5-31-05

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

Adm. Order No.: BCD 11-2005

Filed with Sec. of State: 6-7-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 4-1-05

Rules Amended: 918-282-0230

Subject: This rulemaking reduces the minimum number of electrical training hours required for an approved training program for a Limited Journeyman Stage Electrician license.

Rules Coordinator: Heather L. Gravelle—(503) 373-7438

918-282-0230

Limited Journeyman Stage Electrician License

(1) A limited journeyman stage electrician:

(a) Shall be employed by an electrical contractor;

(b) Shall only install temporary feeders, branch circuits and equipment used for the production of shows, exhibits, displays, festivals, conventions, stage, theater, film or video productions;

(c) Shall be authorized to perform maintenance on temporary equipment designed to be accessed by qualified personnel such as, but not limited to, electronic dimmers, pendant drops, cords, connectors, theatrical and film and video lighting fixtures operating at not more than 150 volts to ground; and

(d) Is not authorized to install or extend permanent wiring of the structures involved, or install, maintain or repair service conductors or service equipment.

(2) License and Equivalent Requirements. Applicants for acceptance under equivalent requirements shall show proof of the following work categories and minimum hours of on-the-job training or experience:

(a) Stage/film and video/event lighting, 750 hours;

(b) Stage/film and video/event dimmer distribution and applications, 250 hours;

(c) Three-phase temporary power distribution and power sources including service disconnects and generators, 500 hours;

(d) Stage/film and video lamp operator, 500 hours;

(e) Set construction, installation, maintenance and repair, 1,000 hours, a minimum of which shall be:

(A) Stockroom, 50 hours;

(B) Troubleshooting, 50 hours;

(C) Pre-rigging/rigging, 50 hours;

(D) Transportation and hoisting, 50 hours;

(E) Layout and design, 50 hours;

(F) Pattern and blueprint, 50 hours.

(f) Stage/film and video/event property, 1,000 hours, a minimum of which shall be:

(A) Repair of related equipment, 125 hours;

(B) Troubleshooting, 125 hours;

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(C) Maintenance of related equipment, 125 hours.

(g) A minimum of 150 electrical-related training hours during the course of an apprenticeship or approved training program.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & cf. 5-15-87; Renumbered from 814-022-0950; BCA 11-1992, f. & cert. ef. 6-26-92; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-320-0160; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 22-2001, f. 12-28-01, cert. ef. 1-1-02; BCD 11-2005, f. 6-7-05, cert. ef. 7-1-05

Adm. Order No.: BCD 12-2005(Temp)

Filed with Sec. of State: 6-10-2005

Certified to be Effective: 6-10-05 thru 12-6-05

Notice Publication Date:

Rules Amended: 918-282-0365

Subject: These rules clarify the license criteria to qualify for the Class "B" Limited Energy Technician license examination by amending the equivalent experience requirements as determined by the Electrical and Elevator Board.

Rules Coordinator: Heather L. Gravelle—(503) 373-7438

918-282-0365

Licensing Requirements for Class "B" Limited Energy Technician

(1) License Requirements. An applicant for a Class "B" Limited Energy Technician License must complete either a board-approved apprenticeship program or provide proof of equivalent experience and complete a board-approved 32 hour training.

(a) A board-approved limited energy technician apprenticeship program, includes at least 4,000 hours in work processes with minimum hours under section (2) of this rule and 288 hours of related class or training;

(b) Proof of limited energy electrical activity equivalent to an apprenticeship program, means notarized documentation of the following:

(A) 4,000 hours of lawfully obtained equivalent experience in the work processes and minimum hours under section (2) of this rule and a minimum of 288 hours of class or related training covering the subjects in section (4) of this rule; or

(B) 8,000 hours of equivalent experience lawfully obtained from out of state in the work processes and minimum hours under section (2) of this rule, and;

(C) A board-approved 32 hour training program.

(2) Limited energy experience required under Section (1) of this rule, including, but not limited to; the following work processes and hours;

(a) Stock room and materials, including shop and service: 100 hours;

(b) Limited Energy Installations, including cables and supports, wire pulling and splices, conduit, flex, tray and duct, control panels and controls, wiring devices, removal and finish work, overhead and underground: 1,650 hours;

(c) Trouble shooting and maintenance: 250 hours; and

(d) Occupation specific applications, including 2,000 hours in any application of the following:

(A) Communications systems, including data telecommunication, intercom, paging, and;

(B) Specialized control systems, including HVAC, medical, boiler, clock, instrumentation, or other limited energy systems, and;

(C) Limited energy electrical activity defined in ORS 479.905(4).

(3) Total Hours Required. Total electrical work experience shall be at least 4,000 hours. No more than 300 percent credit shall be allowed in work categories (a), through (d) in Section (4) of this rule.

(4) Applicants from the apprenticeship program or applicants relying on equivalent experience under Section (1)(b)(A) must have a minimum of 288 hours of class or related training covering:

(a) Electrical mathematics;

(b) Safety and accident prevention;

(c) Care and use of hand and power tools;

(d) Blueprint reading and electrical symbols;

(e) Introduction to the National Electrical Code;

(f) Electrical fundamentals and basic theory, including alternating and direct current;

(g) Electrical measuring devices;

(h) Wiring methods;

(i) Related electrical statutes and rules;

(j) Fundamentals of electronics;

(k) Transformers;

(l) Lighting circuits; and

(m) Basic mechanics — Applied physics and theory,

(5) Verification of training or experience shall be through a person other than the applicant and must be by a person actively involved in the training or experience. The signature of the individual verifying the experience shall be notarized, embossed with a union seal or have similar authentication.

(6) Provisional License Requirements. Individuals who have a restricted energy electrician's license, with an endorsement other than nurse call, fire alarm or protective signaling, and who have not completed the required 32 hours of training in limited energy electrical activity by October 1, 2002, shall be issued a provisional Class "B" limited energy technician's license. Provisional licensee may only perform those limited energy electrical installations for which they held an endorsement on their most recently issued restricted energy electricians license. Upon proof of successful completion of board-approved 32 hours of limited energy specialty training, the provisional license shall be replaced with a Class "B" limited energy technician's license. All provisional licenses issued under this section will expire October 1, 2005, and may not be renewed.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.905, 479.910 & 479.915

Hist.: BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 12-2005(Temp), f. & cert. ef. 6-10-05 thru 12-6-05

Department of Consumer and Business Services, Insurance Division Chapter 836

Adm. Order No.: ID 8-2005

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Rules Amended: 836-009-0007, 836-020-0210, 836-020-0305, 836-028-0020, 836-042-0310, 836-042-0316, 836-042-0322, 836-043-0009, 836-043-0017, 836-043-0086, 836-050-0010, 836-050-0230, 836-050-0240, 836-051-0010, 836-051-0020, 836-051-0540, 836-051-0550, 836-051-0570, 836-051-0590, 836-052-0156, 836-052-0165, 836-052-0175, 836-052-0180, 836-053-0030, 836-053-0050, 836-053-1060, 836-054-0000, 836-062-0005, 836-071-0112, 836-071-0127, 836-071-0148, 836-071-0150, 836-071-0160, 836-071-0180, 836-071-0190, 836-071-0195, 836-071-0210, 836-071-0215, 836-071-0220, 836-071-0225, 836-071-0230, 836-071-0235, 836-071-0242, 836-071-0250, 836-071-0280, 836-071-0285, 836-071-0287, 836-071-0295, 836-071-0297, 836-071-0310, 836-071-0323, 836-071-0326, 836-071-0331, 836-071-0336, 836-071-0346, 836-074-0005, 836-074-0010, 836-074-0017, 836-074-0020, 836-074-0025, 836-074-0030, 836-074-0035, 836-074-0040, 836-074-0045, 836-074-0047, 836-074-0048, 836-074-0050, 836-075-0000, 836-075-0070, 836-080-0001, 836-080-0005, 836-080-0014, 836-080-0022, 836-080-0029, 836-080-0039, 836-080-0043, 836-080-0430, 836-080-0511, 836-081-0101, 836-085-0001, 836-085-0010, 836-085-0025, 836-085-0035, 836-085-0045

Rules Ren. & Amended: 836-030-0050 to 836-071-0269, 836-030-0055 to 836-071-0272, 836-030-0060 to 836-071-0274, 836-030-0065 to 836-071-0277, 836-071-0275 to 836-071-0291

Subject: This rulemaking deals with a number of licensing issues, largely concerning insurance producers. The primary issue relates to disclosure of all compensation when the consumer pays compensation to the producer. Other changes: "agent" is replaced throughout the Insurance Division rules with "insurance producer"; Division rules governing felony waivers are extended; insurance producers are authorized to charge specific incidental charges; limited lines license categories are established; and the notice requirement for replacement of life insurance policies and annuity contracts is authorized to be limited to actual replacement transactions.

Rules Coordinator: Sue Munson—(503) 947-7272

836-009-0007

Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is \$2,500. The fee for application as a domestic

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insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is \$1,500;

(c) The fee for reinstatement of a certificate of authority is \$100.

(2) The fees in this section apply to examinations for licenses for insurance producers, adjusters and insurance consultants. The fees are as follows:

(a) Examination fees:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$80;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$70;

(C) Surplus lines licensee — \$70;

(D) Adjuster, general lines insurance or life and health insurance — \$80;

(E) Adjuster, health insurance or any single other line designated by rule — \$70;

(F) Consultant, life and health insurance or general lines insurance — \$80;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$70;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$80;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$70;

(C) Surplus lines licensee — \$70;

(D) Adjuster, general lines insurance or life and health insurance — \$80;

(E) Adjuster, health insurance or any single other line designated by rule — \$70;

(F) Consultant, life and health insurance or general lines insurance — \$80;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$70;

(c) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — \$30;

(b) Nonresident insurance producer — \$30;

(c) Adjuster — \$30;

(d) Insurance consultant — \$30.

(4) The following fees apply to issuance of licenses for insurance producers, adjusters and insurance consultants:

(a) Resident insurance producer — \$45;

(b) Nonresident insurance producer — \$45;

(c) Adjuster — \$45;

(d) Insurance consultant — \$45.

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for insurance producers, adjusters and insurance consultants. A license shall expire on the last day of the month in which the second anniversary of the initial issuance date occurs, and on the second anniversary following each renewal thereafter. The fees are as follows:

(a) Resident insurance producer — \$45;

(b) Nonresident insurance producer — \$45;

(c) Adjuster — \$45;

(d) Insurance consultant — \$45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

(a) Application for a certificate of registration — \$350;

(b) Renewal of certificate of registration — \$350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — \$350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — \$100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — \$180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is \$50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of \$5,000.

(13) The Fire Marshal shall pay \$50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than \$20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 293.445, 731.244, 731.804 & 744.037

Stats. Implemented: ORS 731.804, 744.001, 744.002, 744.004, 744.007, 744.066, 744.069, 744.075, 744.528, 744.531, 744.535, 744.619 & 744.621

Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-020-0210

Definitions

(1) Definitions given in the Insurance Code and in this rule govern the construction of this rule.

(2) "Advertisement" includes:

(a) Written, oral, and pictorial material used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, and other similar mediums for reaching the public;

(b) Written, oral, and pictorial material intended for individual presentation to the public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations; and

(c) Written, oral, and pictorial material prepared for any other use by insurance producers or other representatives of an insurer.

(3) "Policy" includes any certificate of insurance or statement of coverage.

(4) "Insurer" includes fraternal benefit societies and health care service contractors.

(5) "Health Insurance" does not include incidental coverages issued with or supplemental to liability insurance, or coverages included within the Insurance Code definition of life insurance.

(6) "Exception" means any policy provision whereby coverage for a specified hazard is entirely eliminated. An "exception" is a statement of a risk not assumed under the policy.

(7) "Reduction" means any policy provision which reduces the amount of the policy benefit. Under the terms of a "reduction", a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period that is less than would otherwise be the case had the reduction provision not been used.

(8) "Limitation" means any policy provision which restricts coverage under the policy, other than an "exception" or a "reduction".

Stat. Auth.: ORS 731, 743 & 746

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Stats. Implemented: ORS 742.009 & 746.075
Hist.: IC 53, f. 3-5-73, ef. 3-15-73; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-020-0305

Disclosure; Application for Coverage

(1) When an insurance producer or representative of an insurer accepts an application for individual health insurance coverage other than coverage described in section (2) of this rule, the insurance producer or representative shall provide the applicant the documents required under this section. In the case of direct response solicitations of such individual health insurance coverage, the documents required under this section must be provided in conjunction with any application form. The following are the documents required to be provided under this section:

(a) A completed disclosure statement in the form shown in **Exhibit 1** to this rule;

(b) An outline of coverage in the form shown for the applicable coverage in **Exhibit 2** to this rule. If the offered policy provides coverage other than a coverage described in an outline of coverage in **Exhibit 2** to this rule, the insurance producer or representative or the direct response insurer must deliver an outline that has first been approved by the Director under section (6) of this rule.

(2) When an insurance producer or representative of an insurer accepts an application for individual accidental death and dismemberment insurance, accident only insurance or hospital indemnity insurance, the insurance producer or representative shall provide the applicant the documents required under this section. In the case of direct response solicitations of such insurance, the documents required under this section must be provided in conjunction with any application form. The following are the documents required to be provided under this section:

(a) A completed disclosure statement in the form shown in **Exhibit 3** to this rule;

(b) An outline of coverage in the form shown for the applicable coverage in **Exhibit 2** to this rule. If the offered policy provides coverage other than a coverage described in an outline of coverage in **Exhibit 2** to this rule, the insurance producer, representative or insurer must deliver an outline that has first been approved by the Director under section (5) of this rule.

(3) When an insurance producer or representative of an insurer accepts an application for group health insurance coverage, including group accidental death and dismemberment insurance, accident only insurance or hospital indemnity insurance, the insurance producer or representative shall provide to the applicant an outline of coverage in the form shown for the applicable coverage in **Exhibit 2** to this rule. In the case of direct response solicitations, the outline must be provided in conjunction with any application form. If the offered policy provides coverage other than a coverage described in an outline of coverage in **Exhibit 2** to this rule, the outline must first be approved by the Director under section (5) of this rule.

(4) For purposes of sections (1) to (3) of this rule, the following forms shall be used for the following coverages:

(a) **Exhibit 2, form A**, shall be used for comprehensive major medical expense coverage;

(b) **Exhibit 2, form B**, shall be used for hospital confinement indemnity coverage;

(c) **Exhibit 2, form C**, shall be used for accidental death and dismemberment only coverage and for accident only coverage;

(d) **Exhibit 2, form D**, shall be used for specified illness or specified accident coverage;

(e) **Exhibit 2, form E**, shall be used for limited benefit health coverage;

(f) **Exhibit 2, form F**, shall be used for basic hospital and medical-surgical expense coverage.

(5) An insurance producer or representative of an insurer may use a form or material other than the statements set forth in **Exhibits 1** and **3** to this rule or the outlines set forth in **Exhibit 2** to this rule only if the form or material is first approved by the Director for the purpose of disclosure under this rule. Forms and other material submitted under this section are subject to the standards for advertising under OAR 836-020-0220 and 836-020-0225.

(6) When an insurance producer or representative of an insurer provides an applicant the applicable information required under section (1), (2) or (3) of this rule, or a form or material approved under section (5) of this rule, the insurance producer or representative shall obtain from the applicant an acknowledgement that the applicable information required under this rule was provided. In the case of direct response solicitations, the insurer or its representative or agent shall maintain proof that the documents required under this rule have been mailed to the applicant.

(7) This rule applies to all solicitations for health insurance, whether for initial, replacement or added coverage, except for solicitations for the following:

(a) Renewal of a health insurance policy, unless the application is to be used for the purpose of underwriting the policyholder;

(b) Medicare supplement insurance policies;

(c) Long term care insurance policies;

(d) Disability income insurance policies, as exempted from these rules under ORS 743.013;

(e) Accidental death and dismemberment insurance coverage and accident only insurance coverage when sold as a rider to a life insurance policy;

(f) Any individual policy issued under a conversion privilege in an insurance policy or contract.

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

Stat. Auth.: ORS 731, 742 & 743

Stats. Implemented: ORS 742.009, 743.010 & 743.013

Hist.: ID 12-1990, f. 6-12-90, cert. ef. 9-1-90; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-028-0020

Use of Insurance Producers by Purchasing Groups

A purchasing group shall employ an insurance producer to procure insurance for its members in Oregon. Such an insurance producer:

(1) Must hold a current insurance producer's license issued by the Insurance Division, in order to transact insurance in Oregon; or

(2) Must hold a current surplus line licensee's license issued under the Oregon Surplus Lines Law, in order to place business with a surplus lines insurer.

Stat. Auth.: ORS 731, 735 & 746

Stats. Implemented: ORS 735.350

Hist.: ID 19-1988, f. & cert. ef. 12-6-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-042-0310

Producers

A person shall not act as an insurance producer in connection with a mass marketing plan for any kind of insurance unless such person is licensed as an insurance producer to transact casualty insurance.

Stat. Auth.: ORS 731 & 744

Stats. Implemented: ORS 737.346(3)(d)

Hist.: IC 8-1983, f. & ef. 11-10-83; ID 3-1990, f. & cert. ef. 1-19-90; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-042-0316

Disclosure Required

Every insurer or insurance producer selling insurance under a mass marketing plan shall make full and fair disclosure to prospective insureds prior to sale of all features of the plan, whether favorable or unfavorable, including but not limited to premium rates, benefits, duration of coverage, policyholder services, conversion privileges available, and the financial interests in the plan, if any, of the association.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 737.346(3)(d)

Hist.: IC 8-1983, f. & ef. 11-10-83; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-042-0322

Compulsory Facilities

An insurer or insurance producer selling insurance under a mass marketing plan shall help any members who apply for but are denied insurance under the plan to obtain insurance through some other appropriate insurance plan, such as the assigned risk plan or the FAIR Plan.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 737.346(3)(d)

Hist.: IC 8-1983, f. & ef. 11-10-83; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-043-0009

Participation by Insurers and Insurance Producers

(1) All insurers authorized to transact workers' compensation insurance in this state are required to participate in the Plan and subscribe to the Articles of Agreement for this state.

(2) Failure of an insurer to comply with the Plan is grounds for revocation of the insurer's certificate of authority to transact workers' compensation insurance.

(3) Each insurance producer who is authorized to transact the class of casualty insurance is authorized to transact workers' compensation insurance offered by the Plan. The Director of the Department of Consumer and Business Services may terminate an insurance producer's authority under this section for cause.

Stat. Auth.: ORS 656.427, 656.730 & 731.244

Stats. Implemented: ORS 656.427, 656.730 & 737.265

Hist.: ID 4-1994, f. & cert. ef. 4-19-94; ID 10-1996, f. 6-27-96, cert. ef. 7-1-96; Renumbered from 836-043-0016; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

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836-043-0017

Plan Administrator

(1) The Plan Administrator is a rating organization for workers' compensation insurance in this state that is designated as the plan administrator by the Insurance Commissioner. The Plan Administrator shall continue to serve from the effective date of the Plan unless the Plan Administrator resigns. The Plan Administrator must give advance written notice of its resignation to the Insurance Commissioner at least one year in advance of the effective date of resignation.

(2) The Plan Administrator has the following duties and responsibilities in addition to any others set forth in the Plan and the Articles of Agreement:

(a) Administering, managing and enforcing the Plan, subject to the rules governing the Plan;

(b) Determining the methodology and formula for making assignments to servicing carriers pursuant to OAR 836-043-0060 and securing the necessary information in order to make the assignments;

(c) Processing assigned risk applications, determining eligibility for coverage and binding coverage pursuant to the requirements of the Plan;

(d) Establishing eligibility criteria for servicing carriers and selecting servicing carriers, subject to approval by the Commissioner;

(e) Establishing written performance requirements for servicing carriers, subject to approval by the Commissioner, including, but not limited to:

(A) Verification of ongoing Plan eligibility of the employer;

(B) Issuance of policies and endorsements;

(C) Filings with administrative agencies;

(D) Maintenance of premiums on policies, consistent with manual rules, rates, rating plans, and classifications;

(E) Completion and billing of final audits;

(F) Collection of premium;

(G) Claim services, including investigation, disability management and medical cost control;

(H) Loss control services and safety information to encourage employers to make safety a part of their business;

(I) Payment of insurance producer fees;

(J) Issuance of renewal proposals and non-renewal notices;

(K) Assurance of insured and insurer compliance with all terms and conditions of the policy contract;

(L) Resolution of complaints and response to insured and insurance producer inquiries; and

(M) Reporting financial and statistical data;

(f) Monitoring servicing carrier performance and enforcing performance requirements and incentives;

(g) Administering the dispute resolution mechanism as provided in OAR 836-043-0070;

(h) Developing and implementing assigned risk operating rules and forms to the extent necessary to carry out the purposes of the Plan;

(i) Informing the Insurance Commissioner of any insurer that is not participating in this Plan; and

(j) Monitoring the performance and operation of the Plan and initiating amendments thereto as appropriate.

(3) The Plan Administrator shall also publish and make available to all affected insurers and insurance producers, upon request and at no charge, both the necessary information for placement in the Plan and the listings of all employers that have been placed into the Plan. The listings shall include each employer's name, address, policy expiration date, latest experience modification, if applicable, the ARAP factor and the governing class code.

(4) The Plan Administrator shall monitor compliance by servicing carriers with occupational safety and health consultative service requirements of ORS 731.480. The Plan Administrator shall file with the Insurance Commissioner by May 1 of each year a report regarding such compliance for the preceding calendar year. The Plan Administrator shall also determine the expenses for operation of the Plan, not including the Plan Administrator's expenses incurred in connection with responsibilities it has under the Articles, and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator.

Stat. Auth.: ORS 656.427, 656.730 & 731.244

Stats. Implemented: ORS 656.427, 656.730 & 737.265

Hist.: ID 4-1994, f. & cert. ef. 4-19-94; ID 10-1996, f. 6-27-96, cert. ef. 7-1-96; Renumbered from 836-043-0030; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-043-0086

Agent Designation and Compensation

(1) An employer may designate a licensed insurance producer, and with respect to any renewal of the assigned insurance, may change the designated insurance producer by notice to the servicing carrier prior to the date of the renewal or, at any other time with the consent of the servicing carrier.

(2) A servicing carrier shall pay a fee to the insurance producer designated by the employer on new and renewal policies upon payment and receipt of premium due under the policy. The fee shall be based on the state standard premium and paid at the rate of five percent on the first \$1,000 of premium, three percent on the next \$4,000 of premium, two percent on the next \$95,000 of premium and one percent of premium in excess of \$100,000.

Stat. Auth.: ORS 656.427, 656.730 & 731.244

Stats. Implemented: ORS 656.427, 656.730 & 737.265

Hist.: ID 10-1996, f. 6-27-96, cert. ef. 7-1-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-050-0010

Notice of Transfer

(1) An insurer transferring obligations or risks through an assumption reinsurance agreement subject to ORS 742.150, shall provide or cause to be provided to each policyholder or certificate holder a notice of transfer by first-class mail, addressed to the last-known address of the policyholder or certificate holder or to the address to which premium notices or other policy documents are sent. For insurance business on which premiums are collected on a weekly or monthly basis by an insurance producer of the insurer, the notice of transfer must be sent by personal delivery with acknowledged receipt. Notice of transfer must also be sent to the transferring insurer's insurance producer or brokers of record on the affected policies.

(2) The notice of transfer must state or provide:

(a) The date the transfer and novation of the policyholder's policy or certificate holder's certificate are proposed to take place;

(b) The names, addresses and telephone numbers of the assuming insurer and the transferring insurer;

(c) That the policyholder or certificate holder may either consent to or reject the transfer and novation;

(d) The procedures and time limit for consenting to or rejecting the transfer and novation;

(e) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's or certificate holder's rights;

(f) A statement that the assuming insurer is authorized to transact the type of insurance being assumed in the state in which the policyholder or certificate holder resides, or is otherwise authorized under sections 2 to 8, chapter 30, Oregon Laws 1995, to assume such insurance;

(g) The name and address of the representative of the transferring insurer to whom the policyholder or certificate holder should send its written statement of acceptance or rejection of the transfer and novation;

(h) The address and phone number of the insurance regulatory office of the state in which the policyholder or certificate holder resides so that the policyholder or certificate holder may write or call the office for further information regarding the financial information of the assuming insurer;

(i) A statement that the insurer will furnish to the policyholder or certificate holder, upon request, financial data for both insurers, including at a minimum the data described in section (3) of this rule; and

(j) An explanation of the reason for the transfer.

(3) The transferring insurer shall promptly furnish the following financial data for both insurers in response to a request for financial data by a policyholder or certificate holder or by an agent or broker of record of the transferring insurer with respect to the affected policies:

(a) Ratings for the previous year from two nationally recognized insurance rating services acceptable to the Director, including the rating service's explanation of the meaning of the ratings, and if ratings are unavailable for the year, the insurer shall so disclose;

(b) If the rating of either insurer furnished under subsection (a) of this section changed during the previous year, ratings for the year preceding from two nationally recognized insurance rating services acceptable to the Director, including the rating service's explanation of the meaning of the ratings, and if ratings are unavailable for the year preceding, the insurer shall so disclose;

(c) A balance sheet as of December 31 for the previous year if available and as of the date of the most recent quarterly statement; and

(d) A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement.

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(4) Notice in the form identical or substantially similar to **Exhibit 1** to this rule is considered to comply with the requirements of section (2) of this rule.

(5) The notice of transfer shall include a pre-addressed, postage-paid response card that a policyholder or certificate holder may return as its written statement of acceptance or rejection of the transfer and novation.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244 & Sec. 5 & 6, Ch. 30, OL 1995
Stats. Implemented: Sec. 5 & 6, Ch. 30, OL 1995
Hist.: ID 4-1996, f. & cert. ef. 2-28-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-050-0230

Purpose, Scope and Definitions

(1) OAR 836-050-0230 to 836-050-0255 provide for fair standards of underwriting for risks relating to HIV infection and apply to all transactions of life and health insurance subject to the **Oregon Insurance Code**. Such transactions include the underwriting of applicants for coverage under individual and group life and health insurance, as well as the setting of group underwriting standards. OAR 836-050-0230 to 836-050-0255 apply to all insurers, including health care service contractors and fraternal benefit societies, and all insurance producers and insurance support organizations, that are engaged in the transaction of life and health insurance under the **Oregon Insurance Code**.

(2) For purposes of OAR 836-050-0230 to 836-050-0255:

(a) "AIDS" means Acquired Immunodeficiency Syndrome;

(b) "ARC" means AIDS Related Complex;

(c) "HIV" means Human Immunodeficiency Virus.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 433, 731, 743 & 746
Stats. Implemented: ORS 433.045(7), 742.005 & 746.240
Hist.: ID 6-1987(Temp), f. & cert. ef. 11-9-88; ID 10-1988, f. & cert. ef. 6-10-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-050-0240

General Principles

(1) No inquiry in an application for health or life insurance coverage, in an investigation conducted by an insurer, insurance producer or insurance support organization in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

(2) Sexual orientation shall not be used in the underwriting process or in the determination of insurability.

(3) Insurance support organization shall be directed by insurers not to investigate, directly or indirectly, the sexual orientation of an applicant or a beneficiary.

(4) Testing for or asking medical questions about HIV infection, including ARC and AIDS, is prohibited when not done in conjunction with testing for or asking medical questions about other health conditions. However, testing for HIV infection alone is permissible if the applicant has answered affirmatively that the applicant has tested positive in any HIV antibody test or has been diagnosed as having HIV infection, including AIDS or ARC.

Stat. Auth.: ORS 433, 731, 743 & 746
Stats. Implemented: ORS 433.045(7), 742.005 & 746.240
Hist.: ID 6-1987(Temp), f. & cert. ef. 11-9-88; ID 10-1988, f. & cert. ef. 6-10-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0010

Definitions

As used in OAR 836-051-0005 to 836-051-0025:

(1) "Buyer's Guide" means a document that contains, and is limited to, the wording contained in **Exhibit 1** or other wording approved by the Commissioner.

(2) "Cash Dividend" means the currently illustrated dividend that can be applied toward payment of the gross premium.

(3) "Equivalent Level Annual Dividend" means the amount calculated by the following steps:

(a) Accumulate the annual cash dividends at five percent interest, compounded annually, to the ends of the 10th and 20th policy years;

(b) Divide each accumulation of step (a) by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (a) over the respective period. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;

(c) Divide the results of step (b) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Equivalent Level Annual Dividend for each of the respective periods.

(4) "Equivalent Level Death Benefit" of a policy or term life insurance rider means the amount calculated by the following steps:

(a) Accumulate the guaranteed amount, that does not depend on the cause of death, payable upon death at the beginning of each policy year for 10 and 20 years at five percent interest, compounded annually, to the ends of the 10th and 20th policy years respectively;

(b) Divide each accumulation of step (a) by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (a) over the respective period. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

(5) "Generic Name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(6) "Life Insurance Net Payment Cost Index" means the amount calculated in the same manner as the Life Insurance Surrender Cost Index except that the cash surrender value and any terminal dividend are set at zero.

(7) "Life Insurance Surrender Cost Index" means the amount calculated by the following steps:

(a) Determine the guaranteed cash surrender value, if any, available at the ends of the 10th and 20th policy years;

(b) For participating policies, add to the respective amount determined in step (a) the accumulation of the annual Cash Dividends at five percent interest, compounded annually, to the end of the period selected, and the respective terminal dividend, if any, payable upon surrender;

(c) Divide the result of step (b), or step (a) for guaranteed cost policies, by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (b), or step (a) for guaranteed cost policies, over the period selected. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;

(d) Determine the equivalent level annual premium for each of the respective periods in step (a) by accumulating each annual premium payable for the basic policy or rider at five percent interest, compounded annually, to the end of the respective period and dividing the result by the respective period factor stated in step (c). (For a level premium plan, the result of this step equals the annual premium.);

(e) Subtract the result of step (c) from the result of step (d);

(f) Divide the result of step (e) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.

(8) "Policy Summary" means a written statement describing the elements of the policy, including but not limited to items in subsections (a) to (k) of this section. The Policy Summary is a separate document. All information must be set out in such a manner as not to minimize or obscure any portion. Any amounts that remain level for two or more years of the policy may be represented by a single number if it is clearly indicated which amounts are applicable for each policy year. If more than one insured is covered under the policy or a rider, guaranteed death benefits shall be displayed separately for each insured, or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be expressed rather than being represented by a blank space:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

(b) The name and address of the insurance producer or, if no insurance producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;

(c) The full name and home office or administrative office address of the insurer in which the life insurance policy is to be or has been written;

(d) The Generic Name of the basic policy and each policy rider;

(e) The following amounts, where applicable, on a total basis rather than on a per thousand or a per unit basis, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which Life Insurance Net Payment or Surrender Cost Indexes are displayed and at least one age from 60 through 65 or policy maturity, whichever is earlier:

(A) Annual premium for the basic policy;

(B) Annual premium for each optional rider;

(C) Guaranteed amount payable upon death at the beginning of the policy year, without regard to the cause of death other than suicide and other specific exclusions, that is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;

(D) Total guaranteed cash surrender values at the end of the year, with values shown separately for the basic policy and each optional rider;

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(E) Cash Dividends payable at the end of the year, with values shown separately for the basic policy and each optional rider. (Dividends need not be displayed beyond the 20th policy year.);

(F) Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values above.

(f) If the policy contains a loan provision, the effective policy loan interest rate and the annual percentage interest rate applied in advance or in arrears, whichever is specified. If the policy loan interest rate is variable, the Policy Summary shall include the maximum effective and annual percentage rates;

(g) Life Insurance Net Payment and Surrender Cost Indexes for 10 and 20 years but in no case beyond the premium-paying period. Separate Indexes shall be displayed for the basic policy and for each optional term life insurance rider. The Indexes need not be included for optional riders that are limited to such benefits as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits, nor for a basic policy or optional rider covering more than one life;

(h) The Equivalent Level Annual Dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations for which Life Insurance Net Payment and Surrender Cost Indexes are displayed;

(i) A statement, in the case of a Policy Summary that shows dividends, that dividends are based on the insurer's current dividend scale and are not guaranteed, and a statement in close proximity to the Equivalent Level Annual Dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide";

(j) A statement in close proximity to the Life Insurance Net Cost and Surrender Cost Indexes as follows: "An explanation of the intended use of these Indexes is provided in the Life Insurance Buyer's Guide";

(k) The date on which the Policy Summary is prepared.

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

Stat. Auth.: ORS 731 & 743

Stats. Implemented: ORS 742.009(2)

Hist.: IC 3-1978, f. & ef. 6-9-78; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0020

General Requirements

(1) An insurer shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to OAR 836-051-0005 to 836-051-0025. Each such document shall be retained in the file for at least three years following the date of its last authorized use.

(2) An insurance producer shall inform a prospective buyer, prior to the beginning a life insurance sales presentation, that the insurance producer is acting as a life insurance producer, and shall inform the prospective buyer of the full name of the insurer that the insurance producer is representing to the buyer. In sales situations in which an insurance producer is not involved, the insurer shall identify its full name.

(3) Such terms as "financial planner," "investment advisor," "financial consultant," or "financial counseling" shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actual-ly the case.

(4) Any reference to policy dividends must include a statement that dividends are not guaranteed.

(5) A presentation that does not recognize through the use of appropriate interest adjustments the time value of money shall not be used for comparing the cost of two or more life insurance policies. Such a presentation may be used for the purpose of demonstrating the cash-flow pattern of a policy if it is accompanied by a statement disclosing that the presentation does not recognize that a dollar in the future has less value than a dollar today because of interest.

(6) A presentation of benefits shall not display guaranteed and non-guaranteed benefits as a single sum unless they are also shown separately in close proximity to the single sum.

(7) A statement regarding the use of the Life Insurance Net Cost and Surrender Cost Indexes shall include an explanation to the effect that the Indexes are useful only for the comparison of the relative costs of two or more similar policies.

(8) A statement of a Life Insurance Net Cost or Surrender Cost Index that reflects dividends, and an Equivalent Level Annual Dividend, shall be accompanied by a statement that it is based on the insurer's current dividend scale and is not guaranteed.

(9) For the purposes of OAR 836-051-0005 to 836-051-0025, the annual premium for a basic policy or optional rider for which the insurer reserves the right to change the premium shall be the maximum annual premium.

Stat. Auth.: ORS 731 & 743

Stats. Implemented: ORS 742.009(2)

Hist.: IC 3-1978, f. & ef. 6-9-78; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0540

General Rules and Prohibitions

(1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of OAR 836-051-0500 to 836-051-0600, be clearly labeled "life insurance illustration" and contain the following basic information:

(a) Name of insurer;

(b) Name and business address of the insurance producer, if any;

(c) Name, age and sex of proposed insured, except when a composite illustration is permitted under OAR 836-051-0500 to 836-051-0600;

(d) Underwriting or rating classification upon which the illustration is based;

(e) Generic name of policy, the insurer product name, if different, and form number;

(f) Initial death benefit; and

(g) Dividend option election or application of non-guaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, neither an insurer nor its insurance producer shall:

(a) Represent the policy as anything other than a life insurance policy;

(b) Use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(c) State or imply that the payment or amount of non-guaranteed elements is guaranteed;

(d) Use an illustration that does not comply with the requirements of OAR 836-051-0500 to 836-051-0600;

(e) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(f) Provide an applicant with an incomplete illustration;

(g) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

(h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(i) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported;" or

(j) Use an illustration that is not "self-supporting."

(3) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

Stat. Auth.: ORS 731.244 & 746.240

Stats. Implemented: ORS 746.075, 746.085, 746.100, 746.110 & 746.240

Hist.: ID 5-1997, f. 5-27-97, cert. ef. 7-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0550

Standards for Basic Illustrations

(1) The format of a basic illustration shall conform to the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared;

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages");

(c) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

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(g) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed;

(h) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements");

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable;

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;

(l) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(A) The benefits and values are not guaranteed;

(B) The assumptions on which they are based are subject to change by the insurer; and

(C) Actual results may be more or less favorable.

(m) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up;

(n) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may show such use of dividends or policy values and the effect on future policy benefits and values.

(2) A basic illustration shall have a narrative summary, which shall include the following:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the policy, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(c) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. The following provisions apply to the numeric summary:

(a) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten and twenty and at age 70, if applicable, on the three bases shown in this subsection. For multiple life policies, the summary shall show policy years five, ten, twenty and thirty. The three bases are as follows:

(A) Policy guarantees;

(B) Insurer's illustrated scale;

(C) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:

(i) Dividends at 50 percent of the dividends contained in the illustrated scale used;

(ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) All non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(b) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

(4) A basic illustration shall include the following tabular detail:

(a) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(B) The corresponding guaranteed death benefit, as provided in the policy; and

(C) The corresponding guaranteed value available upon surrender, as provided in the policy.

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium; and

(c) Non-guaranteed elements may be shown if described in the narrative. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

(5) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in OAR 836-051-0500 to 836-051-0600.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer that reads as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

Stat. Auth.: ORS 731.244 & 746.240

Stats. Implemented: ORS 746.075, 746.085, 746.100, 746.110 & 746.240

Hist.: ID 5-1997, f. 5-27-97, cert. ef. 7-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0570

Delivery of Illustration and Record Retention

(1) If a basic illustration is used by an insurance producer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with OAR 836-051-0500 to 836-051-0600, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of OAR 836-051-0500 to 836-051-0600, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and insurance producer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(2) If no illustration is used by an insurance producer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the insurance producer shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the

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policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this section shall be satisfied if the insurer can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

Stat. Auth.: ORS 731.244 & 746.240

Stats. Implemented: ORS 746.075, 746.085, 746.100, 746.110 & 746.240

Hist.: ID 5-1997, f. 5-27-97, cert. ef. 7-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-051-0590

Annual Certifications

(1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of OAR 836-051-0500 to 836-051-0600.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American Academy of Actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the Director, following appropriate notice and hearing to have:

(A) Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of the actuary's dealings as an illustration actuary;

(B) Been found guilty of fraudulent or dishonest practices;

(C) Demonstrated the actuary's incompetence, lack of cooperation or untrustworthiness to act as an illustration actuary; or

(D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards.

(d) Not fail to notify the Director of any action taken by a commissioner of another state similar to that under subsection (c) of this section (3);

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(A) Fully allocated expenses;

(B) Marginal expenses; or

(C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the Director.

(4)(a) The illustration actuary shall file a certification with the board and with the Director:

(A) Annually for all policy forms for which illustrations are used; and

(B) Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the director promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the Director promptly of the actuary's inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of OAR 836-051-0500 to 836-051-0600 and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the insurer has provided its insurance producers with information about the expense allocation method used by the insurer in its illustrations and disclosed as required in section (3)(f) of this rule.

(7) The annual certification shall be provided to the Director each year by a date determined by the insurer. If the insurer decides to change the date for a subsequent year, the insurer must so notify the Director prior to the insurer's current elected date and include with the notification an explanation for the change. The first annual certification by an insurer is due on the date elected by the insurer during the calendar year beginning January 1, 1998.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the insurer's policy forms, the insurer shall notify the Director of that fact promptly and disclose the reason for the change.

Stat. Auth.: ORS 731.244 & 746.240

Stats. Implemented: ORS 746.075, 746.085, 746.100, 746.110 & 746.240

Hist.: ID 5-1997, f. 5-27-97, cert. ef. 7-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-052-0156

Permitted Compensation Arrangements

(1) An issuer or other entity may provide commission or other compensation to an insurance producer or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation, including overrides and other sales-connected remuneration to field supervisory personnel, does not exceed 200 percent of the commission or the compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent renewal years must be the same as that provided in the second year or period and must be provided for a reasonable number of renewal years. The total number of renewal years shall not be fewer than five renewal years.

(3) An issuer or entity shall not provide compensation to its insurance producers and an insurance producer shall not receive compensation greater than the renewal compensation payable by the replacing issuer if an existing policy or certificate is replaced.

(4) For purposes of this rule, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, awards and finder's fees.

(5) Violation of this rule is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244, 743.010, 743.013, 743.680 - 743.689 & 746.240

Stats. Implemented: ORS 743.684(3)

Hist.: ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-052-0165

Requirements for Application Forms, Replacement Coverage

(1) Application forms shall include the statements and questions set forth in this section designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other health insurance policy or certificate currently in force. A supplementary application or other form to be signed by the applicant and insurance producer containing such statements and questions may be used. The statements and questions are as follows:

(a) Statements:

(A) You do not need more than one Medicare supplement policy;

(B) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages;

(C) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy;

(D) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility; and

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(E) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a qualified Medicare beneficiary (QMB) and a specified low-income Medicare beneficiary (SLMB).

(b) Questions — To the Best of Your Knowledge:

(A) Do you have another Medicare supplement policy or certificate in force?

(i) If so, with which company?

(ii) If so, do you intend to replace your current Medicare supplement policy with this policy (certificate)?

(B) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(i) If so, with which company?

(ii) What kind of policy?

(C) Are you covered for medical assistance through the state Medicaid program:

(i) As a Specified Low Income Medicare beneficiary (SLMB)?

(ii) As a Qualified Medicare Beneficiary (QMB)?

(iii) For other Medicaid medical benefits?

(2) An insurance producer shall list any other health insurance policies that the insurance producer has sold to the applicant, and:

(a) List such policies sold that are still in force;

(b) List such policies sold in the past five years that are no longer in force.

(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.

(4) Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its insurance producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the insurance producer, except when the coverage is sold without an insurance producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

(5) The notice required by section (4) of this rule for an issuer, shall be provided in substantially the form shown in **Exhibit 1** to this rule in no less than 12 point type.

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

Stat. Auth.: ORS 743.010 & 743.685

Stats. Implemented: ORS 743.010, 743.683 & 743.685

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 1-1990, f. 1-10-90, cert. ef. 4-1-90; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 8-2001(Temp), f. 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f. & cert. ef. 9-24-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-052-0175

Standards for Marketing

(1) An issuer, directly or through its producers, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its insurance producers will be fair and accurate;

(b) Establish marketing procedures to assure excessive insurance is not sold or issued;

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy, the following: “**Notice to Buyer:** This policy may not cover all of your medical expenses”;

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has health insurance and the types and amounts of any such insurance;

(e) Establish auditable procedures for verifying compliance with this section.

(2) In addition to the practices prohibited under ORS Chapter 746, the following acts and practices are prohibited:

(a) Twisting, which includes knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing or tending to induce any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer;

(b) High pressure tactics, which include the employing of any method of marketing having the effect of inducing or tending to induce the purchase of insurance through force, fright or threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance;

(c) Cold lead advertising, which is making use, directly or indirectly, of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

(3) Violation of any provision of section (2) of this rule is an unfair trade practice under ORS 746.240.

(4) The terms “Medicare Supplement,” “Medigap,” “Medicare Wrap-Around” and words of similar import shall not be used unless the policy is issued in compliance with OAR 836-052-0103 to 836-052-0194.

Stat. Auth.: ORS 731.244, 743.010, 743.013, 743.680 - 743.689 & 746.240

Stats. Implemented: ORS 743.010(1)(c), 743.010(2), 743.685(8) & 746.240

Hist.: ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 9-1997, f. & cert. ef. 7-10-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-052-0180

Appropriateness of Recommended Purchase and Excessive Insurance

(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an insurance producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Stat. Auth.: ORS 731.244, 743.010, 743.013, 743.680 - 743.689 & 746.240

Stats. Implemented: ORS 743.010(1)(c), 743.010(2), 743.683(2) & 743.685(8)

Hist.: ID 1-1990, f. 1-10-90, cert. ef. 4-1-90; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-053-0030

Marketing

The following requirements apply to health benefit plans offered to Oregon small employers and to HIPAA small employers:

(1) A small employer carrier may offer different small employer health benefit plans in different geographic areas. However, the Basic plan required under ORS 743.734 and a point-of-service plan required of certain carriers under ORS 743.808 must be offered in every geographic area in which the carrier offers or renews its small employer health benefit plans. A small employer carrier may not cease offering or renewing, or offering and renewing, its Basic plan in a geographic area unless the carrier discontinues all plans in the geographic area as provided in ORS 743.737(5)(e).

(2) A small employer carrier must offer all of its approved small employer health benefit plans and plan options, including the Basic plan required under ORS 743.734 and a point-of-service plan required of certain carriers under ORS 743.808, to all small employers on a guaranteed issue basis. A carrier may not serve only a portion of the small employer market, such as employers with more than 25 employees, and a carrier may not establish or maintain a closed plan or plan option or a closed book of business in the small employer market. For purposes of this section, a “closed” arrangement is one in which coverage is maintained and renewed for currently enrolled small employers, but the coverage is not offered or issued to other small employers.

(3) A small employer carrier may not require a small employer to purchase or maintain other lines of coverage, such as group life insurance, in order to purchase or maintain a small employer health benefit plan.

(4) A small employer carrier that offers a particular health benefit plan in the small employer market only through one or more bona fide associations is not required to offer that plan, on a guaranteed issue basis or otherwise, to small employers that are not members of the association.

(5) A small employer carrier must market fairly all of its small employer health benefit plans and plan options and shall not engage in any practice that:

(a) Restricts a small employer’s choice of such plans and plan options; or

(b) Has the effect or is intended to influence a small employer’s choice of such plans and plan options for reasons of risk selection.

(6) A small employer carrier shall not provide to any insurance producer any financial or other incentive that conflicts with the requirements of section (5) of this rule.

(7) A small employer carrier must use the same sales compensation methodology for all small employer health benefit plans offered by the carrier.

(8) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with an insurance producer for

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any reason related to the following: the health status, claims experience, occupation, geographic location of small employer groups, or the type of small employer plans placed by the agent with the carrier.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240
Stats. Implemented: ORS 743.736(4), 743.736(7), 743.737(9) & 746.650(1)
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-053-0050

Trade Practices

The following requirements apply to health benefit plans offered to Oregon small employers and to HIPAA small employers:

(1) When offering plans to small employers, a carrier must briefly describe the variety of small employer plans and plan options that are available from the carrier and must specify that all plans and plan options are offered on a guaranteed issue basis.

(2) A small employer health benefit plan must be issued with an effective date no later than 31 days after the carrier actually receives the application.

(3) Neither a small employer carrier nor an insurance producer may encourage or direct a small employer to seek coverage from another carrier because of the small employer's health status, claims experience, industry occupation or geographic location, if within the carrier's service area.

(4) Neither a small employer carrier nor an insurance producer may induce or otherwise encourage a small employer to separate or otherwise exclude an eligible employee from employment or from health coverage or benefits provided in connection with the employee's employment.

(5) A small employer health benefit plan may specify that an enrolled small employer may replace its current coverage with another small employer plan offered by the carrier only on the anniversary date of the current coverage. This limitation also applies to a small employer that discontinues coverage with a carrier, or forfeits coverage because of non-payment of premiums, and then requests new coverage with the same carrier.

Stat. Auth.: ORS 731.244, 743.731(4) & 746.240
Stats. Implemented: ORS 743.736(5)&(7), 743.737(2)-(4) & (9) & 746.240
Hist.: ID 17-1992, f. 12-3-92, cert. ef. 12-7-92; ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-053-1060

Definitions

For purposes of grievance procedures under OAR 836-053-1000 to 836-053-1200, and ORS 743.804:

(1) "Complaint" means an expression of dissatisfaction to an insurer that is about a specific problem encountered by an enrollee or about a decision by an insurer or by an insurance producer acting on behalf of the insurer and that includes a request for action to resolve the problem or change the decision. "Complaint" does not include an inquiry as that term is defined in this rule.

(2) "Grievance" has the meaning given in ORS 743.801, which states that "grievance" means a written complaint submitted by or on behalf of an enrollee regarding:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an enrollee and an insurer.

(3) "Inquiry" means a written request for information or clarification about any subject matter related to the enrollee's health benefit plan.

Stat. Auth.: ORS 731.244 & 743.819
Stats. Implemented: ORS 743.801 & 743.804
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-054-0000

Election of Lower Limits for Uninsured Motorist Coverage

(1) This rule is adopted under the authority of ORS 731.244 for the purpose of implementing ORS 742.502.

(2) This rule establishes in **Exhibit 1** an example of the form of statement electing lower limits for uninsured motorist coverage in a motor vehicle liability insurance policy that may be used to comply with the requirement in ORS 742.502 for a statement of election. A form used by an insurer or insurance producer that is in substantial compliance with this rule is considered to be approved by the Department. A form is in substantial compliance if the form contains all of the following elements in any order:

(a) An acknowledgement by the named insured that the named insured was offered uninsured motorist coverage with the limits equal to those for bodily injury liability;

(b) A brief summary, which is not part of the insurance contract, of uninsured and underinsured motorist coverages;

(c) A statement of the price for coverage per insured vehicle with limits equal to the named insured's bodily injury liability limits and the price for coverage per insured vehicle with the lower limits requested by the named insured;

(d) A statement to the effect that the statement shall remain in force until rescinded in writing by a named insured or until such time as motor vehicle bodily injury liability limits are changed; and

(e) Provision for signature of a named insured, to be made at the time of the election, and for the date of signature.

(3) Regarding the summary required in subsection (2)(b) of this rule, if an insurer issuing a policy that refers only to uninsured motorist coverage because uninsured motorist coverage under the policy includes underinsured motorist coverage meeting statutory requirements, the insurer need not use the term "underinsured motorist coverage."

(4) The statement required under subsection (2)(c) of this rule may state the term of coverage to which the prices relate.

(5) The form may include one or both of the following statements in addition to the items required under section (2) of this rule:

(a) A statement to the effect that the form is required by Oregon law or specifically by ORS 742.502; and

(b) A statement to the effect that limits for uninsured motorist coverage cannot be less than the amounts required to comply with financial responsibility requirements under ORS 806.070.

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

Stat. Auth.: ORS 731.244 & 742.502
Stats. Implemented: ORS 742.502(2)
Hist.: ID 5-1994, f. & cert. ef. 5-9-94; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-062-0005

Motor Vehicle Physical Damage Only Policies; Required Notice

(1) An insurer providing motor vehicle property damage only coverage on a domestic risk, upon issuance of coverage, shall give notice of the limited nature of the coverage as provided in this section to the purchaser of the motor vehicle to which the coverage applies. The insurer shall display the notice on the face page of the policy, the group or master contract or any other document issued by the insurer to the purchaser as evidence of insurance coverage. Except as provided in section (2) of this rule, the notice shall be in bold face type of not less than 12-point with a lower case unspaced alphabet length of not less than 120-point, or of not less than 10-point if the notice is in a contrasting color, and shall state:

"WARNING: THIS COVERAGE DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW OR ANY OTHER LAW MANDATING MOTOR VEHICLE INSURANCE COVERAGE."

(2) An insurer may satisfy the notice requirement under section (1) of this rule by use of a notice provision that substantially complies with the notice provision set forth in section (1) of this rule, if the alternative notice provision is approved by the Director prior to use.

(3) For purposes of this rule, a policy is a motor vehicle physical damage only policy if it insures solely against the loss of or damage to any motor vehicle designed primarily for use upon a highway.

(4) The notice requirement under this rule may be met by the attachment of a sticker or by a stamp that contains the required warning. Other devices that contain the required warning may be used if approved by the Director prior to use.

(5) The insurance producer selling the coverage to which this rule applies shall require the purchaser of the coverage to sign a receipt acknowledging that the purchaser has read and understands the warning required under section (1) of this rule. The receipt shall be retained by the insurance producer or insurer until the end of the sixth month after the termination date of the coverage to which the receipt applies.

(6) This rule applies to motor vehicle physical damage only policies on individually owned private passenger vehicles including pickup and panel trucks and station wagons that are not used as a public or livery conveyance for passengers or rented to others, and does not apply to motor vehicle physical damage only policies on commercial fleets.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.005, 742.023 & 746.240
Hist.: ID 9-1989, f. & cert. ef. 10-23-89; ID 15-1996, f. & cert. ef. 11-12-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0108

Limited Class Insurance Licenses

For the purpose of ORS 744.062, the Director establishes the following classifications for limited class insurance licenses, for use on and after July 1, 2005:

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(1) Under a "limited class credit insurance" license, the licensee may transact the following classes of insurance when the insurance is offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation:

(a) Credit life insurance. Under this class, an insurance producer may transact credit life insurance as approved under ORS 743.371(1).

(b) Credit health insurance. Under this class an insurance producer may transact credit health insurance as approved under ORS 743.371(2).

(c) Credit unemployment and involuntary unemployment insurance. Under this class an insurance producer may transact approved liability coverage for unemployment.

(d) Credit property insurance. Under this class, an insurance producer may transact insurance against property loss or damage that may result in failure of debtors to pay their obligations to the insured, including but not limited to motor vehicle physical damage insurance. This class does not include mortgage insurance.

(e) Mortgage guarantee insurance. Under this class, an insurance producer may transact only the insurance that is issued by an authorized mortgage insurer under ORS 742.282 to 742.286.

(f) Mortgage life or disability insurance, or mortgage life and disability insurance. Under this class, a lending institution may transact mortgage cancellation insurance as approved under ORS 743.303(1)(b) and (5).

(g) Gap insurance. This class applies to a person described in ORS 731.036(9) who does not qualify for the exemption in ORS 731.036(9) because the person imposes an additional charge to waive the amount described in ORS 731.036(9)(b) pursuant to an agreement to lease or to finance the purchase of a motor vehicle.

(2) Under a "limited class insurance" license, the licensee may transact the following classes of insurance:

(a) Crop insurance. Under this class, an insurance producer may place insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance.

(b) Surety insurance. Under this class an insurance producer may place insurance or a bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust as approved under ORS 742.350 to 742.376. For the purpose of this limited line license, surety does not include surety bail bonds.

(3) Under a "trip travel insurance" license, the licensee may place insurance for trip cancellation, trip interruption, baggage, accidental death, sickness and accident, disability and personal effects. Trip travel coverage provides reimbursement of expenses resulting from an emergency in connection with travel. The following provisions apply to this limited license:

(a) An insurance producer may transact trip travel insurance that covers the risks of a specific trip and sold in connection with transportation provided by a common carrier, owner of a transportation ticket agency or filed with a city, county or state as a tour business.

(b) The limited license under this subsection may be endorsed for an employee or owner, either of whom is engaged in the sale of transportation tickets.

(c) The individual coverage may not be more than the duration of a specified trip.

(d) The limited license under this subsection is issued for the sale of coverage provided by an insurer holding a certificate of authority for casualty insurance or by an insurer holding a certificate of authority for health insurance when the insurer insures only accidental death, sickness and accident or disability coverages.

Stat. Auth.: ORS 731.244, 744.062
Stats. Implemented: ORS 744.062
Hist.: ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0112

Social Security Numbers; Insurance Producer Applications

(1) An applicant for an insurance producer license shall furnish the Social Security number of the applicant as provided in the application form.

(2) The Director may collect Social Security numbers submitted in applications under this rule and may use a Social Security number of an individual when authorized to do so for the purposes specified in this section. In addition to the governmental uses for which a Social Security number is required in an application under federal and state law, when authorized by the holder of a Social Security number, the Director may use a Social Security number for any of the following purposes:

(a) As an identification number in maintaining records and reporting grades or examination scores;

(b) For licensing purposes; and

(c) For use by other government agencies to carry out their statutory duties.

(3) In addition to the governmental uses for which a Social Security number is required in an application under federal and state law, an applicant may voluntarily allow use by the Director of the Social Security number of the applicant, as the Director may request in the application form, for the purposes specified in section (2) of this rule. Refusal to voluntarily allow such use of the Social Security number will not result in the denial of any individual right, benefit or privilege provided by law.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 744.058 & 744.063
Hist.: ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0127

Examination Scores

(1) For the purpose of obtaining authorization to transact a category or class of insurance, an applicant passes an examination for the class or category when the applicant obtains a score of 70 percent or higher.

(2) An applicant for a surplus lines licensee's license must take a written examination approved by the Director and must achieve a score of 70 percent or higher.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.066, 744.069, 744.075, 744.535, 744.619 & 744.621
Stats. Implemented:
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0148

Extended License Expiration Date, Active Military Duty and Other Extenuating Circumstances

(1) An individual insurance producer who is unable to comply with license renewal procedures due to military service or another extenuating circumstance such as a long term medical disability may request a waiver from compliance with those procedures as authorized by ORS 744.072, as provided in this rule. The waiver may include an extension of the expiration date of the license as provided in this rule.

(2) An individual insurance producer who is ordered by a branch of the armed forces of the United States into active military duty may obtain an extension of the expiration date of the license for the period of time provided in this section. The extended expiration date is established for a license as follows:

(a) By adding the number of days the licensee served on active duty to the date on which the licensee is released from active duty, if the license would otherwise have expired during the period of active duty; or

(b) By adding the number of days the licensee served on active duty to the date on which the license of the licensee expires, if the license would otherwise have expired after the date on which the licensee is released from active duty.

(3) The expiration date of the license of an insurance producer who requests extension of the expiration date of the license for an extenuating circumstance other than being ordered into active military duty under section (2) of this rule may be extended by the Director according to the Director's judgment, as provided in this section. The extended expiration date is established for a license as follows:

(a) By adding the number of days the insurance producer was unable to exercise authority under the insurance producer license to the date on which the insurance producer was once again able to resume duties under the license, if the license would otherwise have expired during the period of the extenuating circumstance; or

(b) By adding the number of days the insurance producer was unable to exercise authority under the insurance producer license to the date on which the insurance producer was once again able to resume duties under the license, if the license would otherwise have expired after the date on which the period of the extenuating circumstance ends.

(4) The extended expiration date established under sections (2) and (3) of this rule is the last day of the month in which the final day of the added period occurs. The date so established shall also be the expiration date for purposes of subsequent renewals of the license.

(5) The fee, continuing education and other applicable requirements for renewal that would have applied for the normal expiration date of a license of an insurance producer described in section (2) or (3) of this rule apply for the extended expiration date. An insurance producer applying for renewal under this rule shall include documentation with the renewal application as follows:

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(a) If the reason for the requested extension is that the insurance producer was called to active duty in the military, the insurance producer shall provide a copy of documentation by the branch of the armed forces in which the insurance producer served that shows the period served on active duty or an affidavit, signed by the applicant, that states the period served on active duty.

(b) If the extension is requested for some other reason, the insurance producer shall provide documentation or other evidence of the extenuating circumstances as specified by the Director.

(6) Sections (2) and (3) of this rule apply only to licensees who leave active duty under honorable conditions. This rule does not apply to regular and routine reservist training periods of service.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.072

Hist.: ID 10-1997, f. & cert. ef. 10-8-97; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0150

Errors and Omissions Insurance; Insurance Consultants; Managing General Agents

(1) The amount of insurance for which an insurance consultant must maintain a certificate of errors and omissions insurance with the Director as required by ORS 744.635 is \$500,000 claims made or per occurrence.

(2) The amount of insurance for which a managing general agent as described in ORS 744.300 must maintain a certificate of errors and omissions insurance with the Director as required by ORS 744.303 is \$500,000 claims made or per occurrence.

(3) A managing general agent or an insurance consultant may obtain insurance required by ORS 744.303 or 744.635 from an insurer other than an authorized insurer if the insurer does not control or is not controlled by, or is not under common control with, the managing general agent or insurance consultant, whether directly or indirectly through one or more intermediaries, and if:

(a) The insurer is an eligible surplus lines insurer pursuant to the requirements of ORS 735.400 to 735.495 and the insurance is procured by a surplus lines licensee;

(b) The insurer is an authorized insurer in the state of domicile of the insurance consultant or managing general agent for whom the insurance is obtained; or the state of domicile of the applicant for either such license; or

(c) The insurance is procured from an Oregon surplus lines insurer that is eligible in the state of domicile of the insurance consultant or managing general agent, or applicant for either such license, if all requirements of this subsection are satisfied. The insurance for purposes of this subsection must be confirmed by the signature of an Oregon surplus lines licensee. The Oregon surplus lines licensee must also affirm in writing that the Oregon surplus lines licensee will be the agent for service of process for any action or proceeding involving the insurance consultant or managing general agent and an Oregon resident.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712 & 744.726

Stats. Implemented:

Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0160

Errors and Omissions Insurance; Intermediary Managers

(1) The amount of insurance for which a reinsurance intermediary manager must maintain a certificate of errors and omissions insurance with the Director as required by ORS 744.818, is \$500,000 claims made or per occurrence.

(2) A reinsurance intermediary manager may obtain insurance required by ORS 744.818, from an insurer other than an authorized insurer if the insurer does not control or is not controlled by, or is not under common control with, the reinsurance intermediary manager, whether directly or indirectly through one or more intermediaries, and if:

(a) The insurer is an eligible surplus lines insurer pursuant to the requirements of ORS 735.400 to 735.495 and the insurance is procured by a surplus lines licensee;

(b) The insurer is an authorized insurer in the state of domicile of the reinsurance intermediary manager for whom the insurance is obtained; or the state of domicile of the applicant for the license; or

(c) The insurance is procured from an Oregon surplus lines insurer that is eligible in the state of domicile of the reinsurance intermediary manager or applicant for the license, if all requirements of this subsection are satisfied. The insurance for purposes of this subsection must be confirmed by the signature of an Oregon surplus lines licensee. The Oregon surplus lines licensee must also affirm in writing that the Oregon surplus lines licensee will be the agent for service of process for any action or proceed-

ing involving the reinsurance intermediary manager and an Oregon resident.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.818

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0180

Insurance Producer Pre-Examination Requirements

(1) An applicant for a license as an insurance producer may take an examination for the license only if the applicant first qualifies for the examination by:

(a) Satisfying preexamination training requirements of section (2) of this rule and the training requirement of section (10) of this rule; or

(b) Satisfying the experience requirements of section (6) of this rule and the training requirement of section (10) of this rule.

(2) An applicant may qualify for the examination by taking preexamination training meeting the requirements of section (3) of this rule according to either of the following methods:

(a) Attendance at classroom lectures supervised and conducted by an instructor; or

(b) Attendance at the showing or playing of a previously videotaped or audiotaped lecture, if student check-in and check-out are supervised and a course instructor is present or available to answer student questions.

(3) Preexamination training shall consist of not less than:

(a) 20 hours in basic principles of property insurance, for authority to transact property insurance;

(b) 20 hours in basic principles of casualty insurance, for authority to transact casualty insurance;

(c) 20 hours in basic principles of personal lines insurance, for authority to transact personal lines insurance;

(d) 30 hours in basic principles of life insurance, for authority to transact life insurance; and

(e) 12 hours in basic principles of health insurance, for authority to transact health insurance.

(4) For the purposes of sections (2) and (3) of this rule:

(a) One hour of training shall consist of not less than 50 minutes of instruction.

(b) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line.

(c) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who obtains training for a license to transact casualty insurance need not obtain separate or additional training to transact personal lines insurance.

(5) An applicant may not satisfy the training requirements established in this rule by unsupervised training or by self-study.

(6) An applicant may satisfy experience requirements for the examination by either of the methods described in this section. As provided in section (7) of this rule, an applicant may substitute successful completion of coursework to obtain an industry recognized designation for all or part of the experience requirements. The methods for satisfying experience requirements are as follows:

(a) Obtaining and showing proof of three years of verifiable experience as an unlicensed person performing the duties and activities described in OAR 836-071-0280(1) or (2) in the class or classes of insurance for which application is made, but only if any part of the experience has occurred within two years of the date of application for the insurance producer license in this state; and

(b) Obtaining and showing proof of three years of licensure as a resident insurance producer, agent or insurance broker in another state, a province of Canada or Mexico:

(A) If the applicant has been so licensed within two years of the date of application for the insurance producer license in this state; and

(B) If the applicant is not otherwise exempt from taking the examination under ORS 744.067.

(7) An applicant may substitute successful completion of coursework required for obtaining an industry-recognized designation described in this section for all or a part of the number of years of experience required under section (6) of this rule in the class or classes of insurance for which application was made. The following are the designations, the amount of experience for which the coursework may be substituted and the class or classes of insurance to which the coursework may apply:

(a) Accredited Advisor in Insurance (AAI) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

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(b) Accredited Customer Service Representative (ACSR) designation of the Independent Insurance Agents Association: Two years' experience credit/general lines;

(c) Associate in Risk Management (ARM) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

(d) Certified Insurance Counselor (CIC) designation of the Society of Certified Insurance Counselors: Three years' experience credit/general lines;

(e) Certified Professional Service Representative (CPSR) designation of the Professional Insurance Agents Association: Two years' experience credit/general lines;

(f) Registered Health Underwriter (RHU) designation of the National Association of Health Underwriters in partnership with Northeastern University: Three years' experience credit/health;

(g) Any registered program that fulfills the educational requirement leading to the CFP/Certified Financial Planner certification awarded by the Certified Financial Planner Board of Standards, Inc.: Three years' experience credit/life lines;

(h) Life Underwriters Training Council (LUTCF) designation of the Life Underwriters Training Council: Three years' experience credit/life and health lines;

(i) Chartered Financial Consultant (ChFC) designation of the American College of Life Underwriter: Three years' experience life and health lines;

(j) Fellow Life Manager Institute (FLMI) designation: Three years' experience life and health lines;

(k) Certified Professional Insurance Women (CPIW) designation: Two years' property and casualty lines; and

(l) An industry designation determined by the Director, by virtue of the coursework, to provide experience at least comparable to experience obtained by coursework for an industry designation specifically referred to in this section.

(8) Pretraining experience claimed under section (6) of this rule is verifiable only if:

(a) The applicant's employer submits to the Division a completed Division Qualification Form that includes a description of all the pretraining experience claimed by the applicant; and

(b) The Division is able to contact the employer to verify the information contained in the Qualification Form.

(9) Proof of completion of a training course for an industry designation under section (7) of this rule must be evidenced by a certificate of completion or notice of a passing examination score by the organization sponsoring the training.

(10) Each applicant for a license as an insurance producer must obtain not less than eight hours of training in the Oregon Insurance Code and administrative rules.

(11) The amendments to this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002 are re-adopted with the operative date of July 1, 2002.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.058, 744.064 & 744.067

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 9-2002, f. & cert. ef. 3-18-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0190

Registration of a School

(1) Each school, other than a community college or four-year college or university, offering an insurance instruction program shall register with the Director in order to provide pre-examination training for applicants for insurance producer licenses. Each school shall apply for registration annually on a form provided by the Director.

(2) The application shall contain:

(a) The business name, main business address and business telephone number of the school and the name of an individual employed by the school whom the Director may contact;

(b) A detailed description of the school's insurance training program that shall, for each part, include the course outline and list of source materials, instructor's lesson plans, student outline, proposed student attendance record forms, proposed student progress record forms and enrollment contract form including refund policy;

(c) The names of persons authorized to certify records or statements regarding training taken by applicants;

(d) A list of principal officers and directors if the school is a firm or corporation;

(e) A certification that the training offered or proposed to be offered includes subject matter equivalent to the examination outline adopted by the Insurance Division.

(3) A registered school shall notify the Director of any change of its address, telephone number or contact person within 30 days after the change.

(4) Promotional material advertising insurance pre-examination training published by the registered school shall state that the school is registered with the Insurance Division and that registration does not imply endorsement by the Insurance Division.

(5) A registered school shall retain for each training course the attendance and course outlines for a period of three years after the conclusion of the course.

(6) A registered school is subject to audit by the Director for purposes of verifying compliance with OAR 836-071-0180.

(7) Subject to revocation of registration under OAR 836-071-0195, a registration expires on the second January 1 following the date of registration.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.072

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0195

Revocation of Registration of a School; Reinstatement

(1) The registration of an insurance school providing pre-examination training may be revoked by the Director if the Director determines that:

(a) The insurance training program as registered is not being taught; or

(b) Students who have not maintained a satisfactory attendance record or have not completed course work have been certified by the school for the insurance producer license examination.

(2) A school whose registration is revoked may apply for reinstatement. The school must demonstrate to the Director's satisfaction that the school has taken appropriate action to correct the conditions that were the basis of the revocation.

Stat. Auth.: ORS 731 & 744

Stats. Implemented:

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0210

Statutory Authority; Purpose

(1) OAR 836-071-0210 to 836-071-0250 are adopted under the authority of ORS 731.244 and 744.072 for the purpose of implementing ORS 744.072, relating to continuing education for insurance producers. The purpose of OAR 836-071-0210 to 836-071-0250 is to establish requirements and standards for the program for licensees.

(2) The purpose of the continuing education program is to promote trustworthy and competent insurance services for the public by requiring a sufficient number of hours for insurance training.

Stat. Auth.: ORS 731.244 & 744.072

Stats. Implemented: ORS 744.072

Hist.: ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0215

Continuing Education Requirements for Insurance Producers; Hours; Credit for Experience and Coursework

(1) Each resident insurance producer is responsible for obtaining the credit hours required by this rule by enrolling in courses approved by the Director that serve the insurance producer's professional needs. The following minimum continuing education requirements apply to resident insurance producers as a condition of renewing a license as insurance producer:

(a) For each two year renewal period occurring after issuance of an insurance producer license through the sixth year that an insurance producer holds an insurance producer license, the insurance producer must complete 44 hours of continuing education;

(b) For each two year renewal period occurring after the sixth year that an insurance producer holds an insurance producer license, the insurance producer must complete 24 hours of continuing education;

(c) If an insurance producer has received the designation of Chartered Property and Casualty Underwriter or Chartered Life Underwriter, after issuance of the insurance producer license, the insurance producer must complete 24 hours of continuing education; and

(d) For each two year renewal period occurring after issuance of an insurance producer license, the renewing insurance producer must include in the applicable required hours of completed continuing education:

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(A) At least three credit hours of continuing education on the subject of Oregon statutes and administrative rules, including recent changes; and

(B) At least two credit hours of continuing education of the subject of professional ethics for insurance producers.

(2) For the purpose of satisfying minimum continuing education requirements:

(a) A resident insurance producer who qualified for examination for a license by experience or by completion of coursework to obtain an industry-recognized designation as provided in OAR 836-071-0180 may count the experience or coursework as equivalent to having held the insurance producer license for three years;

(b) A resident insurance producer previously licensed as an insurance producer in Oregon or in another state may count the period of prior licensing on a year for year basis.

Stat. Auth.: ORS 731.244 & 744.072

Stats. Implemented: ORS 744.072

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0220

Continuing Education; Documentation

(1) For the purpose of furnishing evidence of completion of a course for which an insurance producer claims credit, the insurance producer shall submit the documentation applicable to the course as follows:

(a) For a registered course taken for academic credit, an insurance producer shall submit a transcript, certificate of completion or grade or course completion report, whichever is issued by the institution offering the course, or a copy thereof. For purposes of this subsection, a course is taken for academic credit if it is offered by a community college or four-year college or university, and the insurance producer is given academic credit for the course by such an institution;

(b) For coursework taken for the purpose of obtaining a nationally-recognized insurance industry designation, the insurance producer shall submit a transcript, certificate of completion or grade or course completion report, whichever is issued by the entity granting the designation;

(c) For a registered course that is not offered for academic credit, an insurance producer shall submit the certificate of completion issued by the provider, or a copy thereof. The certificate must include a statement of the hours of credit, the name of the insurance producer, the date of the course, the course registration number, the authorized signature of the provider and the title of the course. The authorized signature may be made by rubber stamp or other facsimile if the stamped or facsimile signature is in a contrasting color to the print of the certificate. An insurance producer who submits a copy of a certificate must retain the original certificate for six months after the date of submittal, for the purpose of enabling verification by the Director;

(d) For a course that is not offered for academic credit and is not registered when taken by an insurance producer, an insurance producer must comply with the requirements of OAR 836-071-0250.

(2) An insurance producer who submits a copy of documentation required under this rule must submit the original document upon request by the Director for the purpose of verification.

Stat. Auth.: ORS 731.244 & 744.119

Stats. Implemented: ORS 744.119

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0225

Continuing Education; Standards for Granting Credit Hours

(1) Subject to the subject matter requirements of OAR 836-071-0230, an insurance producer may receive credit for continuing education for a course taken for academic credit, for a course registered under OAR 836-071-0240 or a course certified under OAR 836-071-0250:

(a) For not more than the credit hours authorized by the Director;

(b) Only if an hour includes at least 50 minutes of instruction or study;

(c) For class hours in which an insurance producer is an instructor of a course if the course meets the continuing education requirements of an insurance producer attending it. Credit may be taken by an insurance producer with respect to a course only once in each renewal period in which the insurance producer instructs the course;

(d) For not more than eight credit hours in any given day;

(e) Only if the hour for which credit is taken was completed during the license period immediately preceding the renewal date;

(f) For a course taken through independent study, but only as provided in section (4) of this rule.

(2) An insurance producer may take credit for a course only if the insurance producer has successfully completed the course before the insur-

ance producer applies for renewal or reinstatement. For the purpose of taking credit for a course other than one taken through independent study, an insurance producer successfully completes the course if the insurance producer is present for the full approved time and has signed in and out on the attendance register for the course.

(3) An insurance producer may not take continuing education credit for:

(a) Hours devoted to preparation for a course; when the insurance producer is acting as an instructor for the course;

(b) Travel time;

(c) Time exceeding the actual class time;

(d) Unplanned or incidental learning experiences;

(e) Any course not completed;

(f) Any course repeated within a two year period; or

(g) Any course during which the insurance producer is absent more than 5 minutes for each hour of credit granted, or is absent more than 20 minutes from the course as a whole.

(4) For purposes of subsection (1)(f) of this rule, a course is taken through independent study if the course is designed to allow each student to take the course at the student's own pace on an individual basis. An insurance producer may claim credit for an independent study course if the provider and the course are both registered with the Director when the course is taken, if the insurance producer passes an examination by a score of 70 percent or higher and if the proctor of the examination affirms and the provider certifies completion and passage as provided in this section. If the independent study course is a textbook, the examination must be conducted as a closed book examination. The examination for an independent study course need not be proctored if the course is computerized and includes safeguards ensuring that the insurance producer cannot review the study material while taking the examination and if the examination has safeguards ensuring that the insurance producer cannot change answers after completing the examination. Proctor affirmation and provider certification shall be made as follows:

(a) The proctor must affirm by affidavit, on an affidavit form approved by the Director, that the insurance producer took the examination for the course without assistance from the textbook or from any person. The proctor must disclose in the affidavit the proctor's name, address, telephone number and the proctor's position or connection with the insurance producer, such as a continuing education school or a librarian, and the proctor's registration number, if the proctor is required to be registered under section (7) of this rule. The provider must retain the affidavit with the examination. A proctor affidavit is not required if the independent study course is taken from a provider that offers a nationally recognized insurance industry designation.

(b) If the provider determines that the insurance producer completed and passed the examination, the provider may issue the certificate of completion. The provider shall date the certificate according to the date on which the provider received the examination for grading and shall state on the certificate that to the best of the provider's knowledge the insurance producer passed the examination.

(5) The provider of a course shall issue a certificate of completion of the course to each qualifying insurance producer not later than the 15th day after the date on which an insurance producer completes a course or not later than the 15th day after the date on which the Director approved the course, whichever date is later. The period for issuance of a certificate does not apply to a provider who discloses to the insurance producer in writing, when the insurance producer pays for or registers for the class, the date by which or the time period within which the certificate will be issued.

(6) A provider shall notify the Director immediately of any change in authorized signers for certificates.

(7) A person may act as a proctor for one or more independent study courses under section (4) of this rule only if the person is registered as a proctor with the Insurance Division. A person applying for registration must submit the name, address and telephone number of the person; the location or locations at which examinations will be proctored; the fee or fees that will be charged, if any, for the proctoring service; and whether the person will proctor examinations for the general insurance producer population. There is no registration fee. If the person will proctor independent study course examinations for other than the general insurance producer population, the person must specify for whom the proctoring will be done. The registration requirement under this section does not apply to city, county and state public libraries, state colleges and universities, private colleges and universities other than those that are owned by or operated primarily for the insurance industry, law offices or currently licensed certified public accountants.

Stat. Auth.: ORS 731.244 & 744.119

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Stats. Implemented: ORS 744.119
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 4-1997, f. 4-25-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0230

Continuing Education; Course Qualification Guidelines

(1) An insurance producer may receive credit for a course on one or more of the following general subject matters if the course also meets the requirements of OAR 836-071-0225:

- (a) Rating;
- (b) Insurance fundamentals;
- (c) Tax laws related to the license class;
- (d) Policy contents;
- (e) Proper uses of insurance products;
- (f) Oregon Insurance Code and administrative rules;
- (g) Technical information related to the insurance license classes of general lines, life and health;
- (h) Insurance law;
- (i) Insurance policies and coverage;
- (j) Contract law;
- (k) Insurance needs;
- (l) Insurance risk management;
- (m) Ethics;
- (n) Estate planning;
- (o) Pension plans;
- (p) Financial planning;
- (q) Accounting;
- (r) Finance;
- (s) General underwriting principles;
- (t) Prevention of errors and omissions;
- (u) Office management, client relations or improving the operations of the insurance producer's business, or any combination thereof;
- (v) Any other subject matter that the Director determines will enhance the ability of an insurance producer to provide insurance services to the public effectively.

(2) An insurance producer may claim not more than four hours of credit in a renewal period for a course on the subject matter described in section (1)(u) of this rule.

(3) An insurance producer may not receive credit for the following types of courses:

- (a) A course designed solely to prepare a person for a license examination;
- (b) A course in mechanical, office or business skill, including but not limited to typing, speed reading or the use of calculators or other machines or equipment;
- (c) A course in sales promotion;
- (d) A course in motivation, salesmanship, stress management, time management, psychology, writing or motivational and promotional communication;
- (e) A course in personnel management or recruiting;
- (f) Any product not available for sale to Oregon consumers;
- (g) Securities, other than variable life and variable annuities.

Stat. Auth.: ORS 731.244 & 744.072
Stats. Implemented: ORS 744.072
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0235

Provider Registration

(1) A provider of continuing education courses must register with the Director in order to register courses under OAR 836-071-0240. A provider must register on a form provided by the Director. The registration of a provider shall include the provider's business name, main business address, all addresses in this state at which courses are conducted, the business telephone number and the name of a contact person. If a provider is a firm or corporation or a trade association, registration shall also include the names of all principal officers.

(2) A provider shall notify the Director of any change in the address, telephone number or contact person of the provider within 30 days after any such change takes effect.

(3) Subject to revocation of registration under OAR 836-071-0245, a provider registration expires on the second January 1 following the date of registration.

(4) A provider is subject to rejection of registration by the Director if the provider fails to meet any requirement of OAR 836-071-0215 to 836-071-0250 applicable to the provider or to courses offered by the provider,

or if any of its employees or contractors who supervise or conduct and certify completion of a course:

- (a) Has a history of noncompliance with insurance statutes or rules; or
- (b) Has had an insurance producer license or other insurance license revoked, suspended or refused because of violations of or noncompliance with insurance statutes or rules.

Stat. Auth.: ORS 731.244 & 744.119
Stats. Implemented: ORS 744.119
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0242

Provider Trade Practices

(1) A registered provider shall not engage in false, misleading or deceptive advertising.

(2) A registered provider must disclose in writing the charges for a course to each insurance producer applying to take the course, prior to enrollment of the insurance producer.

(3) If a registered provider cancels a course for any reason, the provider must refund all charges in full unless the refund policy is clearly described in the enrollment application for the course.

(4) A registered provider shall ensure that each registered course and each course for which registration is sought provides students with current and accurate information.

(5) A registered provider shall include a statement in all material published by the provider to advertise or promote insurance license continuing education that the provider and courses are registered with the Insurance Division and that registration does not imply endorsement by the Insurance Division.

Stat. Auth.: ORS 731.244 & 744.119
Stats. Implemented: ORS 744.119
Hist.: ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 19-1998, f. & cert. ef. 12-2-98; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0250

Credit for Unregistered Courses

(1) An insurance producer may apply for credit as credited in this rule for a course that is not offered for academic credit and is not registered. In order to apply for credit, the insurance producer must submit to the Director an application on a form provided by the Director and substantiation of the course as provided in this rule. The application and substantiation must be submitted not later than the 90th day after the date of completion of the course.

(2) If an unregistered course is on a subject permitted under OAR 836-071-0230, the insurance producer must substantiate to the Director's satisfaction that the course meets the requirements of OAR 836-071-0225 and 836-071-0230 and that the insurance producer attended and completed the course. To make the substantiation, the insurance producer must submit documentation of the course and proof of attendance provided by the provider concerning the course. The documentation may include, by way of example only, an outline of the course or course materials, workbooks or other materials issued by the provider that show the course work. The Director may request any other information as well, such as times allotted to the parts of the course.

(3) If an unregistered course is not on a subject permitted under OAR 836-071-0230, the insurance producer must substantiate to the Director's satisfaction that the course meets the requirements of OAR 836-071-0225, that the course contributes to the insurance producer's professional competence and will benefit the insurance-buying public and that the insurance producer attended and completed the course. To make the substantiation, the insurance producer must submit documentation provided by the provider concerning the course. The documentation may include, by way of example only, an outline of the course or course materials, workbooks or other materials issued by the provider that show the course work, or proof of passing the final examination for the course or a letter, certificate or other documentation of completion from the provider. The Director may request any other information as well, such as times allotted to the parts of the course.

(4) The application and substantiation required under this rule are subject to review by the Director for the purpose of determining whether to certify the course for credit and evaluating and assigning credit hours. The Director may certify the course, or may reject it if the Director determines that the course does not meet applicable requirements.

Stat. Auth.: ORS 731.244 & 744.119
Stats. Implemented: ORS 744.119
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 3-1997, f. 4-7-97, cert. ef. 6-1-97; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

ADMINISTRATIVE RULES

836-071-0260

Fees charged by Insurance Producers

(1) When an insurance producer or any affiliate of the insurance producer receives any compensation authorized under ORS 735.455, 744.091 or 744.093 from a prospective insured for transacting insurance, neither the insurance producer nor the affiliate may accept or receive any compensation from an insurer or other third party for the placement of insurance for the prospective insured unless the insurance producer, prior to the prospective insured's purchase of insurance, has:

(a) Obtained the prospective insured's documented acknowledgment that the compensation will be received by the insurance producer or affiliate;

(b) Disclosed the amount of compensation from the insurer or other third party for the placement. If the amount of compensation is not known at the time of disclosure, the insurance producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount; and

(c) Disclosed the nature of the work that the insurance producer or affiliate will perform on behalf of the prospective insured.

(2) When an insurance producer or any affiliate of the insurance producer receives any compensation authorized under ORS 735.455, 744.091 or 744.093 from a prospective insured for transacting insurance and receives no compensation from an insurer or other third party for placement of insurance for the prospective insured, the insurance producer or affiliate must obtain the prospective insured's documented acknowledgement that the compensation will be received by the insurance producer and must disclose the nature of the work that the insurance producer or affiliate will perform on behalf of the prospective insured.

(3) A person is not a prospective insured for the purpose of this rule if the person is merely:

(a) A participant or beneficiary of an employee benefit plan; or

(b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

(4) This rule does not apply to any of the following persons:

(a) An insurance producer when the insurance producer acts only as an intermediary between an insurer and the prospective insured's insurance producer, such as a managing general agent, a wholesale insurance producer under ORS 744.093, a surplus lines licensee when transacting insurance with a producing insurance producer under ORS 735.455 or a sales manager.

(b) An insurance producer with respect to an incidental charge that is received from the prospective insured and is authorized under OAR 836-071-0267.

(c) A reinsurance intermediary.

(5) As used in this rule:

(a) "Affiliate" means a person that controls, is controlled by or is under common control with the insurance producer.

(b) "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.

(c) "Compensation from a prospective insured" does not include any fee or amount collected by or paid to the insurance producer that does not exceed an amount established by the Director.

Stat. Auth.: ORS 731.244, 735.455, 744.091, 744.093

Stats. Implemented: ORS 735.455, 744.091, 744.093

Hist.: ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0267

Incidental Charges for Customer Services; Personal, Commercial Lines

(1) This rule establishes incidental charges that an insurance producer may impose for customer services in connection with the transaction of insurance. For the purpose of this rule, personal lines insurance is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(2) An insurance producer may impose an incidental charge established in this rule on a customer only if the insurance producer has given written notice to the customer that the insurance producer may impose incidental charges authorized by this rule. The notice must disclose all incidental charges that the insurance producer may impose and the service provided for each incidental charge. The insurance producer must give the notice to a customer before providing any service for which an incidental charge may be imposed, but not later than at the time of application or the renewal before the insurance producer commences imposing the incidental charges. The written notice requirement does not apply to the binding or

issuance of a policy. At the time an insurance producer charges an incidental charge under this rule, the insurance producer must clearly disclose to the customer the amount of the incidental charge and the service for which the incidental charge is imposed.

(3) An insurance producer may impose an incidental charge for rewriting or reinstating a policy that was cancelled by the insurer because of an action or inaction of the customer, such as nonpayment of premium or failure to renew according to policy terms, as provided in this section. An insurance producer may not impose the incidental charge for the first rewriting or reinstatement of the policy. The incidental charges are as follows:

(a) A charge not to exceed \$25 for personal lines insurance.

(b) A charge not to exceed \$100 for commercial insurance.

(4) An insurance producer may impose an incidental charge for taking a payment of premium in cash, in an amount not to exceed \$10.

(5) An insurance producer may impose an incidental charge as authorized by ORS 30.701 for handling and collecting on a check from a customer that is returned for insufficient funds.

(6) An insurance producer may impose an incidental charge for the actual cost of providing photographic or inspection services to a customer in connection with issuing or amending insurance coverage, but the incidental charge may not exceed:

(a) \$7.50 for the services in connection with issuing or amending personal insurance coverage.

(b) \$45 for the services in connection with issuing or amending commercial insurance coverage.

(7) An insurance producer may impose an incidental charge for the actual cost of obtaining a motor vehicle report from the Motor Vehicle Division of the Oregon Department of Transportation or from the comparable agency in another state, but the charge may not exceed \$4.

(8) An insurance producer may impose an incidental charge not to exceed \$5 for preparing a duplicate insurance identification card at the request of a customer, when the customer requests the preparation of the card instead of waiting for the insurance identification card prepared by the insurer.

(9) An insurance producer may impose an incidental charge not to exceed \$10 for each endorsement to a personal lines insurance policy that is in addition to the first six other endorsements by the insurance producer to the policy within a six-month period.

(10) An insurance producer may impose an incidental charge not to exceed \$5 for obtaining a duplicate SR22 filing on behalf of a customer when the customer has lost or misplaced the original SR22 filing.

(11) An insurance producer may impose an incidental charge not to exceed \$5 for each certificate of commercial insurance coverage issued by the insurance producer that is in addition to the first 20 certificates requested by the customer for the commercial insurance policy during a policy period.

Stat. Auth.: ORS 731.244 and 744.077

Stats. Implemented: ORS 744.077

Hist.: ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0269

Purpose and Authority

(1) OAR 836-071-0269 to 836-071-0277 regulate the charging of service fees by insurance producers.

(2) ORS 737.025 states, in part, that the purpose of Insurance Code Chapter 737 (Rates and Rating Organization) is "to promote the public welfare by regulating insurance rates to the end they shall not be excessive, inadequate, or unfairly discriminatory." ORS 737.205 requires every insurer to file its rates with the Director of the Department of Consumer and Business Services. ORS 746.015 prohibits unfair discrimination "between risks of essentially the same hazard in the application of rates for insurance policies or in any other terms or conditions thereof." The Director finds that, with respect to personal lines of insurance, it is reasonable and customary for the public to consider all of the charges made by the insurer or its insurance producer to be either an insurance premium charge or a premium financing charge.

(3) OAR 836-071-0269 to 836-071-0277 are issued under the general rulemaking authority of ORS 731.244:

(a) With respect to personal lines insurance coverages to give effect to the rate regulatory provisions of ORS Chapter 737 and the anti-discrimination provisions of ORS 746.015; and

(b) With respect to commercial lines insurance coverage to give effect to the provisions of ORS 746.015 (Discriminations), ORS 746.405 to 746.530 (Premium Financing) and ORS 742.009 (relating to necessary information for insureds). Formerly: OAR 836-030-0050

Stat. Auth.: ORS 731.244

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Stats. Implemented: ORS 737.205, 742.009, 746.015 & 746.405 - 746.525
Stats. Implemented: ORS 737.205, 742.009, 746.015 & 746.405 - 746.525
Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; ID 15-1996, f. & cert. ef. 11-12-96; Renumbered from 836-030-0050, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0272

Scope of OAR 836-071-0269 to 836-071-0277; Definitions

(1) OAR 836-071-0269 to 836-071-0277 do not apply to the transaction of life insurance, mortgage insurance, or title insurance.

(2) "Service fee" means a charge made by an insurance producer with respect to an insurance transaction to a party other than the insurer, which charge is not a part of the insurer's rate filing under ORS Chapter 737. "Service fee" does not include finance or service charges governed by ORS 746.405 to 746.530 (Premium Financing). Formerly: OAR 836-030-0055

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 737.205, 742.009, 746.015 & 746.405 - 746.525

Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; ID 15-1996, f. & cert. ef. 11-12-96; Renumbered from 836-030-0055, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0274

Service Fees Prohibited on Personal Lines

Except as provided in OAR 836-071-0267, a service fee may not be charged with respect to the transaction of insurance covering an individual's person, property, or liability. Coverage of several individuals as members of the same family or household is considered individual coverage for the purpose of this rule. Formerly: OAR 836-030-0060

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 737.205, 742.009, 746.015, 746.405 - 746.525

Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; Renumbered from 836-030-0060, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0277

Service Fees Allowed on Commercial Lines; Conditions

(1) Service fees may be charged with respect to the transaction of insurance that covers other than an individual's person, property, or liability.

(2) Except as authorized in ORS 744.091 and 744.093, a service fee may be charged only in those instances where the insurance producer has provided service additional to what is the usual and customary practice of insurance producers under similar circumstances. The insurance producer must give a written explanation of the charge and the reason for it to the person charged. If OAR 836-071-0260 applies to the transaction in which a service fee is charged under this rule, the insurance producer may include the written explanation with the disclosure required by OAR 836-071-0260 or provide the written explanation separately.

(3) A service fee may not be charged with respect to arranging the financing of premium payments. This does not preclude finance charges by insurance producers on their own accounts, or service charges by premium finance companies, which conform to the provisions of ORS 746.405 to 746.530.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 737.205, ORS 742.009, ORS 746.015, ORS 746.405 to ORS 746.525

Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; Renumbered from 836-030-0065, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0280

Permitted and Prohibited Activities of Insurance Personnel Exempt from Agent License Requirement

For purposes of ORS 744.056(2)(a):

(1) An unlicensed person whose activities are executive, administrative, managerial, clerical or a combination of these and is employed by an insurance producer may engage in any activity described in this section, subject to review by the insurance producer or an insurance producer employed by the insurance producer if review is required under this section, if the unlicensed person engages in the activity under the supervision of the insurance producer and on the premises of the insurance producer's business. The unlicensed person may:

(a) Disclose rates to the insurance-buying public, but only if the rates are reviewed by the insurance producer prior to submission to the insurer;

(b) Fill out an application for insurance if the application is reviewed by the insurance producer prior to submission to the insurer;

(c) Accept or receive an insurance premium;

(d) Provide information to current policyholders addressing existing policy terms;

(e) Take requests for changes on in-force policies;

(f) Obtain information needed from insureds;

(g) Receive claim information directly from insureds and claimants;

(h) Engage in telephone marketing or making appointments, but only to the extent that the person may obtain policy expiration dates; and

(i) Transmit insurance policies to insureds.

(2) An unlicensed person whose activities are executive, administrative, managerial, clerical or a combination of these and is employed by an insurer may engage in any activity described in this section. The unlicensed person may:

(a) Disclose rates to the insurance-buying public;

(b) Fill out an application for insurance;

(c) Accept or receive an insurance premium;

(d) Provide information to current policyholders addressing existing policy terms;

(e) Take requests for changes on in-force policies;

(f) Obtain information needed from insureds;

(g) Receive claim information directly from insureds and claimants;

(h) Engage in telephone marketing or making appointments, but only to the extent that the person may obtain policy expiration dates;

(i) Transmit insurance policies to insureds; and

(j) Analyze, interpret and resolve policy coverage questions regarding a claim.

(3) An unlicensed person whose activities are executive, administrative, managerial, clerical or a combination of these and is employed by an insurance producer may engage in the following activities only if they are indirectly related to the sale, solicitation or negotiation of insurance:

(a) Binding coverage; or

(b) Interpreting policy coverages.

Stat. Auth.: ORS 731.244 & 744.056

Stats. Implemented: ORS 744.056

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0285

Insurance Producer Review of Applications

An insurance producer who permits an unlicensed person to fill out an application for insurance as authorized under OAR 836-071-0280 must indicate on the office copy of the application that the insurance producer reviewed the application, giving the date of the review.

Stat. Auth.: ORS 731 & 744

Stats. Implemented:

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0287

Transaction of Group Life, Health Insurance by Agent without Appointment

(1) Subject to section (2) of this rule:

(a) An insurance producer licensed to transact life or health insurance, or both such classes, may solicit group insurance authorized under the license of the insurance producer for an insurer with whom the insurance producer does not hold an appointment; and

(b) The insurer may issue proposals based on the solicitation by the insurance producer.

(2) If an insurance producer under section (1) of this rule submits to the insurer an application for group coverage based on the solicitation, the insurer may not issue the coverage unless the insurer files the notice of the appointment with the Director as provided in ORS 744.078.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.053 & 744.078

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 15-1996, f. & cert. ef. 11-12-96; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0291

Certificate of Deposit in Lieu of Trust Account

For purposes of ORS 744.084, evidence of a certificate of deposit kept by an insurance producer is satisfactory:

(1) If the evidence is a written statement of verification issued by the institution issuing the certificate to the insurance producer; and

(2) If the statement shows the date of renewal, if any, and verifies that the certificate is valid as of the date of the request by the Director for verification of the certificate. Formerly: OAR 386-071-0275

Stat. Auth.: ORS 731.244, 744.084

Stats. Implemented: ORS 744.084

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; Renumbered from 836-071-0275, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0295

Transaction of Insurance by Individual Insurance Producer for Appointed Firm or Corporate Insurance Producer

An individual insurance producer affiliated by employment or contract with a firm or corporate insurance producer that is appointed by an

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insurer may transact insurance for the insurer without an appointment from the insurer. An individual insurance producer may so transact insurance only with respect to the classes of insurance endorsed on the license of the individual insurance producer. For purposes of this rule, an individual insurance producer is affiliated with a firm or corporate insurance producer if the individual insurance producer under the contract is authorized to transact insurance in the name of the firm or corporate insurance producer.

Stat. Auth.: ORS 731 & 744
Stats. Implemented:
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0297

Permitted Transaction of Insurance by Unappointed Insurance Producer

(1) When an insurance producer does not hold an appointment with an insurer, the insurance producer may transact casualty insurance, property insurance or both by placing the insurance with the insurer through a firm or corporate insurance producer appointed by the insurer and:

(a) The appointed insurance producer has a contract with the unappointed insurance producer that specifies the binding authority, if any, and fiduciary responsibility of the unappointed insurance producer, including ownership and payment of the premiums, but does not authorize the unappointed insurance producer to act in the name of the appointed insurance producer; and

(b) The appointed insurance producer obtains at least 90 percent of its premium under contractual agreement with unappointed insurance producers that are not affiliated with the firm or corporate insurance producer.

(2) This rule does not apply to the transaction of insurance by an individual insurance producer affiliated with a firm or corporate insurance producer as provided in OAR 836-071-0295.

Stat. Auth.: ORS 731.244 & 744
Stats. Implemented:
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0310

Referral fee from Oregon Medical Insurance Pool

An insurance producer authorized to transact health insurance in Oregon may receive a referral fee from the Oregon Medical Insurance Pool, established under ORS 735.600 to 735.650, for referring prospective insureds to the Pool, without being appointed as an insurance producer by the Pool or its administering insurer or otherwise being authorized to act as an agent of the Pool, its governing board or its administering insurer.

Stat. Auth.: ORS 731 & 744
Stats. Implemented:
Hist.: ID 14-1990(Temp), f. & cert. ef. 6-29-90; ID 22-1990, f. 12-20-90, cert. ef. 12-26-90; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0321

Terms for OAR 836-071-0323 to 836-071-0346

For purposes of OAR 836-071-0323 to 836-071-0346:

(1) A felony offense involving dishonesty includes but is not limited to any offense constituting or involving theft, burglary, perjury, bribery, forgery, counterfeiting, a false or misleading oral or written statement, deception, fraud, a scheme or artifice to deceive or defraud, a material misrepresentation or the failure to disclose material facts, or any felony the commission of which is determined by the Director to have involved some element of deceit, misrepresentation, untruthfulness or falsification.

(2) A breach of trust includes but is not limited to any offense constituting or involving misuse, misapplication or misappropriation of anything of value held as a fiduciary, including but not limited to a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant, or anything of value of any public, private or charitable organization.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013, 744.074
Hist.: ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0323

License Applicants and Licensees with Prior Convictions

(1) When the Director considers an application for a license that indicates the applicant has been convicted of a crime or crimes described in ORS 744.113(1)(e) or 744.074(1)(f), the Director shall determine whether the crime or any of the crimes is an offense under 18 U.S.C. sec. 1033 or a felony offense involving dishonesty or breach of trust that is subject to 18 U.S.C. sec. 1033.

(2) An applicant for a license who has been convicted by final judgment of an offense under 18 U.S.C. sec. 1033 or of any felony offense

involving dishonesty or breach of trust does not qualify for the license unless:

(a) The Director has reviewed the entire application of the applicant and has determined that the applicant qualifies for the license; and

(b) The Director issues a written consent as provided in this rule.

(3) An applicant for a license to whom subsection (2) of this rule applies must apply to the Director for a consent as provided in OAR 836-071-0326.

(4) A licensee who has ever been convicted of an offense described in section (1) of this rule must apply to the Director for a consent as provided in OAR 836-071-0326. The licensee may not retain the license unless the Director issues a written consent as provided in this rule.

(5) A licensee who, while licensed, is convicted of an offense described in section (1) of this rule must apply to the Director for a consent as provided in OAR 836-071-0326 not later than the 30th day after the date of the final judgment. The licensee may not retain the license unless the Director issues a written consent as provided in this rule.

(6) A license applicant or licensee who is appointed or expects to be appointed by more than one insurer need submit only one consent application under OAR 836-071-0326, but the application and related letters, statements and other information must relate to the insurer with whom the license applicant or licensee has or will have the most substantial ongoing business relationship.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013 & 744.074
Hist.: ID 9-2000, f. & cert. ef. 10-24-00; ID 9-2002, f. & cert. ef. 3-18-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0326

Application by Person under OAR 836-071-0323

(1) A person to whom OAR 836-071-0323 applies must submit a consent application on a form provided by the Director.

(2) A person shall submit with the application the following:

(a) A letter from the president of the insurer, or designee of the president, for whom the person acts or will act, that the president or designee is aware of the offense or offenses to which the consent application applies and that the president or designee attests to the character of the person. The letter should describe the person's character traits as they relate to the employment, position or activities for which written consent is sought and the duties and responsibilities thereof.

(b) At least five letters or other forms of statement addressed to the Director, attesting to the character and reputation of the person, in addition to the letter required in subsection (a) of this section. The statement as to character should indicate the length of time the writer has known the person and should describe the person's character traits as they relate to the employment, position or activities for which written consent is sought and the duties and responsibilities thereof. The statement as to reputation must attest to the person's reputation in the person's community, circle of business or social acquaintances.

(3) Each letter or statement required in section (2) of this rule should indicate that it has been submitted in compliance with these procedures and that the person has informed the writer of the factual basis of the application being filed with the Director and the purpose thereof. In evaluating letters or statements from relatives by blood or marriage, prospective employers or insurance related business activities, or persons serving in any capacity with the insurer, its employees or agents, the Director may take into account the personal and business interests of those persons.

(4) A person shall also submit with the application under this rule a current credit report from a credit bureau. A credit report is current if it was issued within 30 days after the date of the application.

(5) A person shall submit information in addition to that required in this rule as the Director determines to be appropriate for the proper consideration and disposition of the consent application under this rule.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013
Hist.: ID 9-2000, f. & cert. ef. 10-24-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0328

Unlicensed Individuals with Prior Convictions Who are Engaged or Participate in Business of Insurance

(1) When the Director considers an application of an individual who applies to the Director under ORS 731.428 for written consent to engage or participate in the business of insurance, other than a licensee to whom OAR 836-071-0323 applies, the Director shall determine whether the crime or any of the crimes is an offense under 18 U.S.C. sec. 1033 or a felony offense involving dishonesty or breach of trust that is subject to 18 U.S.C. sec. 1033. Individuals to whom this section applies includes any applicant

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for employment in the business of insurance in Oregon and any current unlicensed individual engaged or participating in the insurance business in Oregon who has ever been convicted of an offense described in this section.

(2) An applicant for written consent under this section who has been convicted by final judgment of an offense under 18 U.S.C. sec. 1033 or of any felony offense involving dishonesty or breach of trust does not qualify for the written consent unless:

(a) The Director has reviewed the entire application of the applicant and has determined that the applicant qualifies for the written consent; and

(b) The Director issues a written consent as provided in this rule.

(3) An applicant to whom this rule applies must submit a consent application on a form provided by the Director.

(4) An individual currently engaged or participating in the insurance business in Oregon and is not required to be licensed to do so may not continue to engage or participate in the business of insurance in Oregon unless the Director issues a written consent as provided in this rule.

(5) An unlicensed individual who, while engaged or participating in the insurance business in Oregon and is not required to be licensed to do so, is convicted of an offense described in section (1) of this rule must submit a consent application under this rule not later than the 30th day after the date of the final judgment. The individual may not engage or participate in the insurance business in Oregon unless the Director issues a written consent as provided in this rule.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428
Hist.: ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0331

Director's Procedures, Application for Consent

When the Director has received a complete license application and the consent application required in OAR 836-071-0326, or has received the consent application required in OAR 836-071-0326, in the case of a current licensee or an applicant for a license, or required in OAR 836-071-0328, in the case of an unlicensed person engaged or participating in the business of insurance, and the person has otherwise complied with all applicable requirements:

(1) The Director shall determine whether the crime or any crimes committed by the person and described in the application are subject to ORS 670.280, if a license or license application is involved.

(2) The Director shall notify all state members of the National Association of Insurance Commissioners that an application for written consent has been filed, and shall include with the notice a statement including the name, address, Social Security number (if submitted with the application) and types of insurance actions to be conducted by the applicant, and a request that any insurance commissioner with relevant knowledge regarding the fitness of the applicant respond immediately. The Director shall allow at least 30 days from the date on which the notice was sent, for comment.

(3) The Director may conduct an investigation of the person. The Director may use data bases of the National Association of Insurance Commissioners, including but not necessarily limited to the Regulatory Information Retrieval system, the Producer Database, the Complaint Database and the Special Activities Database.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013
Hist.: ID 9-2000, f. & cert. ef. 10-24-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0336

Factors to be Considered by the Director

The Director shall consider at least the following factors when deliberating upon a consent application :

(1) The legitimate interest of the Director or the insurer for whom the activities would be performed in protecting property and the safety and welfare of specific individuals, businesses or the general public.

(2) Whether the applicant or someone on the applicant's behalf has made a materially false or misleading statement or omission in the application process.

(3) The nature of the circumstances surrounding, and the seriousness of, the offense or offenses.

(4) Whether the applicant has been charged with, indicted or convicted of multiple criminal offenses.

(5) What evidence exists of the applicant's rehabilitation, including good conduct in prison, on probation or on parole; good conduct in the community; counseling or psychiatric treatment received; acquisition of additional academic or vocational schooling; successful participation in correctional work-release programs; and the recommendation of persons who have or have had the applicant under their supervision (for example,

letters of recommendation from prosecutors, law enforcement or correctional officers who have prosecuted, arrested or had custodial responsibility for the applicant, and letters of recommendation from the sheriff or chief of police in the community in which the applicant resides or has resided).

(6) Whether all members of the National Association of Insurance Commissioners were notified in a timely manner of the applicant's request and any relevant information regarding the fitness of the applicant received from members of the National Association of Insurance Commissioners.

(7) Whether licensing the applicant or issuing the person a written consent to engage in the business of insurance would be consistent with the public interest, with federal and state law, with applicable court orders and with the determination that the applicant is trustworthy to conduct the business of insurance.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013
Hist.: ID 9-2000, f. & cert. ef. 10-24-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-071-0346

Denial of Consent

(1) If the Director determines that a written consent to engage in the business of insurance should be denied to an applicant, the Director shall issue the denial in writing and shall notify the applicant of rights of review of the Director's determination.

(2) If the Director determines that the crime committed by the applicant is not one to which 18 U.S.C. Section 1033 applies, the Director shall so inform the applicant at the time of granting or denying the license application or, in response to a consent application.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 731.428, 744.013
Hist.: ID 9-2000, f. & cert. ef. 10-24-00; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0005

Statutory Authority; Effective Date

OAR 836-074-0005 to 836-074-0050 are adopted under the general rulemaking authority of the Director of the Department of Insurance and Finance under ORS 731.244 for the purpose of carrying out ORS 744.083.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 744.225
Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0010

Definitions

As used in OAR 836-074-0005 to 836-074-0050:

(1) "Insurance producer includes any person who is licensed by the Department as a resident insurance producer.

(2) "Premium Fund" and "Premium Funds" means any premium or other consideration received from or on behalf of an insured for the purpose of effecting or purchasing insurance, and includes return premiums, return premium credits, policy fees and premium taxes.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 744.225
Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0017

Exemptions

OAR 836-074-0005 to 836-074-0050 do not apply to:

(1) An insurance producer who is exclusively a salaried employee of an insurer.

(2) An insurance producer who sells only industrial life insurance, as that term is defined in ORS 731.166.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 744.083
Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0020

Premium Funds Trust Account

(1) Except as otherwise provided in OAR 836-074-0025, an insurance producer shall deposit in one or more premium funds trust accounts all premium funds received by the insurance producer under the insurance producer's license. Each trust account must be located in this state unless the Director gives written permission to the insurance producer to keep the account in another state. In applying for permission, the insurance producer must give written justification for keeping the account outside this state;

(2) An insurance producer shall maintain each trust account in one or more of the following forms:

(a) In the form of a checking account, demand account, savings account or other account in a state or national bank or savings bank, a state or federal savings association or a state or federal credit union. A trust account under this subsection must be insured by the United States

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Government or an agency or instrumentality thereof. However, such insurance need not exceed \$100,000 for each account or the amount at any time in the account, whichever is less;

(b) In the form of an account that solely invests, either directly or through an investment fund, in any or all of the following instruments: United States government bonds and Treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest, repurchase agreements collateralized by securities issued by the United States and bankers acceptance;

(c) In the form of an account in an open-end investment company registered under the Investment Company Act of 1940 that:

(A) Limits its portfolio investments to United States-dollar denominated instruments that the board of directors determines present minimal credit risks and that are either of high quality as determined by a nationally recognized statistical rating organization or, in the case of an instrument that is not rated, of comparable quality as determined by the board of directors; and

(B) May not purchase any instrument with a remaining maturity of greater than one year or maintain a dollar-weighted average portfolio maturity that exceeds 120 days.

(3) Premium funds may be placed in an account under section (2) of this rule only if the premium funds are readily available from the account for payments when due.

(4) Each check or other instrument drawn on a trust account must clearly identify that it is drawn on an insurance premium funds trust account.

(5) An insurance producer must make each trust account of the agent accessible to the Director for purposes of examination and audit.

(6) A trust account may be interest-bearing.

(7) For the purpose of OAR 836-074-0005 to 836-074-0050, all premium funds received by an insurance producer on or under any policy of insurance are received in the fiduciary capacity of the insurance producer.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0025

Deposit and Payment of Funds

An insurance producer shall deposit and pay premium funds received as provided in this rule. When deposit is required, the insurance producer shall deposit the funds not later than the seventh day after they are received. When a payment is owed to an insured, the insurance producer shall pay the premium funds not later than the 30th day after the receipt of the funds. The following provisions also apply to the deposit and payment of premium funds:

(1) A return premium and the insurance producer's share of any premium funds required to be refunded, including unearned commissions, shall be deposited and paid to the insured or other person entitled to the funds. When a return premium is paid in the form of a credit to the account of an insurance producer, the insurance producer shall deposit the equivalent of the credit in money into the account.

(2) When an insurance producer receives a payment of premium funds in the form of an instrument, such as a check, made payable to an insurer, another insurance producer, a surplus line licensee or a premium finance company, the insurance producer may forward the instrument directly to the payee without depositing the instrument in the trust account, if that can be done without endorsement or alteration. Such a payment need not be accounted for with respect to the trust account.

(3) Except as otherwise provided in this section, when an insurance producer receives a payment of premium funds in the form of cash or an instrument requiring endorsement by the insurance producer, the insurance producer shall deposit the premium funds in the trust account or endorse and forward the instrument to the insurer, another insurance producer, the surplus lines licensee or the premium finance company that is entitled to the premium funds received. An insurance producer:

(a) Need not deposit premium funds that are paid in cash if the insurance producer does not maintain a premium trust account because the insurance producer does not engage in transactions for which a trust account must be established, and if the insurance producer complies with all of the following requirements:

(A) Upon receiving the cash, the insurance producer must give the payor a receipt showing the amount of money received, the date on which the money was received, the policy number and the name of the policyholder;

(B) Within 72 hours after receiving the cash, the insurance producer must convert the cash into a guaranteed negotiable instrument, such as a

money order, certified check or cashier's check, that is made out to the insurer and forward the money order or check to the insurer;

(C) The insurance producer must keep records of such moneys so received and forwarded.

(b) May deposit the premium funds under procedures established by the insurer entitled to the funds if the procedures meet the requirements of this section and the insurer has given those procedures to the insurance producer in writing. Such other procedures must:

(A) Recognize that the insurance producer is receiving premiums directly on behalf of the insurer;

(B) Direct the insurance producer to give adequate receipts on behalf of the insurer;

(C) Require deposit of the proceeds into the account of the insurer.

(4) An insurance producer may remove gross commissions from the trust account and pay them to the operating account of the insurance producer.

(5) An insurance producer shall not pay out premium funds from a trust account to pay premiums that have not been paid into the trust account.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0030

Advancing Return Premiums

An insurance producer may advance return premiums from funds of the insurance producer other than from a trust account of the insurance producer, in anticipation of receiving a credit for the return premium from the insurer. When the insurance producer credits the return premium to the trust account, the insurance producer may transfer the advanced credit out of the trust account.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0035

Other Permissible Funds

(1) An insurance producer may not deposit in a premium fund trust account any funds other than premium funds, except as follows:

(a) Funds reasonably sufficient to pay bank charges;

(b) Funds that the insurance producer determines to be prudent for advancing premiums or establishing reserves for the paying of return premiums;

(c) Funds for contingencies that may arise in the course of receiving and transmitting premiums.

(2) An insurance producer may deposit in a premium fund trust account any premium funds produced in another state. However, premium funds produced in another state must be deposited and paid in the same manner as premium funds under OAR 836-074-0025.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0040

Interest on Trust Funds

Unless an insurance producer and the insurer agree to the contrary, interest earned in a premium funds trust account may be retained by the insurance producer and:

(1) Used to offset bank charges; or

(2) Removed to the operating account of the insurance producer.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0045

Accounting Records; Inspection

(1) An insurance producer shall establish and maintain records and an appropriate accounting system for all premium funds received by the insurance producer as provided in this rule.

(2) Unless otherwise authorized by the Director, an insurance producer shall establish and maintain the records and accounting system in this state. An insurance producer may establish the records and system in another state if the Director gives written permission to the insurance producer to do so. In applying for permission, the insurance producer must give written justification for keeping the records and system outside this state.

(3) An insurance producer shall make the records available in this state for inspection by the Director during regular business hours upon demand.

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(4) An insurance producer shall make the records available with respect to any premium funds received for a period of three years following the date of the policy expiration.

(5) An insurance producer may use any accounting system that effectively isolates each trust account from any operating accounts. A record-keeping system, whether electronic or manual, must provide an audit trail so that details underlying the summary data, such as invoices, checks and statements, may be identified and made available on request. The system must provide the means of tracing any transaction back to its original source or forwarded to final entry such as is accomplished by a conventional double-entry bookkeeping system. When an automatic data processing system is used, the insurance producer shall make a description of the system available for review by the Director.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0047

Examinations and Audits

(1) The Director may examine or audit any trust account and any accounting records of premium funds as the Director determines necessary.

(2) The examination or audit shall be performed at the expense of the insurance producer, when the trust account or accounting records are located outside this state.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0048

Other Trust Account Requirements

OAR 836-074-0005 to 836-074-0050 do not prohibit an insurer from establishing requirements applicable to trust accounts of insurance producers of the insurer, if the requirements are more restrictive than the provisions of OAR 836-074-0005 to 836-074-0050.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-074-0050

Single Account for Affiliated Persons

(1) An insurance producer that is a firm or corporation may use one premium fund trust account for the funds received by an affiliated person operating under its license.

(2) An affiliated person of an insurance producer that is a firm or corporation may deposit the premium fund that the affiliated person received in the capacity of an affiliated person directly to the deposit account of the firm or corporation with which the person is affiliated.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.083

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-075-0000

Third Party Administrators; License Application; Required Information

An applicant for a third party administrator license shall provide the following:

(1) On the application form provided by the Director, information relating to the organizational form of the applicant as follows:

(a) The name under which the applicant will transact business as a third party administrator;

(b) The principal place of business at which the applicant will transact business as a third party administrator, including the street and mailing addresses and telephone number;

(c) The organizational form of the applicant (corporation, partnership, sole proprietorship);

(d) All assumed business names and other names under which the applicant will transact business as a third party administrator;

(e) Whether the applicant has ever had a judgment entered against the applicant for fraud, and whether any insurer, insurance producer or other person claims the applicant to be indebted to it, together with the details of any such indebtedness;

(f) Whether any license of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state, and whether the applicant has otherwise ever been the subject of a complaint to a professional licensing board or agency. If the applicant's answer is affirmative in any respect, the applicant must also provide the name and address of the licensing board or agency, the date of the complaint or the action taken against the license, a description of the nature of the complaint or the reason for the action taken against the license, and,

with regard to a complaint, a description of the licensing board or agency's disposition of the complaint;

(g) Whether the applicant has ever filed for bankruptcy or been adjudged a bankrupt;

(h) All states and provinces of Canada in which the applicant currently holds a license or certificate of authority to transact business as a third party administrator, or has held such a license or certificate within ten years prior to the date of the application;

(i) The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the administrator, including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership or association; shareholders holding directly or indirectly ten percent or more of the voting securities of the administrator; and any other person who exercises control or influence over the affairs of the administrator;

(j) The name and telephone number of a contact person who is knowledgeable about preparation of the annual financial statements or reports required under section (4) of this rule.

(2) An appointment of the Director, on the application, as agent for service of process, if the third party administrator will be a nonresident licensee.

(3) Biographical information for each owner, partner, director and officer of the applicant, on the Biographical Affidavit form designed by the National Association of Insurance Commissioners.

(4) The following documents, which must accompany the application under section (1) of this rule:

(a) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, share-holder agreement and other applicable documents and all amendments to such documents;

(b) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

(c) Annual financial statements or reports for the two most recent years, which prove that the applicant is solvent, and such information as the Director may require in order to review the current financial condition of the applicant;

(d) A statement describing the business plan, including information on staffing levels and activities proposed in this state and nationwide. The plan must provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping and underwriting;

(e) Evidence that the applicant has a fiduciary account established in a federally- or state-insured financial institution. An applicant that is an insurance producer licensed under ORS Chapter 744 need not comply with this subsection if the applicant is in compliance with 744.225 with respect to the premiums, charges and return premiums referred to in ORS 744.730;

(f) Evidence of insurance coverage required by ORS 744.726;

(g) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an insurance producer licensed by the Director for solicitation and taking of applications. Any applicant that intends directly to solicit insurance contracts or to otherwise act as an insurance producer must provide proof that it has a license as an insurance producer in this state.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712 & 744.726

Stats. Implemented: ORS 744.706

Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-075-0070

Errors and Omissions Insurance; Third Party Administrators

(1) The amount of insurance for which a third party administrator as described in ORS 744.702 must maintain a certificate of errors and omissions insurance with the Director as required by ORS 744.726 is \$500,000 claims made or per occurrence.

(2) A third party administrator may obtain insurance required by ORS 744.726 from an insurer other than an authorized insurer if the insurer is not an affiliate, as that term is defined in ORS 744.700, of the third party administrator, and if:

(a) The insurance is procured by an Oregon surplus lines licensee from an insurer that is an eligible surplus lines insurer pursuant to the requirements of ORS 735.400 to 735.495;

(b) The insurer is an authorized insurer in the state of domicile of the third party administrator or license applicant; or

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(c) The insurance is procured from a surplus lines insurer that is eligible in the state of domicile of the third party administrator or license applicant, if all requirements of this subsection are satisfied. The insurance for purposes of this subsection must be confirmed by the signature of an Oregon surplus lines licensee who also affirms in writing that the Oregon surplus lines licensee will be the agent for service of process for any action or proceeding involving the third party administrator and an Oregon resident.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712 & 744.726
Stats. Implemented: ORS 744.726
Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0001

Statutory Authority; Purpose; Applicability

(1) OAR 836-080-0001 to 836-080-0043 are adopted pursuant to the general rulemaking authority of the Director of the Department of Consumer and Business Services in ORS 731.244 and the specific authority in ORS 746.085(1), for the purpose of implementing ORS 746.085 and 746.240.

(2) The purpose of OAR 836-080-0001 to 836-080-0043 is to protect the insurance-buying public in insurance transactions involving the replacement of life insurance or annuities by:

(a) Regulating the activities of insurers and insurance producers with respect to the replacement of existing life insurance and annuities.

(b) Protecting the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. OAR 836-080-0001 to 836-080-0043 are intended to:

(A) Assure that a purchaser receives information with which a decision can be made in the purchaser's own best interest;

(B) Reduce the opportunity for misrepresentation and incomplete disclosure; and

(C) Establish penalties for failure to comply with requirements of OAR 836-080-0001 to 836-080-0043.

(3) In OAR 836-080-0001 to 836-080-0043 and the appendices thereto, for purposes of consistency with the Life Insurance and Annuities Replacement Model Regulation of the National Association of Insurance Commissioners dated July 2000, an annuity is referred to as a contract and a life insurance policy is referred to as a policy, and they are subject to OAR 836-080-0001 to 836-080-0043 on the basis of that terminology.

(4) Unless otherwise specifically included, OAR 836-080-0001 to 836-080-0043 do not apply to transactions involving:

(a) Credit life insurance;

(b) Group life insurance or group annuities, when there is no direct solicitation of individuals by an insurance producer. Direct solicitation does not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation are subject to the provisions of OAR 836-080-0039;

(c) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Director;

(d) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer;

(e)(A) Policies or contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, when the plan, for purposes of ERISA, is established or maintained by an employer;

(iii) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(B) Notwithstanding paragraph (A) of this subsection, OAR 836-080-0001 to 836-080-0043 apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and when the insurer has been notified that plan participants may choose from among two or more insur-

ers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation does not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(f) When new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(g) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(h) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of OAR 836-080-0001 to 836-080-0043; or

(i) Structured settlements.

(5) Registered contracts are exempt from the requirements of OAR 836-080-0029(1)(b) and 836-080-0034(2) with respect to the provision of illustrations or policy summaries, but premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

Stat. Auth.: ORS 731.244 & 746.085

Stats. Implemented: ORS 746.085 & 746.240

Hist.: IC 8-1984, f. 10-26-84, ef. 12-1-84; ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0005

Definitions

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurer whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement".

(3) "Existing policy" means an individual life insurance policy or annuity policy in force, including a policy under a binding or conditional receipt or a policy that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same insurer within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in OAR 836-080-0022(1)(e).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in OAR 836-051-0500 to 836-051-0600.

(6) "Policy summary" has the following meanings:

(a) For policies or contracts other than universal life policies, the term means a written statement regarding a policy or contract that shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

(b) For universal life policies, the term means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

(7) "Registered Contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(8) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the propos-

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ing insurance producer, or to the proposing insurer if there is no insurance producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase.

(9) "Replacing Insurer" means the insurer that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or that is a financed purchase.

(10) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the insurer or insurance producer and used in the presentation to the policyholder or contract owner related to the policy or contract purchased.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085

Hist.: IC 39, f. 12-4-67, ef. 3-1-68; IC 8-1984, f. 10-26-84, ef. 12-1-84; ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0014

Duties of Agent

(1) An insurance producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the insurance producer as to whether the applicant has existing policies or contracts and, at the option of the insurer, as to whether the applicant is replacing any of the existing policies or contracts. If the first question is asked alone and the answer is "no," or if both questions are asked and the answer to the optional question is "no," the insurance producer's duties with respect to replacement are complete, except as provided in section (2) of this section.

(2) If the applicant answered "yes" to the question whether the applicant has existing coverage referred to in section (1) of this rule, and the question is asked alone, or if both questions are asked and the answer is "yes" to both, the insurance producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A to this rule or other substantially similar form approved by the Director. Approval is not required, however, when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the insurance producer attesting that the notice has been read aloud by the insurance producer or that the applicant did not wish the notice to be read aloud (in which case the insurance producer need not have read the notice aloud) and left with the applicant.

(3) The notice under section (2) of this rule shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction an insurance producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. Electronically presented sales material shall be provided to the policy or contract owner in printed form not later than at the time of policy or contract delivery.

(5) Except as provided in OAR 836-080-0029(3), in connection with a replacement transaction an insurance producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this rule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

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

Stat. Auth.: ORS 731.244 & 746.085

Stats. Implemented: ORS 746.085 & 746.240

Hist.: ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0022

Duties of Insurers that Use Agents Insurance Producers

Each insurer that uses an insurance producer shall:

(1) Maintain a system of supervision and control to insure compliance with the requirements of OAR 836-080-0001 to 836-080-0043. The system shall do at least the following:

(a) Inform its insurance producers of the requirements of OAR 836-080-0001 to 836-080-0043 and incorporate the requirements of OAR 836-080-0001 to 836-080-0043 into all relevant insurance producer training manuals prepared by the insurer;

(b) Provide to each insurance producer a written statement of the insurer's position with respect to the acceptability of replacements, providing guidance to its insurance producer as to the appropriateness of these transactions;

(c) Include a system for reviewing the appropriateness of each replacement transaction that the insurance producer does not indicate is in accord with subsection (b) of this section;

(d) Include procedures that confirm the requirements of OAR 836-080-0001 to 836-080-0043 have been met; and

(e) Include procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or insurance producer. Compliance with OAR 836-080-0001 to 836-080-0043 may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring;

(2) Have the capacity to monitor each insurance producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, such records for and make such records available to, the Director. The capacity to monitor shall include the ability to produce records for the following with respect to each insurance producer:

(a) Life replacements, including financed purchases, as a percentage of the insurance producer's total annual sales for life insurance;

(b) Number of lapses of policies by the insurance producer as a percentage of the agent's total annual sales for life insurance;

(c) Annuity contract replacements as a percentage of the insurance producer's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by subsection (1)(e) of this section; and

(e) Replacements, indexed by replacing insurance producer and existing insurer;

(3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the insurance producer as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in **Appendix A** to this rule;

(5) When the applicant has existing policies or contracts, be able to produce copies of any sales material required by OAR 836-080-0014(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the insurance producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by OAR 836-080-0014(5) meet the requirements of OAR 836-080-0001 to 836-080-0043 and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of OAR 836-080-0001 to 836-080-0043, notify the insurance producer and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

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

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085 & 746.240

Hist.: IC 8-1984, f. 10-26-84, ef. 12-1-84; ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0029

Duties of Replacing Insurers that Use Agents

(1) When a replacement is involved in the transaction, the replacing insurer shall:

(a) Verify that the required forms are received and are in compliance with OAR 836-080-0001 to 836-080-0043;

(b) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed

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application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

(c) Be able to produce copies of the notification regarding replacement required in OAR 836-080-0014(2), indexed by insurance producer, for at least five years or until the next regular examination by the insurance department of the insurer's state of domicile, whichever is later; and

(d) Provide to the policyholder or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. Notice required in this subsection may be included in **Appendix A** or **C** to this rule.

(2) In a transaction in which the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to a financed purchase the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to the requirements made of an insurer pursuant to OAR 836-080-0014(5), the insurer may:

(a) Require with each application a statement signed by the insurance producer that:

(A) Represents that the insurance producer used only insurer-approved sales material;

(B) States that copies of all sales material were left with the applicant in accordance with OAR 836-080-0014(4); and

(b) Within ten days of the issuance of the policy or contract:

(A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the insurance producer has represented that copies of all sales material have been left with the applicant in accordance with OAR 836-080-0014(4);

(B) Provide the applicant with a toll-free number to contact insurer personnel involved in the compliance function if the insurer cannot give the applicant the notice required in paragraph (A) of this subsection; and

(C) Stress the importance of retaining copies of the sales material for future reference.

(4) An insurer to whom section (3) of this rule applies shall maintain the ability to produce from the policy file a copy of the letter or other verification sent to an applicant under section (3) of this rule for at least five years after the termination or expiration of the policy or contract.

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

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085 & 746.240

Hist.: ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0039

Duties of Insurers with Respect to Direct Response Solicitations

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in **Appendix B** to this rule, or other substantially similar form approved by the Director.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) Provide to the applicant or prospective applicant with the policy or contract a notice, as described in **Appendix C** to this rule, or other substantially similar form approved by the Director. In these instances the insurer may delete the references to the insurance producer, including the insurance producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the Director. The insurer's obligation to obtain the applicant's signature

shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(b) Comply with the requirements of OAR 836-080-0029(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of OAR 836-080-0029(1)(c) and (d), and (2).

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

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085 & 746.240

Hist.: ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0043

Violations and Penalties

(1) Any failure to comply with OAR 836-080-0001 to 836-080-0043 shall be considered an unfair trade practice for purposes of ORS 746.240. Examples of violations include:

(a) Any deceptive or misleading information set forth in sales material;

(b) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(c) The intentional incorrect recording of an answer;

(d) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) Advising a policyholder or contract owner to write directly to the insurer in such a way as to attempt to obscure the identity of the replacing insurance producer or insurer.

(2) Policyholders and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policyholders or contract owners of the same insurance producer shall be deemed prima facie evidence of the insurance producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the insurance producer's intent to violate OAR 836-080-0001 to 836-080-0043.

(3) When it is determined that the requirements of OAR 836-080-0001 to 836-080-0043 have not been met, the replacing insurer shall provide to the policyholder or contract owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in **Appendix A** or **C** to this rule.

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

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085 & 746.240

Hist.: ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0430

Disclosure of use of Credit History or Insurance Scores

(1) Before an insurer or its insurance producer may obtain the credit history or insurance score of a consumer in response to a request by the consumer relating to insurance coverage, the insurer or insurance producer shall notify the consumer that the insurer or insurance producer will check the credit history or insurance score of the consumer. The notice may be oral, in writing or in the same medium as the medium in which communication between the consumer and the insurer or insurance producer is conducted.

(2) An insurance producer need provide only one notice under section (1) of this rule to a consumer for the inquiry or inquiries that the insurance producer makes to one or more insurers in response to the request by the consumer.

(3) An insurer who uses credit histories or insurance scores for underwriting or rating coverage shall instruct each of its insurance producer that before an insurance producer may obtain a consumer's credit history or insurance score, the insurance producer must notify the consumer that the consumer's credit history or insurance score of the consumer will be checked.

(4) An insurer that uses the credit history or insurance score of a consumer when considering the consumer's application for insurance must notify the consumer during the application process that the consumer may request a written statement describing its use of credit histories or insurance scores. The notice to the consumer may be either in writing or in the same medium as the medium in which the application is made. The statement must address the following items:

(a) Why the insurer uses credit history or insurance scores.

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- (b) How the insurer uses credit histories or insurance scores.
- (c) How often the insurer reviews a consumer's credit information.
- (d) What kinds of credit information are used by the insurer.
- (e) Whether a consumer's lack of credit history will affect the insurer's consideration of an application.
- (f) Where the consumer may go with questions.

(5) An insurer that uses a credit history or insurance score of a consumer in connection with renewal of the consumer's policy shall notify the consumer of that use when the insurer makes a renewal offer to the consumer. The notice shall also inform the consumer that the consumer may request a statement referred to in section (4) of this rule, describing the insurer's use of credit histories or insurance scores, prior to renewal of the insurance. If the insurer does not at least annually update the credit information in its renewal process, the insurer shall also inform the consumer in the notice that the consumer has a right annually to request that the insurer use current credit information in the renewal process and that the insurer, upon receiving such a request, will update the credit information used. This section does not apply when an insurer uses a credit history or insurance score of a consumer only at the inception of a policy.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 746.015 & 746.240
Hist.: ID 25-2002, f. 12-17-02, cert. ef. 6-1-03; ID 7-2004, f. & cert. ef. 10-5-04; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-080-0511

Application of Notice Requirements

(1) A licensee is not subject to the requirements stated in ORS 746.620 if the licensee is an employee or other representative of another licensee who is the principal in the relationship and the principal otherwise complies with the requirements of ORS 746.620, 746.630 and 746.665, and:

(a) If the licensee is an insurance producer, the licensee acts in accordance with the requirements of ORS 746.620(8); and

(b) If the licensee is other than an insurance producer, the licensee does not disclose any personal information to any person other than to the principal or its affiliate as provided in ORS 746.665(1)(a) to (j) or (m) to (q), or under ORS 746.665(1)(L) in connection with an audit.

(2) A surplus lines licensee or surplus lines insurer is deemed to be in compliance with ORS 746.620 if:

(a) The licensee or insurer does not disclose personal information of a consumer or a customer to nonaffiliated third parties for any purpose, except as permitted by ORS 746.665(1)(a) to (j) and (L) to (q); and

(b) The licensee or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE
NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE
WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION
CONCERNING THE BUYER TO NONAFFILIATES OF THE
BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

Stat. Auth.: ORS 731.244, 746.600 & 746.620
Stats. Implemented: ORS 746.600, 746.620, 746.630 & 746.665
Hist.: ID 8-2002, f. & cert. ef. 2-15-02; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-081-0101

Purpose, Policy, Authority and Effective Date

(1) OAR 836-081-0101 to 836-081-0126 are adopted by the Director of the Department of Consumer and Business Services under the authority of ORS 731.244 for the purpose of implementing:

(a) ORS 746.240, relating to trade practices found by the Director to be an unfair or deceptive act or practice in the transaction of insurance that is injurious to the insurance-buying public; and

(b) ORS 746.670, relating to the Director's authority to examine and investigate into the affairs of an insurer, agent or insurance support organization in order to determine whether any of those entities is violating or has violated any provision of ORS 746.600 to 746.690, governing the use and disclosure of insurance information.

(2) OAR 836-081-0101 to 836-081-0126 establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807, as follows:

(a) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section

501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

(A) To ensure the security and confidentiality of customer records and information;

(B) To protect against any anticipated threats or hazards to the security or integrity of such records; and

(C) To protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.

(b) Section 503(a)(3) requires each financial institution to develop policies for protecting the nonpublic personal information of consumers, and to make those policies available in written form.

(c) Section 505(b)(2) calls on state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation with respect to persons engaged in providing insurance.

(d) Section 507 provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of the Gramm-Leach-Bliley Act. The safeguards established pursuant to OAR 836-081-0101 to 836-081-0126 apply to nonpublic personal information, including financial information and health information.

(3) Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to OAR 836-081-0101 to 836-081-0126.

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

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 746.240 & 746.670
Hist.: ID 2-2003, f. & cert. ef. 3-17-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-085-0001

Statutory Authority; Purpose; Applicability

(1) OAR 836-085-0001 to 836-085-0050 are adopted pursuant to the general rulemaking authority of the Director of the Department of Insurance and Finance in ORS 731.244, to aid in the proper effectuation of ORS 737.330, 746.160 and 746.240.

(2) The purpose of OAR 836-085-0001 to 836-085-0050 is to protect the insurance-buying public in insurance transactions involving termination, renewal or nonrenewal, or premium increases on contracts of insurance by:

(a) Regulating the grounds for midterm cancellation of an insurance policy;

(b) Prohibiting midterm increases in premium;

(c) Increasing the opportunity for policyholders to shop for replacement or substitute insurance;

(d) Reducing the opportunity for breach of policy bargain, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) Increasing the opportunity for insurance producers to freely compete.

(3) OAR 836-085-0001 to 836-085-0050 shall apply to all forms of commercial insurance that are subject to filing under ORS 737.330 on risks or operations in this state, except for:

(a) Commercial liability insurance as defined in ORS 731.074, and comprehensive or package policies that include commercial liability insurance coverage;

(b) Reinsurance;

(c) Wet marine and transportation insurance;

(d) Marine and transportation insurance;

(e) Health Insurance;

(f) Life Insurance;

(g) FAIR plans and automobile assigned risk insurance;

(h) Workers' Compensation and employers' liability insurance;

(i) Nuclear liability insurance;

(j) Fidelity and surety insurance;

(k) Hazardous waste and environmental impairment insurance;

(l) Aviation insurance;

(m) Commercial automobile liability insurance;

(n) Any commercial insurance policy that has not been previously renewed if the policy has been effect less than 60 days at the time notice of cancellation is mailed or otherwise delivered;

(o) Any policy issued by a surplus lines insurer.

(4) OAR 836-085-0001 to 836-085-0050 are not exclusive. The Director may also consider other provisions of the Insurance Code to be applicable to the circumstances or situations addressed herein. Policies may provide terms more favorable to policyholders than are required by these

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rules. The rights provided by these rules are in addition and do not prejudice any other rights the policyholder may have at common law, under statutes or other Oregon Administrative Rules.

Stat. Auth.: ORS 731, 737 & 746
Stats. Implemented: ORS 737.330, 742.005(3)-(4), 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-1-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-085-0010

Midterm Cancellation

(1) A policy of commercial insurance may not be cancelled by the insurer prior to the expiration date of the policy, except on one or more of the following grounds:

(a) Nonpayment of premium, which means the failure or inability of the named insured to discharge any obligation in connection with the payment of premium on a policy of commercial insurance, whether the payments are payable directly to the insurer or its insurance producer or indirectly payable under a premium finance plan or extension of credit;

(b) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;

(c) Substantial increase in the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to rules, legislation or court decision;

(d) Failure to comply with reasonable loss control recommendations;

(e) Substantial breach of contractual duties, conditions or warranties;

(f) Determination by the Director that the continuation of a line of insurance or class of business to which the policy belongs will jeopardize a company's solvency or will place the insurer in violation of the insurance laws of Oregon or any other state;

(g) Loss or decrease in reinsurance covering the risk.

(2) Cancellation of a commercial policy that includes provisions of the standard fire insurance policy under ORS 742.206 to 742.242 and is written as a single coverage shall not be effective until at least 30 days after the insured receives a written notice of cancellation. Cancellation of a commercial policy that does not include provisions of the standard fire insurance policy shall not be effective until at least 10 working days after the insured receives a written notice of cancellation. The notice in either case shall state the effective date of and the reason for cancellation and shall inform the insured of the hearing rights established by OAR 836-085-0011.

Stat. Auth.: ORS 731, 244
Stats. Implemented: ORS 737.330, 742.005, 746.160 & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & cert. ef. 12-14-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-1990, f. & cert. ef. 5-4-90; ID 15-1996, f. & cert. ef. 11-12-96; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-085-0025

Renewal with Altered Terms

(1) If the insurer offers or purports to renew the policy, but on terms less favorable to the insured or at higher rates, the new terms or rates may take effect on the renewal date if the insurer provides 30 days' written notice to the insured and to the insurance producer, if any. If the insurer does not provide such notice, the insured may cancel the renewal policy within 30 days after receipt of such notice. Earned premium for period of coverage, if any, shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, any premium increase or changes in terms shall be effective immediately following the prior policy's expiration date.

(2) Nonrenewal of a policy shall not be effective until at least 30 days after the insured received a written notice of nonrenewal. If, after an insurer provides a notice of nonrenewal as described in this section, the insurer extends the policy 90 days or less, and additional notice of nonrenewal is not required with respect to the extension. For purposes of this section, "nonrenewal" means the refusal of an insurer to renew a policy at its expiration date.

(3) Section (1) of this rule does not apply:

(a) If the change is a form, rate or plan filed with the Director and applicable to the entire line of insurance or class of business to which the policy belongs; or

(b) To a premium increase based on the altered nature or extent of the risk insured against.

Stat. Auth.: ORS 731, 737 & 746
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; IC 6-1985, f. 11-29-85, ef. 12-1-85; ID 8-1988, f. & cert. ef. 12-14-87; ID 21-1988, f. & cert. ef. 12-16-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-085-0035

Cancellation or Nonrenewal Notice

(1) If a risk sharing plan exists under ORS Chapter 735 for the kind of coverage cancelled or nonrenewed, notice of cancellation or nonrenewal required under OAR 836-085-0010(2) is not effective unless the notice contains adequate instructions to the policyholder and if one exists, the insurance producer for applying for insurance through a risk sharing plan under ORS Chapter 735.

(2) Adequate instructions under section (1) of this rule must direct the policyholder to the agent of the notifying insurer for assistance or, if no agent exists, must provide that the insurer will directly assist in submission of the application.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-14-87; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

836-085-0045

Unfair Trade Practices

(1) Failure of an insurer to comply with OAR 836-085-0010 to 836-085-0050 constitutes an unfair trade practice under ORS 746.240.

(2) Midterm premium increase or a policy coverage reduction attempted or executed in nonconformance with ORS 737.330 or 743.006 constitutes an unfair trade practice under ORS 746.240.

(3) Block Cancellations or Nonrenewals of entire lines of insurance or withdrawal of classes of business are presumed to be unfairly discriminatory and constitute an unfair trade practice under ORS 746.240, unless prior authorization is received.

(4) Termination of an appointed insurance producer, or an attempt of such termination, solely to achieve block cancellation or nonrenewal of entire lines of insurance or other such instant reunderwriting of an insurance producer book of business shall be presumed to constitute an unfair trade practice under ORS 746.240 an unfair trade practice detrimental to free competition under ORS 746.160.

(5) Any nonrenewal will be expected to be for justifiable cause; and:

(a) Inability to substantiate justifiable cause for nonrenewal will be subject to Insurance Division review; and

(b) Unjustified nonrenewals of such frequency as to indicate a general business practice shall be presumed to constitute an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 746.045, 746.055, 746.160(3) & 746.240
Hist.: IC 2-1985(Temp), f. 5-31-85, ef. 6-15-85; IC 4-1985, f. & ef. 9-19-85; ID 8-1987, f. & ef. 12-14-87; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05

Adm. Order No.: ID 9-2005(Temp)

Filed with Sec. of State: 5-18-2005

Certified to be Effective: 8-1-05 thru 1-15-06

Notice Publication Date:

Rules Adopted: 836-071-0263

Rules Amended: 836-071-0277

Subject: This temporary rulemaking establishes minimum terms of disclosure when an insurance consumer pays compensation to an insurance producer and the transaction is not subject to ORS 735.455, 744.091 or 744.093, or pays compensation to an insurance consultant who also receives other compensation.

Rules Coordinator: Sue Munson—(503) 947-7272

836-071-0263

Fees charged by Insurance Consultants or Insurance Producers

(1) When an insurance consultant or an affiliate of an insurance consultant receives from a prospective insured any compensation authorized under the Insurance Code or rules adopted thereunder, neither the insurance consultant nor the affiliate may accept or receive any compensation from an insurer or other third party for services provided the prospective insured in addition to the compensation paid by the prospective insured unless the insurance consultant, prior to the transaction:

(a) Has obtained the prospective insured's documented acknowledgment that the compensation will be received by the insurance consultant or affiliate; and

(b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance consultant shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

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(2) When an insurance producer or an affiliate of an insurance producer receives any compensation otherwise authorized under the Insurance Code or OAR 836-071-0269 to 836-071-0277 from a prospective insured, neither the insurance producer nor the affiliate may accept or receive any compensation from an insurer or other third party for the placement of insurance in the same or related transaction unless the insurance producer, prior to the prospective insured's purchase of insurance, has:

(a) Obtained the prospective insured's documented acknowledgment that the compensation will be received by the insurance producer or affiliate; and

(b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

(3) A person is not a prospective insured for the purpose of this rule if the person is merely:

(a) A participant or beneficiary of an employee benefit plan; or

(b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

(4) This rule does not apply to:

(a) An insurance producer with respect to a transaction to which ORS 735.455, 744.091 or 744.093 applies;

(b) An insurance producer when the insurance producer acts only as an intermediary between an insurer and the prospective insured's insurance producer, such as a managing general agent, a wholesale insurance producer under ORS 744.093, a surplus lines licensee when transacting insurance with a producing insurance producer under ORS 735.455 or a sales manager;

(c) An insurance producer with respect to an incidental charge that is received from the prospective insured and is authorized under OAR 836-071-0267; or

(d) A reinsurance intermediary.

(5) As used in this rule:

(a) "Affiliate" means a person that controls, is controlled by or is under common control with the insurance consultant or insurance producer.

(b) "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.

(c) "Compensation from a prospective insured" does not include any fee or amount collected by or paid to the insurance producer that does not exceed an amount established by the Director.

Stat. Auth.: ORS 731.244, 744.077 & 744.650

Stats. Implemented: ORS 737.205, 742.009, 744.077, 744.650, 746.015

Hist.: ID 9-2005(Temp), f. 5-18-05, cert. ef. 8-1-05 thru 1-15-06

836-071-0277

Service Fees Allowed on Commercial Lines; Conditions

(1) Service fees may be charged with respect to the transaction of insurance that covers other than an individual's person, property, or liability.

(2) Except as authorized in ORS 744.091 and 744.093, a service fee may be charged only in those instances where the insurance producer has provided service additional to what is the usual and customary practice of insurance producers under similar circumstances. The insurance producer must give a written explanation of the charge and the reason for it to the person charged. If OAR 836-071-0260 or 836-071-0263 applies to the transaction in which a service fee is charged under this rule, the insurance producer may include the written explanation with the disclosure required by OAR 836-071-0260 or 836-071-0263 or provide the written explanation separately.

(3) A service fee may not be charged with respect to arranging the financing of premium payments. This does not preclude finance charges by insurance producers on their own accounts, or service charges by premium finance companies, which conform to the provisions of ORS 746.405 to 746.530.

Stat. Auth.: ORS 731.244, 744.077 & 744.650

Stats. Implemented: ORS 737.205, 742.009, 746.015, 746.405 - 746.525

Hist.: IC 58, f. 8-9-74, ef. 9-11-74; IC 9-1983(Temp), f. 11-10-83, ef. 11-15-83; Renumbered from 836-030-0065, ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 9-2005(Temp), f. 5-18-05, cert. ef. 8-1-05 thru 1-15-06

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

Adm. Order No.: OSHA 2-2005

Filed with Sec. of State: 5-27-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 3-1-05

Rules Adopted: 437-007-1300, 437-007-1303, 437-007-1305, 437-007-1310, 437-007-1315, 437-007-1320, 437-007-1325, 437-007-1330, 437-007-1335, 437-007-1340, 437-007-1345

Rules Amended: 437-007-0004, 437-007-0025, 437-007-0130, 437-007-0215, 437-007-0230, 437-007-0235, 437-007-0640, 437-007-0650, 437-007-0660, 437-007-0665, 437-007-0685, 437-007-0905, 437-007-0935, 437-007-1115

Rules Repealed: 437-007-1391, 437-007-1392, 437-007-1393, 437-007-1394, 437-007-1395, 437-007-1396, 437-007-1397, 437-007-1398, 437-007-1399

Subject: Oregon OSHA adopted new rules in Division 7/N, Forest Activities/Wildland Fire Suppression and Prescribed Fire. We repealed OAR 437-007-1391 through 437-007-1399, and adopted 11 new rules in Division 7/N.

Also adopted are amendments to 14 existing standards in subdivisions A, B, C, G, J, L, and Appendix 7-C.

All changes have been reviewed by the Forest Activities Advisory Committee and the subcommittee for Wildland Firefighting comprised of representatives from labor, private and government land owners, and government agencies. This group started meeting in February 2003 and remains an active advisory group. These changes clarify existing regulations and keep standards current with updated technology.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-007-0004

Applicability of Rules

(1) The rules in division 7 establish occupational safety and health practices for all forest activity operations including but not limited to:

(a) Chemical application;

(b) Chipping;

(c) Clearing and slash disposal;

(d) Forest road construction, maintenance and decommissioning;

(e) Log dumps, ponds, plantsite log yards and independent sort yards;

(f) Log hauling;

(g) Marking;

(h) Prescribed fire;

(i) Pulpwood and non-pulpwood logging;

(j) Reforestation/vegetation management;

(k) Stream restoration;

(l) Timber cutting and thinning operations;

(m) Timber cruising;

(n) Tree climbing activities;

(o) Wildland fire suppression.

(2) Any situation or condition not specifically addressed will be subject to other applicable provisions of the Oregon Administrative Rules, chapter 437, Oregon Occupational Safety and Health Standards.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0025

Definitions

(1) A-frame — A structure made of two independent columns fastened together at the top and separated by a reasonable width at the bottom to stabilize the unit from tipping sideways.

(2) Alternative communication system — A system by voice, hand or media other than horn or whistle which provides a safe and reliable method of communication between crew members.

(3) Approved container — A metal or polyethylene (plastic) container that can be used to carry flammable liquids in quantities up to 5 gallons. These containers must be accepted as satisfactory to contain flammable liquids by a nationally recognized testing lab, such as Underwriters Lab (UL) or Factory Mutual (FM).

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(4) Aramid — The generic name for a high-strength, flame-resistant synthetic fabric used in the shirts and jeans of firefighters. Nomex, a brand name for aramid fabric, is the term commonly used by firefighters.

(5) Arch — Any device attached to the back of a mobile vehicle and used for raising one end of logs to facilitate movement.

(6) Authorized person — See “Designated Person.”

(7) Backcut (falling cut) — The cut opposite of the face cut.

(8) Ballistic nylon — A nylon fabric of high tensile properties designed to provide protection from lacerations.

(9) Base of tree — That portion of a tree that is not more than 12 inches above highest ground level.

(10) Bight of the line — A hazardous zone created by one or more lines under tension, or a point on a line where a rigging chain is attached.

(11) Binder — A hinged lever assembly for connecting the ends of a wrapper to tighten the load restraining devices (log trucks, flatbeds, low-boys, etc.).

(12) Brow log — A log placed parallel to any roadway at a landing or dump to protect carriers while loading or unloading.

(13) Buck — To cut a fallen tree into logs.

(14) Butt — The bottom cut or the first log of a fallen tree.

(15) Cable yarding — The movement of trees or logs from the area where they have been fallen to a landing by attaching them to a cable system that is supported by a metal tower (wood spar) and/or intermediate support or tail trees.

(16) Chock — A block, often wedge-shaped, which is used to prevent movement; for example, a log from rolling, a wheel from turning.

(17) Choker — Length of wire rope, chain or synthetic material with attachments for encircling a log to be yarded.

(18) Competent person — A qualified person who has been authorized by the employer or employer representative to:

(a) Identify existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees; and

(b) Eliminate the hazard or take corrective action.

(19) Confine a fire — To restrict the fire within determined boundaries established either prior to the fire or during the fire.

(20) Contain a fire — To take suppression action as needed, which can reasonably be expected to check the fire’s spread under prevailing conditions.

(21) Control a fire — To complete control line around a fire, and spot fires therefrom and any interior islands to be saved; burn out any unburned area adjacent to the fire side of the control lines; and cool down all hot-spots that are immediate threats to the control line, until the lines can reasonably be expected to hold under foreseeable conditions.

(22) Cut-up-tree/snag — A tree/snag, left standing, with the falling cuts started or completed.

(23) Cutter — One whose primary job is to manually fall, buck or limb trees.

(24) Danger tree — A standing tree, alive or dead, that presents a hazard to personnel due to deterioration or physical damage to the root system, trunk (stem), or limbs, and the degree and direction of lean.

(25) DBH — Diameter at breast height.

(26) Deadman — Buried log or other object used as an anchor.

(27) Deck — A stack of trees or logs.

(28) Designated person — An individual who has been assigned by the employer or the employer representative to perform a specific duty or duties.

(29) Direct supervision — Supervision by a competent person who watches over and directs the work of others who are within sight and unassisted natural voice contact.

NOTE: Direct supervision may be achieved by radio contact when an untrained runner is enroute to or from an operational area where there may be exposure to wildland fire hazards, provided there is a competent person at both the pick-up and drop-off points.

(30) Domino falling — The partial cutting of several trees which are left standing and then pushed over with a pusher (driver) tree. This definition of domino falling does not include the falling of:

(a) A single danger tree by falling another single tree into it.

(b) Two or more trees at the same time because their limbs are interlocked.

(31) Double tree intermediate support system — A system for supporting a loaded skyline in a support jack suspended on a single piece of wire rope that is supported by two trees in a manner that provides for sharing the load between the two trees. (See Figure 7-15.)

(32) Dutchman (as used in falling) — A method used to pull a tree against its lean by leaving a section of the undercut on one corner of the face.

(33) Dutchman (as used in yarding) — A block used to change direction of line lead (sideblocking).

(34) Emergency care — Care provided by a person who is first aid and CPR trained.

(35) Emergency medical service — Care provided by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.

(36) Emergency scene — The site where the suppression or control of a fire or an emergency exists.

(37) Equipment — See “Vehicle and Machine.”

(38) Equipment protection designations — The listing of specific guarding requirements for specific logging machines.

(39) Escape route — A planned and understood route firefighters take to move to a safety zone or other low-risk area.

(40) Experienced person — A person who has sufficient training, experience and skill in a given process to be knowledgeable of all aspects of that process.

(41) Extreme weather conditions — Includes, but not limited to:

(a) Strong winds (applies to timbered areas only) — Wind velocity that reaches sufficient force to blow limbs from standing trees, cause wind-falls, or prevent cutters from falling trees in the desired direction;

(b) Impaired vision — Conditions such as falling snow, sleet, mist, fog, rain, dust, or darkness which substantially impairs visibility to the extent that employees cannot clearly see signals, moving vehicles, equipment and lines, falling trees or other hazards;

(c) Hazardous snow or ice conditions — Snow or ice conditions which prevent escape from hazards such as falling trees, moving logs, vehicles, or similar hazards; or

(d) Lightning.

(42) Fairlead — Sheaves, rolls or a combination thereof arranged for receiving a line coming from any direction to minimize the line from burning and aid proper line spooling onto a drum.

(43) Fall — To cut down trees.

(44) Faller — A person who falls (cuts down) trees.

(45) Fire camp — A geographical site(s) equipped and staffed to provide sleeping, food, water and sanitary services to fire personnel.

(46) Fire fighting equipment — All portable and fixed fire suppression and control equipment.

(47) Fire season — That period during the year when the State Forester declares fire season in any part of the state, as required by ORS 477.505.

(48) Fire shelter — A personal protection item carried by firefighters which when deployed unfolds to form a pup-tent shelter of heat reflective materials.

(49) Firefighter — Any employee whose primary duty is fire suppression and control of fires on or around wildland areas.

(50) Flame resistance — The property of material, or combinations of component materials, to retard ignition and restrict the spread of flame.

(51) FOPS (Falling Object Protective Structure) — Structural members arranged in such a way to reasonably protect operators from falling objects such as trees, rocks, etc.

(52) Frequent review or inspection — A review or inspection that is conducted at intervals which are necessary (conducted on daily to monthly intervals) to gain a desired assessment of conditions, practices, policies or procedures.

(53) Grounded (Cutting) — Placement of a tree on the ground.

(54) Grounded (Electrical) — A method to dissipate static or electrical charges.

(55) Grounded (Machines) — The placement of a machine component on the ground or device where it is firmly supported.

(56) Guarded — Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable enclosures, covers, casings, shields, troughs, railings, screens, mats, or platforms, or by location to prevent injury.

(57) Guyline — A standing line used to support or stabilize a spar, tail tree, intermediate support tree, machinery or equipment.

(58) Health care provider — A health care practitioner operating within the scope of their license, certificate, registration, or legally authorized practice.

(59) High lead — A system of logging where the mainline is threaded through the mainline block which is located near the top of the spar or metal tower to obtain a lift of the logs being yarded and is returned to the vicinity of the logs by a haulback line.

(60) High visibility colors — Bright or fluorescent white, lime green, orange, yellow, red, or aqua colors that stand out from the surrounding background color so as to make them easily seen.

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(61) In the clear — A position within the work area where the probability of hazardous contact with vehicles, machines, falling trees, moving logs, rootwads, chunks, material, rigging, and equipment is minimized by distance from the hazards and/or use of physical barriers, such as stumps, trees, terrain, or other objects providing protection.

(62) Initial attack — The control efforts taken by all resources which arrive at the fire during the first burning period (first 24 hours).

(63) Kicker (as used in cutting) — A piece of the face, or an equivalent object, placed in one side of a face cut to pull the tree from its lean as it falls.

(64) Landing — Any designated place where logs are laid after being yarded and are awaiting subsequent handling, loading and hauling.

(65) Landing chute — The head of the skid trail or yarding road where the logs are temporarily placed and are awaiting subsequent handling, loading, and hauling.

(66) Lay (cutting) — The desired direction of fall for a tree.

(67) Lay (wire rope) — A unit of measure to describe the straight-line distance in which a strand of wire rope makes one complete spiral around the core of a rope. The way wires have been laid to form strands and the way strands have been laid around the core (i.e., regular, lang lay, etc.).

(68) Limbing — To cut branches off trees.

(69) Lodged tree (hung tree) — A tree leaning against another tree or object which prevents it from falling to the ground.

(70) Log — A segment sawed or split from a fallen tree, such as, but not limited to, a section, bolt, or tree length.

(71) Log dump — An area in which logs are removed from a truck or rail car. May be either dry land or water, parbukled over a brow log or removed by machine.

(72) Logging — All operations relating to the falling of trees, cutting the fallen trees into suitable lengths, yarding, limbing, debarking, grading, loading, hauling, unloading, storing in decks or ponds until processed from timber to wood products.

(73) Machine — Equipment used or intended for use in forest activities operations such as but not limited to building or maintaining roads; felling trees; processing trees or fiber; yarding, moving or handling logs, trees, chunks and other material; stream restoration; forest operations for wildlife enhancement or other management objectives; and wildland fire suppression.

(74) Mainline (yarding) — The line that moves the turn of logs toward the yarder in any given system.

(75) Mechanized falling — Falling of standing timber by a self-propelled mobile-wheeled or tracked machine equipped with a shear or other powered cutting device.

(76) Metal tower — A vertical or leaning metal tube or boom used for yarding logs by various methods of cable logging.

(77) NRTL (Nationally Recognized Testing Laboratory) — An organization which is recognized by OSHA in accordance with OAR 437, Division 2/A, §1910.7, Appendix A, OSHA Recognition Process for Nationally Recognized Testing Laboratories.

(78) OPS (Operator Protective Structure) — Structures or enclosures whose primary purpose is to minimize the possibility of operator injury from hazards, such as whipping saplings, branches, jill-poking and snapping winch lines with the least adverse effect on operator visibility, comfort, and protection from other hazards. Specific standards and tests exist and are referenced in many national and state codes.

(79) Pass line — A small line threaded through a block at or near the top of a wood tree or metal tower to assist the high climber.

(80) Periodic review or inspection — A review or inspection that is conducted at predetermined intervals (conducted on 1 to 12 months intervals).

(81) Personal protective equipment — Clothing or equipment worn to protect the head, body, feet and extremities from chemical or physical hazards.

(82) Potential failure zone — An area that could be impacted by the failure of any part of a standing tree anchor, tail or intermediate support tree as the result of forces or loads imposed on the tree by guylines, running lines or skylines. The boundaries of the zone encompass the area into which the tree, or parts of the tree, could fall, slide or roll and all trees, logs, lines and material impacted by the tree failure.

(83) Prescribed Fire — Any fire burning under predetermined conditions to meet specific objectives related to fuels reduction or habitat improvement.

(84) Qualified first aid person — Has evidence to show valid first aid and CPR training within the last 2 years.

(85) Qualified person — A person who has:

(a) A recognized degree, certification, professional standing, knowledge, training or experience.

(b) Successfully demonstrated the ability to perform the work, solve or resolve problems relating to the work, subject matter, or project.

(86) Rated capacity — The load identified by the manufacturer that a system, vehicle, machine or piece of equipment can lift or move.

(87) Reach — Usually a rectangular steel tube which slides in the trailer tunnel and is used as a connection between a log truck and the trailer.

(88) Reforestation — All forest management operations relating to the planting and nurturing of trees. The nurturing of trees includes: fertilization, pre-commercial thinning, mulching, pruning, animal control measures, application of chemicals, and stand inventories.

(89) ROPS (Roll-Over Protective Structure) — Framing and support for machinery that reduces the possibility of a seat belted operator from being crushed should the machine roll over. Specific standards and tests exist and are referenced in many national and state codes.

(90) Root wad — The root ball and dirt that is pulled from the ground when a tree or stump is uprooted.

(91) Rub rails — Guarding on the exposed sides of elevated bridges, ramps or runways to prevent wheeled equipment from going over the edge.

(92) Rub tree — A tree used to guide a turn around a certain area.

(93) Runner — A person who delivers supplies, materials or relays information.

(94) Running line — Any moving line in a cable yarding system.

(95) Safety factor — The ratio of breaking strength to safe working strength or load.

(96) Safety pin (shackle) — A threaded shackle pin secured by a nut that is secured with a cotter key, latchpin or molly.

(97) Safety swede — A device that is designed for the specific purpose of making a positive connection to binders that are being closed (tightened) or opened.

(98) Safety Zone (fire) — A designated area of sufficient size and suitable location that is expected to protect fire personnel from known hazards without using fire shelters, such as but not limited to an already burned area, previously constructed safety area, a meadow that won't burn, man-made or natural rocky area that is large enough and sufficiently devoid of fuels to take refuge without being burned.

(99) Serviceable condition — That quality of a tool, machine, vehicle, equipment, or other device to operate as it was intended to operate by the manufacturer.

(100) Short log (chunks) — Any log or fiber less than 27 feet long.

(101) Single jack — One cutter, in an area or portion of standing timber, who falls and bucks.

(102) Single tree intermediate support system — A system for supporting a loaded skyline in a support jack suspended from a single tree. The tree may be an upright single-rooted tree or a leaning tree severed or partially severed from the stump.

(103) Siwash (intentional) — The use of a natural physical object, such as a tree or stump, that changes the direction of a line rather than with a block.

(104) Siwash (unintentional) — When a line is incorrectly routed through standing timber or other objects or, as often occurs in side-hill yarding, the turn of logs pulls the bight of the line downhill and it hangs up on a stump, root wad or other object, changing the lead and creating a hazardous area.

(105) Skidder — A self-propelled machine, of the wheel or crawler design, or an animal used to move logs or trees to a landing.

(106) Skidding — The movement of logs or fiber on the surface of the ground toward the place where they can be further processed or loaded.

(107) Skyline — The line which is hung between two or more supports on which a carriage or block travels.

(108) Slackline — A system of logging where a carriage travels on a skyline that can be raised or lowered. The carriage is pulled to the landing by the mainline (skidding line) and is returned to the vicinity of the logs by the haulback line or gravity.

(109) Slash burning — The use of prescribed fire as a method of forest management.

(110) Slope (grade) — The increase or decrease in altitude over a horizontal distance expressed as a percentage. For example, change of altitude of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

(111) Snag — Any standing dead tree or portion thereof.

(112) Snubbing — Retarding or controlling the movement of logs or machines by attachment to another vehicle or stationary object.

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(113) Spring pole — A tree, segment of a tree, limb, or sapling which is under stress or tension due to the pressure or weight of another object.

(114) Square lead — A horizontal angle of up to 90 degrees formed by the projected lines of the mainline from the drum of the logging machine through the block or fairlead and the yarding road.

(115) Stability (machine or vehicle) — The capacity of a machine or vehicle to return to equilibrium or to its original position after having been displaced.

(116) Strip — A stand of timber or area of fallen and bucked timber in a predetermined location on which employees work in a planned pattern.

(117) Supervisory personnel — Agent of the employer (such as a manager, superintendent, foreperson, hooktender, rigging slinger, or person in charge of all or part of the place of employment) who directs the work activities of one or more employees.

(118) Swede connection — A line configuration consisting of wrapping two choker lines in the same direction around a tree or log and connecting the line nubbins to opposite line bells.

(119) Swing cut — A back cut in which the holding wood on one side is cut through.

(120) Swing radius (machines) — Is that distance equal to actual working radius of machines capable of upper structure rotation plus the length of the attachments, logs, and materials being handled.

(121) Tail hold — An anchor used for making fast any line or block other than a guyline.

(122) Tail tree — The tree at the opposite end from the landing area on which rigging is hung.

(123) Tight line — When a force is exerted on both main line and haulback at the same time.

(124) Timber cutting — The falling and/or bucking of trees by hand or mechanical means.

(125) Topping — Cutting off the top section of a standing tree prior to rigging the tree for a spar or tail tree.

(126) TOPS (Tip-Over Protective Structure) — Framing and support for machinery that reduces the possibility of a seat belted operator from being injured should the machine tip over on its side. Specific standards and tests exist and are referenced in many national and state codes.

(127) Tractor — A self-propelled machine of wheel or crawler design used to exert a push or pull force through mounted equipment to move objects or material.

(128) Tree jack (shoe) (other than for directional falling use) — A grooved saddle of wood, soft metal or rollers contained within two steel side plates attached to a tree with a strap as a guide for a skyline, sail guy or similar static line.

(129) Tree plates — Steel bars sometimes shaped as elongated “J”s which are fastened to a tree to hold the guylines and prevent the rigging from cutting into the tree when tightened. The hook of the “J” is also used to prevent the mainline block strap from sliding.

(130) Turn — Any log or group of logs or other material usually attached by chokers, grapples or other means and moved from a point of rest to the landing or landing chute area.

(131) Undercut (face) — A notch cut in a tree to guide the direction of the tree fall and help prevent splitting or kickback.

(132) V-lead — A horizontal angle of less than 90 degrees formed by the projected lines of the mainline from the drum of the logging machine through the block or fairlead and the yarding road.

(133) Vehicle — A car, bus, truck, trailer or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material. Any carrier that is not manually propelled.

(134) Watcher/Firewatch — A person who visually observes the area on which operation activity occurred for the out-break of fire.

(135) Wildland Fire — Any non-structure fire, other than prescribed fire, that occurs in the wildland.

(136) Wildlands fire fighting — All activities, operations, and equipment of employers and employees involved in the suppression or control of fires on wildlands. Does not include interior structural fire suppression or control.

(137) Wildlife tree — A live, partially dead, or snag tree in the forest riparian zone, or in a cutting unit that is left for wildlife habitat. May also be a danger tree.

(138) Winching — The winding of cable or rope onto a spool or drum.

(139) Within the stakes — When the log center is below the top of the stakes.

(140) Work area — Any area frequented by employees in the performance of assigned or related duties.

(141) Wrapper (tie down) — A chain, cable, steel banding, synthetic rope or fiber webbing assembly used to contain a load of logs.

(142) Yarder — A machine with a series of drums used to yard logs.

(143) Yarding — Movement of logs or trees from the place they were felled to an area where they can be further processed.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0130

Employee Involvement

The employer or their authorized representative must:

(1) Encourage employees to participate in site planning and the pre-work safety meeting to discuss site conditions and known hazards.

(2) Require employees to report safety and health hazards.

(3) Require qualified employees to take corrective action and eliminate hazards.

(4) Conduct monthly safety meetings with all employees.

(a) Keep written minutes and attendance records for 3 years.

(b) Make written minutes and attendance records available to all employees.

NOTE 1: Meetings may be with individuals, separate crews, or larger groups.

NOTE 2: Upon written application, OR-OSHA may approve an innovative method to comply with the requirements for monthly safety meetings.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0215

Working Alone

(1) The employer must not assign workers to a task or location so isolated as to be without visual, audible, or radio contact with another person who can summon or provide aid in an emergency.

(2) Unless otherwise specified in division 7, in any operations where fire suppression, prescribed fire, tree climbing, power chain saw operation, yarding, loading or a combination of these duties is carried on, there must be a minimum crew of two employees who must work as a team and must be in visual or natural unassisted voice communication with one another.

(3) Workers are not prohibited from working alone when performing certain jobs which by their nature may be single employee assignments, such as: mechanics, watchers, the operation of motor vehicles, self-loading log trucks, mechanized logging machines, feller bunchers, forwarders, processors, harvesters or excavator-based machines, provided the employer complies with the requirements of 437-007-0210(2), Checking System; 437-007-0775, Protective Structures for Operators; and 437-007-0220, Medical Services and First Aid.

(4) Mechanics or other employees must not be assigned to work on machines by themselves when there is a probability of a fall from elevated work locations or machines. When the work is of such nature that heavy parts require moving, or there is a probability that anything heavy could fall on the person, there must be another person in the area who can render immediate assistance or emergency care.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0230

Power Line Safeguards

(1) Forest activities operations near overhead electric lines must be done in accordance with the requirements of OAR 437, Division 2/S, Electrical, §1910.333(c)(3), Selection and Use of Work Practices.

(2) When any machinery is being moved or operated in the vicinity of an overhead power line, a minimum clearance of 15 feet must be maintained between the overhead power lines and all elements of the machine, including logs, trees, or other material being handled by the machine.

NOTE: Any overhead power line must be considered to be an energized line until the person owning the line or the electrical utility authorities indicate that it is not energized.

(3) While falling trees, the minimum distance required by this section applies when a tree could fall within 15 feet of an overhead power line.

(4) The minimum distance required when cable yarding must not be reduced by line whip or breakage.

(5) A person must be designated to observe clearance and give timely warning for all operations where it is difficult for the operator to maintain the required distance by visual means.

(6) If work activities could encroach upon the minimum clearance required by this section, the employer or person responsible for the work to

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be done must promptly notify the power company in accordance with ORS 757.805, Oregon's Overhead Line Safety Act. The responsible party and the power company must complete mutually satisfactory safety measures as required before proceeding with any work which would impair the aforesaid clearance.

(7) If contact is made with a power line by a tree, rigging, machinery, or the structure supporting the overhead powerline is damaged by forest activities, the power company must be notified immediately and all employees must remain clear of the area until power company personnel advise that conditions are safe.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0235

Working Conditions

Working Conditions. A competent person must determine if work activities can be safely conducted during inclement weather conditions or darkness. When weather conditions or darkness pose a hazard to workers, the activity must be discontinued until the work is arranged to mitigate the hazard.

NOTE: This rule does not prohibit logging or wildland fire suppression activities at night, but it requires an assessment of conditions so work can be done safely.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0640

Metal Spar Guyline Safety Straps

(1) A guyline safety strap or equivalent device must be installed at the top of metal spars to prevent guylines from falling vertically more than 5 feet in case of structural or mechanical failure of the guyline attachment.

(2) Metal spar guyline safety straps or equivalent devices must be equal to the individual strength of any guyline being used.

(3) The ends of metal spar guyline safety straps must be connected to each other, or installed per manufacturer's instructions.

NOTE: Two eyes secured with a shackle or two poured nubbins secured in a connector are acceptable for the connections.

(4) The use of cable clips or clamps for joining the ends of metal spar guyline safety straps is prohibited.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0650

Guylines — General Requirements

(1) Splicing of guylines is prohibited except to make an eye.

(2) Guylines used to stabilize logging machines must be at least of the size, strength and number recommended by the machine manufacturer.

(3) Load-bearing guyline angles must not be greater than 50 degrees measured horizontally or that recommended by the machine manufacturer. If suitable anchors are not available or the terrain is so steep that the guyline angle exceeds 50 degrees or the machine manufacturer's recommendation, additional precautions must be taken, such as rearranging guylines to oppose the load, adding an additional guyline to oppose the load, or narrowing yarding roads.

(4) Tail and intermediate support tree guylines must be:

(a) Arranged and adjusted so they share the load when lines are tensioned.

(b) Kept securely tightened during the yarding process.

(c) Made of the same strength material as the line hung in the tree or larger size guylines must be used to provide the same relative strength.

Example: In 437-007-0650(4)(c), a 1-inch swaged skyline requires guylines equivalent in strength to 5/8-inch swaged guylines.

(5) When using tail or intermediate support trees and the line hung in the tree is:

(a) 5/8-inch or less, guylines must be at least 3/8-inch.

(b) Greater than 5/8-inch and less than 1-inch, guylines must be at least 1/2-inch.

(c) 1-inch and larger, guylines must be at least 5/8-inch.

(6) A skyline must not be considered a guyline.

(7) Machines and equipment used for yarding that are specifically designed to be self-stabilizing during operation may be used without guyline(s).

NOTE: Hydraulic excavator-based log loading machines may yard logs without using guylines.

(8) Guylines made of synthetic materials, including the end connectors, must have the equivalent strength capacities of wire rope.

(9) The manufacturer's recommendations for out-of-service requirements of synthetic materials must be followed.

(10) When guylines are required for towers they must be positioned according to Appendix 7-I, Figure 7-39 through Figure 7-50.

(11) Tail or intermediate support tree guylines must not be pretensioned beyond the point of tree stability before the load is applied. (See Figure 7-18.)

(12) Trees and unintentional siwashes must not interfere with the proper alignment, placement, or tightening of guylines.

(13) Guylines must be hung in a manner to prevent a bight or fouling when they are tightened.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0660

Intermediate Support Trees

(1) Intermediate support trees must be rigged so:

(a) Horizontal carriage clearance at the base of the intermediate support tree(s) is sufficient for the turn of logs to pass the support tree(s).

(b) The jackline is a single piece of line that provides strength equal to a line 1/8-inch larger than the tong or skidding line. (Figures 7-17, 7-19 and 7-20.) Extensions may be attached to the anchor end of the jack-line.

(2) Vertical support trees must be firmly rooted.

(3) The base of all leaning tree supports must be prevented from moving by:

(a) Retaining 20 percent of the stump diameter in holding wood; or

(b) Other suitable rigging arrangements.

(4) Single tree intermediate supports must be guyed as follows:

(a) For skylines 1-inch and smaller use the rigging configuration in Figure 7-17:

(A) No guylines are required when at the point of rigging attachment the tree does not move more than its diameter in the direction of load as shown in Figure 7-18.

(B) If the tree moves more than one diameter at the point of rigging attachment, then a guyline of the size called for in 437-007-0650(4) must be rigged to oppose the yarding forces.

Figure 7-18 — Tail and Intermediate Support Tree Stability [Figure not included. See ED. NOTE.]

(b) For all skylines larger than 1-inch and for skylines rigged as in Figure 7-17.

(A) Two guylines are needed of the sizes called for in 437-007-0650(4)(c).

(B) The guylines must be rigged according to 437-007-0655(4) if the tree is not stable according to Figure 7-18.

(c) For all leaning tree intermediate supports using the rigging configuration of Figure 7-19, a minimum of three guylines must be used.

(A) Two guylines of the sizes called for in 437-007-0650(4)(c) must be rigged according to Appendix 7-I, Figure 7-42.

(B) A snap guyline of at least 3/8-inch diameter must be placed opposite the two load-bearing guylines.

Figure 7-19 — Intermediate Support Tree — Leaning [Figure not included. See ED. NOTE.]

(5) Double tree supports must be rigged (see Figure 7-20) so the:

(a) Angle of the block to the center of the support line:

(A) Is 10 degrees in any direction when skylines 1 1/8-inch and smaller are used; or

(B) Has deflection in the direction of the jack which does not exceed 10 degrees when skylines larger than 1 1/8-inch are used.

(b) Loaded support trees do not displace more than 2 feet at the point of rigging attachment.

(c) Minimum and maximum heights of the jack relative to the height of the block is as shown below for double tree intermediate support systems.

Figure 7-20 — Intermediate Support — Double Tree [Figure not included. See ED. NOTE.]

(6) Double tree supports must be guyed as follows:

(a) For skyline sizes equivalent to 1 1/8-inch improved plow steel (IPS) and less, no guys are required;

(b) For skyline sizes equivalent to those larger than 1 1/8-inch IPS as shown in Appendix 7-I, Figure 7-39.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2004, f. & cert. ef. 6-7-04; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

ADMINISTRATIVE RULES

437-007-0665

Anchoring

(1) A competent person must carefully choose skyline, guylines and running line anchors for position and strength.

Figure 7-21 — Stump Tie Back Anchor [Figure not included. See ED. NOTE.]

(2) A competent person must inspect anchors while the operation is in progress. When necessary, anchors must be tied back or changed.

Figure 7-22 — Stump Twister Anchor [Figure not included. See ED. NOTE.]

(3) Unstable yarder guylines must be immediately corrected.

(4) Stump anchors must be notched to a depth not greater than is necessary to safely secure the line to the stump.

(5) Deadman anchors must have:

(a) Straps or lines equal in strength to the guylines, skyline, or mainline to attach the line to a deadman.

(b) Deadman anchor strap or line connectors visible for inspection.

Figure 7-23 — Deadman Anchor [Figure not included. See ED. NOTE.]

(6) When a standing tree is used as an anchor:

(a) The line or strap must be attached to the base of the tree.

Figure 7-24 — Tree Tie Back Anchor [Figure not included. See ED. NOTE.]

(b) The tree must be tied back if it is within reach of any worker, the landing area, or haul road.

NOTE: In some cases, the base of a standing tree(s) that is used as an anchor may also need to be tied-back.

(c) Affected personnel must be notified of the standing tree anchor and the potential failure zone.

NOTE: See the potential failure zone requirements listed in 437-007-0927(1) through (7)

(7) The use of machines for anchoring guylines, skylines, or corner blocks must be done only under the supervision of a competent person.

Figure 7-25 — Log Loader Anchor [Figure not included. See ED. NOTE.]

(a) When determining if the machine is a suitable anchor, the competent person must consider:

(A) The size and weight of the machine.

(B) The size of the line to be attached.

(C) The type of logging system to be used.

(D) The condition of the soil and slope of the ground.

(E) The availability of holding aids, such as road embankments or stumps.

(F) The skyline, guylines, or running line angle from the horizontal and vertical.

(G) Any other factors which would affect the stability of the machine anchor.

(b) Line attachment points on the machine must be determined by a qualified person.

(c) Machines that are used as mobile tail anchors and are stabilized with a guylines(s) must be guyed in accordance with OAR 437-007-0650(1), (2) and (3).

Figure 7-26 — Tailhold Cat Anchor [Figure not included. See ED. NOTE.]

(8) Rock bolt anchors must be installed, grouted, tested and maintained in accordance with the manufacturer's recommendations.

(9) Artificial earth anchors must be installed and used in accordance with their design specifications and manufacturer's recommendations.

(10) When using tipping plate anchors:

(a) Guylines, skylines, or mainlines must not be directly attached to the anchors.

(b) The combined strength of straps or lines attached to multiple anchors must be equal in strength to the guylines, skyline, or mainline.

Figure 7-27 — Tipping Plate Anchor [Figure not included. See ED. NOTE.]

(c) Shackles used to connect straps to the anchors must be secured with a safety pin.

NOTE: This connection will not be visible for inspection.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0685

Climbing Equipment and Climbing

(1) Defective climbing equipment must be immediately removed from service.

(2) The climber must be equipped with a climbing equipment assembly having a breaking strength of not less than 5,000 pounds. The equipment must include:

(a) A safety belt with double "D" rings; and

(b) Steel spurs long and sharp enough to hold in any tree in which they are used; and

(c) A high-quality steel safety chain of 3/16-inch size or larger or a wire rope core climbing rope.

(3) A wire rope core climbing rope or chain must be attached to both of the "D" rings at the side of the belt or passed through the "D" rings and around the body. A secondary safety device must be used when snap hooks are used.

(4) All climbers must be trained in safe rigging procedures for each applicable climbing duty.

(5) Personnel with climbing experience and an extra set of climbing equipment must be available at the worksite to render assistance to the climber in an emergency.

(6) Climbers must select the place for hanging rigging before topping a tree, with no more than 16 feet nor less than 6 feet of the topped tree above the top guylines.

(7) Yarding of any type must not be conducted within reach of the tree or guylines of a tree in which a climber is working.

(8) When machines are used to hoist rigging:

(a) A person must be assigned to transmit the climber's signals.

(b) The signal person and machine operator must not perform other duties when the climber is in the tree.

(9) Noisy equipment, such as power saws, tractors and other logging machines, must not be operated around the area where a climber is working when such noise will interfere with the climber's signals.

(10) Lines attached to a tree in which a climber is working must not be moved except on a signal from the climber.

(11) A climber's rope (chain) must encircle the tree before the climber leaves the ground.

(12) While the climber is working in the tree, employees must keep a sufficient distance from the tree to be clear of falling objects.

(13) The climber must give warning when any equipment or material is in danger of dropping, or is dropped deliberately.

(14) Loose equipment, rigging, or material must either be removed from the tree or securely fastened.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0905

Landings

(1) Landing areas must be:

(a) Large and level enough to land, heel, tail/swing or process logs without striking standing timber, rigging, trucks, vehicles, equipment, other machines or objects.

NOTE: This is not intended to restrict the occasional yarding or loading of logs for poles, piling or an infrequent long break or tree length, provided the log is stabilized before unhooking the choker.

(b) Large enough for safe movement of all machinery.

(c) Kept chunked out and have an even surface.

(2) Outrigger pads, tracks or wheels must be on firm, stable ground, cribbing or prepared surface.

(3) During road side thinning, logs stacked on the road side must be placed in a stable position.

(4) Roadside or continuous landings must be wide enough to safely operate the yarding and loading equipment.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-0935

Operation of Ground Skidding Machines and Vehicles

(1) Machines must not be operated on slopes in excess of the following limits unless specified by the manufacturer of the equipment.

(a) Rubber-tired skidders — 30 percent.

(b) Crawler tractors, tracked feller bunchers, tracked excavators and loaders — 40 percent.

(c) Other forestry equipment designed for steep slopes — 50 percent.

(2) Operation in excess of the above limits may be permitted for specific limited application or in identified small areas provided the operator and the competent person plan how to safely operate on the steep slopes considering:

(a) Experience of the operator.

(b) Limitations of the machine and the soil conditions.

(c) Direction of travel (traveling straight up and down the slope).

(d) Requirements for turning the machine or vehicle on the slope.

(e) Weather.

(f) Load sizes.

ADMINISTRATIVE RULES

(g) Any other adverse conditions.

(3) Turnarounds must be provided on all skidding roads so operators do not have to backup more than 250 feet.

(4) Towed equipment, such as skid pans, pallets, arches, and trailers, must be attached in a manner which will prevent overrunning of the towing vehicle, equipment or machine.

(5) Tractors, skidders, arches, or logs being yarded must not run over or rub against anchored lines, tailhold stumps, or other rigging.

(6) The yarding machine or vehicle, including its load, must be operated with safe clearance from trees, snags, logs, or other objects that may create a hazard for an employee.

(7) Each machine must be positioned during winching so the machine and winch are operated within their design limits.

(8) No load can exceed the rated capacity of the pallet, trailer, or other carrier.

(9) Arches must be equipped with line guards.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1115

Barriers For Securing Log Loads

(1) Barriers used to secure loads must:

(a) Be at least 15 feet high.

(b) Be designed to prevent logs from striking personnel as binders and wrappers are being removed.

(c) Have the barrier controls, if any, on the release side of the unloading station and forward of the truck cab guard.

(2) Barriers and the area surrounding the barrier structure must be free of accumulations of bark, mud and other debris.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1300

Scope of Rules

The purpose of the rules in Subdivision N is to provide minimum safety and health requirements for all public and private employers who engage in wildland fire prevention, wildland fire suppression or prescribed fire that includes activities such as, but not limited to:

(1) Fire line construction;

(2) Engine (fire truck) operation;

(3) Dozer, skidgine and pumper-cat operation;

(4) Snag felling;

(5) Fire detection;

(6) Forest patrols;

(7) Helicopter operation;

(8) Slash burning;

(9) Mop-up;

(10) Laying hose lines;

(11) Tending dip-tanks;

(12) Handling, mixing and applying fire suppression chemicals.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1303

Application of Rules

(1) Except as otherwise specified, the rules in Subdivision N apply to all personnel engaged in wildland fire prevention, wildland fire suppression or prescribed fire activities when there is potential for exposure to wildland fire hazards such as, but not limited to:

(a) Burn injuries;

(b) Burning embers;

(c) Extreme fire behavior;

(d) Entrapment;

(e) Falling snags;

(f) Rolling materials;

(g) Smoke inhalation.

(2) The rules in Subdivision N do not limit the use of other applicable safety and health rules.

(3) The rules in Subdivision N do not apply to personnel assigned to wildland fire suppression support activities, such as fire camp support positions which will not expose them to wildland fire hazards.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1305

General Requirements

(1) Tactical and command fire suppression communications must provide a clear line of communication to all affected personnel.

(2) When employees are required to handle, mix and/or apply hazardous chemicals, the employer must develop, implement and maintain a written hazard communication program meeting the requirements of Division 2, Subdivision 2/Z, Toxic and Hazardous Substances, 1910.1200, Hazard Communication.

(3) During the initial attack on a wildland fire, when the fire and/or the fire suppression activity creates a hazardous condition for traffic and warning signs and/or flaggers are not controlling traffic, a vehicle with emergency flashing lights must be used to warn traffic.

NOTE: See Division 7 Subdivision F, 437-007-0510 Roads, Vehicles, Flagging and Flammables.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1310

Personnel Assignments

(1) The employer and/or their authorized representative must take into account the physical capability of each employee to safely perform assigned tasks:

(a) Prior to job assignment; and

(b) While the employee performs those tasks.

(2) Personnel performing wildland fire suppression or prescribed fire activities except as provided for in OAR 437-007-1315(1) and (2), must:

(a) Work in teams of two or more; and

(b) Be positioned so they are close enough to render assistance to one another in case of an emergency.

NOTE: This rule does not prohibit the ignition and monitoring of burn piles and landings by one employee when a competent person has determined that conditions are such that the fire(s) will not spread beyond the fuels intended to be burned.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1315

Single Personnel Assignments

(1) Single employee assignments such as watchers, security and forest patrol personnel may take appropriate action to contain, control or extinguish a fire upon discovery only when:

(a) They have first reported the fire, described their intended fire suppression activities, and agreed on a checking system as required by OAR 437-007-0210; and

(b) Their fire suppression activities are consistent with firefighter training and safety; and

(c) There is an escape route to a safety zone that will not be cut off if the fire increases in size or changes direction.

(2) A competent person must ensure that watchers, security and forest patrol personnel, and other single employee assignment personnel who are expected to perform fire suppression activities:

(a) Have received Basic Wildland Fire Safety Training as required by OAR 437-007-1325; and

(b) Are qualified in the operation of assigned fire suppression machines, equipment, and use of fire fighting tools; and

(c) Are advised of the requirements of OAR 437-007-1315(1) and other job site conditions, known by the employer, which could affect the extent of their fire suppression activities; and

(d) Are physically capable of performing assigned fire suppression activities as required by OAR 437-007-1310(1).

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1320

Personal Protective Equipment

Personnel performing wildland fire suppression or prescribed fire activities must wear:

(1) Pants and a long-sleeved shirt made of cotton, wool, denim or other fire resistant materials.

NOTE: The employer is not required to provide the clothing listed in OAR 437-007-1320(1).

(a) Clothing made from common permanent-press materials or synthetic fibers that melt when exposed to flame or heat must not be worn.

(b) When special protective clothing made of aramid or other fire resistant materials is required by the employer, the employer must provide it at no cost to the personnel.

ADMINISTRATIVE RULES

(2) Footwear that:

(a) Covers and provides protection and support for the foot and ankle, such as heavy duty leather lace-up boots with an 8-inch high top.

(b) Provides for secure footing and traction for the assigned task.

NOTE: Caulked boots, in accordance with the requirement of OAR 437-007-0330, may be required for some fire suppression or prescribed fire duties.

(c) Is fire and melt resistant.

(d) Is made of or covered with chain saw cut resistant material when operating a chain saw.

NOTE: The employer is not required to provide the minimum basic footwear listed in OAR 437-007-1320(2).

(3) Head protection in accordance with the requirement of OAR 437-007-0305(1) and (2). When wearing hard hats around helicopters, the hats must be secured by a chin strap.

NOTE: To reduce the possibility of blowing objects when working around helicopters, hard hats need not be worn when a competent person has determined there is no danger from falling or flying objects.

(4) Upper body cover and/or hard hats of a high-visibility color in accordance with the requirement of OAR 437-007-0310.

(5) Eye and face protection in accordance with the requirements of OAR 437-007-0315.

(6) Hand protection in accordance with the requirements of OAR 437-007-0320(1) and (2).

(7) Leg protection in accordance with the requirements of OAR 437-007-0325 when operating chain saws.

(8) Hearing protection in accordance with the requirements of OAR 437-007-0335.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1325

Training

The following requirements are in addition to the training requirements of OAR 437-007-0140.

(1) The employer and/or their authorized representative must ensure that all personnel who may be called upon to do wildland fire suppression and/or prescribed fire activities receive Basic Wildland Fire Safety Training as follows:

(a) Once a year, between January 1 and the legal declaration of fire season, for personnel who are employed at the time training is presented.

NOTE 1: Personnel who have previously received Basic Wildland Fire Safety Training need only receive refresher training on those portions of the curriculum outlined in Appendix 7-C that are relevant to the fire suppression activities to which they may be assigned.

NOTE 2: Basic Wildland Fire Safety Training is not required for personnel who are assigned to fire support positions that will not expose them to wildland fire hazards.

(b) Newly hired and/or reassigned personnel who have not received Basic Wildland Fire Safety Training must be trained within 17 days of being assigned or dispatched to wildland fire suppression or prescribed fire activities. In the interim, they may perform wildland fire suppression, or prescribed fire activities provided they work under the direct supervision of a competent person who must:

(A) Brief personnel (prior to starting fire suppression or prescribed fire activities) about the escape route(s), safety zone(s), anticipated fire activity, and what to do if they get separated from the competent person; and

(B) Provide continuous on-the-job supervision; and

(C) Provide on-the-job fire safety training; and

(D) Supervise no more than 5 untrained personnel.

NOTE: When an untrained runner is enroute, direct supervision may be achieved by radio contact provided there is a competent person providing direct supervision at both the pick-up and drop-off points.

(2) Basic Wildland Fire Safety Training must:

(a) Be presented by a qualified person; and

(b) Provide instruction and training on the curriculum outline in Appendix 7-C; and

(c) Be presented in a language and manner that the employee(s) is able to understand.

(3) The employer must keep a current written record of Basic Wildland Fire Safety Training for each employee.

(4) Personnel who are issued fire shelters must receive instructions from a qualified person prior to issue, and at least once a year thereafter, on:

(a) How to inspect and care for the shelter; and

(b) How, when and where to deploy the shelter; and

(c) What a person needs to do in the deployed shelter.

NOTE: When fire shelters are required, an orderly transition for employee training must be consistent with fire suppression needs and employee safety.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1330

Equipment, Vehicles and Machines, General Requirements

(1) Fire fighting equipment, vehicles and machines must be:

(a) Inspected for defects prior to the start of each shift.

(b) Maintained in accordance with the appropriate manufacturers' recommendations.

(2) Fire fighting equipment, vehicles, and machines that are defective or damaged so as to render them hazardous to operate, must be removed from service and not returned to service until repairs are completed.

(3) A safe and adequate means of access and egress such as steps, ladders, and handholds must be provided and maintained to all parts of vehicles and machines where employees must go.

(4) Machine and vehicle access must comply with the Society of Automotive Engineers' SAE J185-1988 or ISO 2867:1994, Access Systems for Off-Road Machines.

(5) An effective means of communication must be established when it is necessary for personnel to communicate with the operator of a vehicle, equipment or machine.

(6) When military vehicles are used to transport personnel, they must be equipped with standard military seating, backrests and endgates or equivalent.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1335

Vehicle Operation

(1) The operation of vehicles must comply with the requirements of OAR 437-007-0520 through 437-007-0570.

(2) All equipment hauled on a vehicle must be adequately secured when the vehicle is in motion.

(3) Vehicles must be brought to a full stop before personnel disembark.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1340

Machine Operation

(1) When machines used for fire trail construction or fire fighting are operated on slopes in excess of the limitations for machine operation as defined in OAR 437-007-0935(1) and (2), a competent person must ensure that measures are taken to provide stability such as:

(a) Using the blade; or

(b) Tying to stumps, anchors, or other machines; or

(c) Using materials to limit the slope under the machine; or

(d) Limiting the operating range of movement and/or the machine loading to maintain stability.

(2) The machine operator and a competent person must agree how to safely operate on all steep slopes taking into consideration the:

(a) Experience of the operator.

(b) Limitations of the machine.

(c) The soil conditions.

(d) Direction of travel (traveling straight up and down the slope).

(e) Hazards of turning the machine on the slope.

(f) Weather.

(g) Load size.

(h) Any other adverse condition(s).

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

437-007-1345

Helicopter Operations

(1) Helicopter facilities must be kept clear of loose objects and unauthorized personnel.

(2) Personnel must not smoke within 50 feet of a helicopter, fuel storage, or fueling equipment.

(3) Unless authorized by the pilot or helicopter ground crew, personnel must stay at least:

(a) 50 feet away from small helicopters (50 feet or less overall length); and

(b) 100 feet away from large helicopters.

NOTE: Helicopter overall length, includes the tail boom and the rotors fully extended.

ADMINISTRATIVE RULES

(4) A competent person must provide a detailed briefing on helicopter safety procedures to all passengers prior to loading.

(5) Personnel assigned to ride in helicopters must:

(a) Be briefed in the correct approach, riding and off-loading procedures for the particular type of helicopter.

(b) Follow instructions of helicopter personnel at all times when around helicopter.

(c) Carry all tools at their side (not slung over their shoulder) when around helicopters.

(6) Unless told otherwise by a competent person, personnel must approach and leave the helicopter in full view of the pilot.

(7) Personnel must stay away from turning tail rotors at all times.

(8) Personnel must not stand directly beneath a hovering helicopter unless they have been trained or are being trained in performing sling load hookup or bucket filling operations.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2005, f. 5-27-05, cert. ef. 6-1-05

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Rules Amended: 437-002-0182

Subject: In late 2003 Oregon OSHA discovered that the requirements for live fire training, in OAR 437-002-0182(10)(c), are not usable, and in fact, don't exist. The Oregon State Fire Marshal's standard (OAR 837-010-0070(3)(b)(c) and (d)), referenced in Oregon OSHA's rule, was repealed several years ago, and no other standard has been adopted in its place.

OR-OSHA contacted some fire departments, and DPSST to review a variety of programs for live fire training. It became clear that the programs, though different, were usually based on the NFPA standard for live fire training. Oregon OSHA decided to ask for assistance from the Oregon OSHA Fire Fighters Advisory Committee (a standing committee with representatives from various parts of the Fire Service) to select, or develop a standard for live fire training. The first meeting was held in March 2004, followed by five more meetings, ending in November. The Committee based the development of a new standard, focused on occupational safety and health of fire fighters during live fire training, on NFPA 1403, Live Fire Training. Acceptable sources of ignition became a major topic. A petition for the use of drip torches was sent to the NFPA 1403 Subcommittee on Ignition Sources. The subcommittee agreed that ignition sources need to be addressed in the next (2007) draft of NFPA 1403. Unofficial acceptance by the subcommittee was given for the use of fuses. After further studying the use and safety of drip torches, the Oregon OSHA Fire Fighters Advisory Committee recommended allowing use of drip torches in the standard. Another major topic for discussion was calculation of water supply. Consensus of the committee was to use the calculations of NFPA 1142, 2001 edition, for the minimum water supply.

Adopted amendments are in Division 2/L, Oregon Rules for Fire Fighters standard OAR 437-002-0182(10)(c) and a new mandatory Appendix C to 437-002-0182(10)(c), Minimum Requirements for Live Fire Training.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0182

Oregon Rules for Fire Fighters

(1) Scope and Application.

(a) These rules shall apply to any and all activities, operations and equipment of employers and employees involved in providing fire protection services, and other emergency first response and related activities, which are subject to the provisions of the Oregon Safe Employment Act. These rules shall not apply to the following exempted fire fighting activities:

(A) Aircraft fire fighting and rescue;

(B) Forest and uncultivated, wildland fire fighting;

(C) Private industry fire brigades.

(D) Marine Fire Fighting and rescue.

EXCEPTION: When a public fire department elects to participate in one or more of the exempted fire fighting activities, that fire department shall comply with all of the provisions of OAR 437-002-0182.

(b) The provisions of OAR 437-002-0182 shall be supplemented by the provisions of other applicable safety and health rules of OR-OSHA.

(2) Definitions.

(a) Aerial device: An aerial ladder, elevating platform, aerial ladder platform, or water tower that is designed to position personnel, handle materials, provide egress and discharge water.

(b) Afterflame: The time a test specimen continues to flame after the flame source has been removed.

(c) ANSI: American National Standards Institute.

(d) Apparatus: A mobile piece of fire fighting equipment such as pumper, water tender, etc.

(e) Drill tower: A structure which may or may not be attached to the station and which is principally used for nonclassroom training of the fire fighters in fire service techniques, and which is over two stories in height.

(f) Emergency incident: Any situation to which the fire department responds to deliver emergency services, including rescue, fire suppression, medical treatment, and other forms of hazard control and mitigation.

(g) Emergency scene: The site where the suppression of a fire or the emergency exists.

(h) Fire chief: An employer representative responsible for managing the fire department's operation.

(i) Fire fighter:

(A) A person involved in performing fire department duties and responsibilities, which include fire suppression.

(B) A fire fighter may be a career or volunteer member of a fire department and may occupy any position or rank within the fire department.

(j) Fire retardant: A material to reduce, stop or prevent flame spread.

(k) Fire training: Training received by fire fighters to maintain proficiency in the performance of their assigned duties.

(l) Flame-resistance: The property of materials, or combinations of component materials, to retard ignition and restrict the spread of flame.

(m) Hazardous material incident: The accidental release of hazardous materials from their containers.

(n) Helmet: A head protective device consisting of a rigid shell, energy absorption system, and chin strap intended to be worn to provide protection for the head or portions thereof, against impact, flying or falling objects, electric shock, penetration, heat and flame.

(o) Hose tower: A vertical structure where hose is hung to dry.

(p) IFSTA: International Fire Service Training Association.

(q) Lifeline: Length of rope to which employees are secured when in extremely hazardous areas.

(r) Live fire training: Any fire set within a structure, tank, pipe, pan, etc., under controlled conditions to facilitate the training of fire fighters under actual fire conditions.

(s) MSHA: Mine Safety and Health Administration.

(t) NFPA: National Fire Protection Association.

(u) Nondestructive testing: A test to determine the characteristics or properties of a material or substance that does not involve its destruction or deterioration.

(v) Private Industry Fire Brigades: A group of employees within an industry who are required to fight interior structural fires at their place of employment.

(w) Protective clothing: The clothing or equipment worn to protect the head, body and extremities from chemical, physical and health hazards.

(x) Quick disconnect valve: A device which starts the flow of air by insertion of the hose which leads from the facepiece into the regulator of self-contained breathing apparatus, and stops the flow of air by disconnection of the hose from the regulator.

(y) Rescue saw (Cutoff saw): A powered saw with a large circular cutting blade covered in part by a movable guard used to cut metal, wood, or concrete enclosures.

(z) Respirators:

(A) Atmosphere-supplying respirators: May be self-contained in which a cylinder of air or oxygen or an oxygen generating chemical provides the necessary oxygen for breathing, or a hose-type respirator in which the air is supplied from an external source.

(B) Air-purifying respirators: Contain chemical cartridges and/or filters to remove the contaminant prior to breathing.

(C) Positive Pressure demand respirators (Positive pressure respirators): Types of respirators which constantly and automatically maintain a positive pressure in the mask by the introduction of air when a spring-

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loaded valve senses that the positive pressure has been lowered because of inhalation or the leakage of air from the mask.

(aa) Responding: The act of answering an emergency call or other alarm.

(bb) Scabbard: A guard which will prevent accidental injury and which covers the blade and pick of an axe or other sharp instrument when worn by the fire fighter.

(cc) SCBA: A self-contained breathing apparatus designed to provide the wearer with a supply of respirable air carried in and/or generated by the breathing apparatus. This apparatus requires no intake of air or oxygen from the outside atmosphere, and can be designed to be a demand or pressure demand type respirator.

(dd) Station (Fire station): Structure in which fire service apparatus and/or personnel are housed.

(ee) Tailboard: Standing space at rear of an engine or pumper apparatus where fire fighters ride.

(ff) Training: The process of making proficient through instruction and hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used and in the performance of assigned duties.

(gg) Warning light: A flashing or rotating light.

(3) Organizational statement. The employer shall prepare and maintain a statement or written policy which includes basic organizational structure and functions of the organization, in addition to the type, amount, and frequency of training to be provided to fire fighters. This statement shall be made available for inspection by the Administrator and by employees or their designated representatives.

(4) Personnel.

(a) The employer shall review and evaluate the physical capability of each employee annually to determine their ability to perform duties which may be assigned. The review and evaluation shall be accomplished through physical examination, stress testing or satisfactory performance demonstrated during the performance of their assigned duties.

(b) The employer shall not permit an employee with known medical condition which would significantly impair their ability to engage in fire suppression activities at the emergency scene unless a physician's certificate of the employees' fitness to participate in such activities is provided. This shall not limit the employer's ability to assign personnel to support activities (versus fire suppression activities).

(5) Employer's Responsibility.

(a) Each employer shall comply with the provisions of this division to protect the life, safety, and health of employees.

(b) It shall be the responsibility of the employer to establish and supervise:

(A) A safe and healthful working environment, as it applies to non-emergency conditions or to emergency conditions at the scene after the incident has been terminated, as determined by the officer in charge; and

(B) Programs for training employees in the fundamentals of accident prevention.

(C) A safe and healthful working environment, as it applies to live fire training exercises.

(c) The employer shall maintain all equipment in a safe condition.

(d) The employer shall see that employees who participate in exempted fire fighting activities listed in OAR 437-002-0182(1) are properly trained, protected, clothed and equipped for the known hazards of that particular emergency operation.

NOTE: The following note refers to the Respiratory Protection Standard, 1910.134(g)(3) and (4), Procedures for Interior Structural Fire Fighting ("two-in/two-out rule") adopted in Oregon July 7, 1998.

NOTE: If, upon arriving at the scene, members find an imminent life threatening situation where immediate action may prevent the loss of life or serious injury, the requirements for personnel in the outside standby mode may be suspended, when notification is given by radio to incoming companies that they must provide necessary support and backup upon their arrival.

(6) Employee's Responsibility.

(a) Each fire fighter shall comply with the provisions of OAR 437-002-0182 which are applicable to his/her own actions and conduct in the course of his/her employment.

(b) Fire fighters shall notify the appropriate employer and/or safety committee representative of unsafe practices and of unsafe conditions of equipment apparatus or workplaces.

(c) All fire fighters, at regularly scheduled times, shall attend required training and/or orientation programs designed to increase their competency in occupational safety and health.

(d) Fire fighters and other employees shall apply the principles of accident prevention in their work. They shall use all required safety devices and protective equipment.

(e) Each fire fighter shall take proper care of his/her protective equipment.

(f) Fire fighters who are expected to perform fire fighting operations shall notify their employer when health conditions arise or are discovered that will limit their capability of performing those duties.

(7) Safety Committee.

(a) A fire department safety committee shall be established and administered by public or private employers in accordance with the requirements of OAR 437-001-0765 in Division 1, General Administrative Rules.

(b) When applicable, the representation on the safety committee shall include both career and volunteer fire fighters.

(8) Incident Management. An incident management system that meets the requirements of NFPA standard 1561, on Fire Department Incident Management, shall be established with written standard operating procedures, applying to all members involved in emergency operations. All members involved in emergency operations shall be familiar with the system.

(9) Accountability.

(a) The fire department shall establish written standard operating procedures for a personnel accountability system in accordance with Section 2-6, 1995 of NFPA 1561, standard on Fire Department Incident Management System, by January 1, 1999, that provides for the tracking and inventory of all members operating at an emergency incident.

(b) It shall be the responsibility of all members operating at an emergency incident to actively participate in the personnel accountability system.

(10) Fire Fighting Training and Education.

(a) The employer or employer representative shall establish and implement a policy for the delivery of education and training designed to develop and maintain an appropriate level of knowledge, skill, and ability throughout the fire fighting classifications (ranks). Such education and training shall be provided to fire fighters before they perform assigned duties on a continuing basis.

(b) Before fire fighters participate in structural fire fighting activities, or in live fire training in a structure, they shall meet the training levels prescribed by the Department of Public Safety Standards and Training's (DPSST) 'Entry-level Firefighter' or have equivalent training.

(c) When live fire training occurs, it must be conducted under the direction of the fire department training officer, or employer authorized representative. All live fire training must be conducted following the requirements of Appendix C of this standard.

(d) During live fire training, fire fighters shall wear the protective equipment normally required for that type of fire fighting.

(e) When rope rescue training occurs, it shall be conducted under the direction of the fire department training officer or department-designated authority in accordance with the equipment manufacturers' recommendations. The training officer shall keep records of the manufacturers' training requirements, and shall comply with all such requirements.

(f) All fire hoses used by fire departments for training and fire combat shall meet the service testing requirements noted in Chapter 5 of NFPA 1962, 1993 edition.

(g) The employer shall provide training for the purpose, proper selection, fitting, use, and limitations of personal protective equipment.

(h) The employer shall assure that each employee is informed of the procedure of reporting unsafe work conditions or equipment.

(11) General Requirements for Protective Clothing.

(a) The employer shall provide to employees all required protective clothing, except that an employee at the employee's option may supply protective clothing. The employer shall provide the protective clothing at no cost to employees. The protective clothing must meet the requirements in OAR 437-002-0182(11) through (16), whether supplied by the employer or employee.

(b) The employer shall assure that new protective clothing intended for structural fire fighting which is ordered, used or purchased after the effective date of this division, meets the requirements contained in OAR 437-002-0182(11) through (16). The employer shall assure that fire fighters wear this clothing when performing structural fire fighting.

(c) In situations other than structural fire fighting, the employer shall ensure that protective clothing appropriate for the known hazards of that particular emergency operation is worn.

(d) Protective clothing currently in use which does not meet the requirements of OAR 437-002-0182(11) through (16) may continue to be used until October 1, 1998, if it was designed for fire fighting purposes and meets the manufacturer's original specifications and maintains the protective capabilities for which it was designed.

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(e) The employer shall assure that appropriate protective clothing protects the head, body, and extremities and consists of at least the following components: foot and leg protection, hand protection, body protection, and eye, face and head protection.

(12) Body Protection.

(a) Body protection shall be as follows to ensure full body protection for the wearer.

(b) Coats and trousers used by structural fire fighters shall be at least equivalent to the National Fire Protection Association (NFPA) standard, No. 1971, 1991 edition, entitled "Protective Clothing for Structural Fire Fighting." (See also Appendix A.)

(13) Head Protection.

(a) Head protection shall consist of a protective head device, ear protection, flaps and chin strap which meet the requirements of NFPA Standard 1971-2000, Protective Ensemble for Structural Fire Fighting.

(b) Use, care, alterations and maintenance instructions for protective headgear shall be supplied for each helmet.

(c) Care, maintenance, and alteration of helmets shall conform to the manufacturer's recommendations.

(d) During structural fire fighting helmet accessories designed to provide or maintain protection from health and safety hazards shall be worn in the manufacturer's recommended position. (See also Appendix A.)

(e) A flame-resistant protective hood which will not adversely affect the seal of a respirator facepiece and meeting the requirements of NFPA Standard 1971, 1996 edition, after January 1, 1999 shall be worn during interior structural fire fighting operations to protect the sides of the face and hair.

(14) Hand Protection.

(a) Hand protection for fire fighting activities shall consist of protective gloves or glove system which will provide protection against cut, puncture, and heat penetration. Gloves or glove system shall meet the requirements of NFPA Standard 1973, 1988 edition, titled "Gloves for Structural Fire Fighting."

(15) Foot and Leg Protection.

(a) Foot and leg protection shall meet the requirements of OAR 437-002-0182(15)(a)(A) and (B) and may be achieved by either of the following methods:

(A) Fully extended boots which provide protection for the legs; or

(B) Protective shoes or boots worn in combination with protective trousers that meet the requirements of OAR 437-002-0182(12).

(b) Protective footwear shall meet the requirements of NAPA Standard 1974, 1992 edition, titled "Protective Footwear for Structural Fire Fighting."

(c) Fire fighters' boots may be resoled but must meet the requirements of this rule.

(16) Eye and Face Protection. Eye and face protection worn by fire fighters at the fire ground shall comply with the following regulations:

(a) General requirements. Face protection shall be required where there is a reasonable probability of injury that can be prevented by such protection, when such face protection does not protect the eyes from foreign objects additional eye protection shall be provided.

(b) When self-contained respiratory equipment is being utilized by fire fighters, additional eye and face protection will not be required. Employers shall make conveniently available a type of protection suitable for the work to be performed, and employees shall use such protectors. Protectors shall meet the following minimum requirements.

(A) They shall provide adequate protection against the particular hazards for which they are designed.

(B) They shall be reasonably comfortable when worn under the designated conditions.

(C) They shall be durable.

(D) They shall be capable of being disinfected.

(E) They shall be easily cleanable.

(F) Protectors that can be worn over corrective lenses shall be available for those who need them, and should be kept clean and in good repair.

(c) Face shields.

(A) Face shields shall accommodate any of the following styles;

(i) Clear transparent.

(ii) Colored transparent.

(B) Disinfection. When a person is assigned protective equipment, it is recommended that this equipment be cleaned and disinfected regularly.

(C) Face shields must be an integral part of the fire helmet and may be installed in a fixed position or hinged allowing adjustment of the shields.

(D) In the event breathing apparatus is being used which incorporates a face mask, the face mask will be considered an acceptable face shield.

(d) Goggles, flexible, or cushioned fitting. Goggles shall consist of a wholly flexible frame, forming a lens holder or a rigid frame with integral lens or lenses, having a separate, cushioned fitting surface on the full periphery of the facial contact area.

(A) Materials used shall be chemical-resistant, nontoxic, nonirritating and slow-burning.

(B) There shall be a positive means of support on the face, such as an adjustable headband of suitable material or other appropriate means of support to retain the frame comfortably and snugly in front of the eyes.

(e) Design, construction, testing, and use of devices for eye and face protection shall be in accordance with ANSI Z87.1, Occupational Eye and Face Protection (1979).

NOTE: Fire fighters shall be protected from the effects of noise exposures which exceed the noise levels deemed to be safe as provided in OAR 437, Division 2/G, 1910.95, Occupational Noise Exposure.

(17) Requirements for Respiratory Protection. See OAR 437, Division 2/I, 1910.134, Respiratory Protection.

(18) Criteria for Approved Self-Contained Breathing Apparatus.

(a) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet DOT and NIOSH criteria.

(b) Self-contained breathing apparatus shall be provided with an indicator which automatically sounds an audible alarm when the remaining air supply of the apparatus is reduced to within a range of 20 to 25 percent of its rated service time.

(19) (Reserved).

(20) Personal Alert Safety System (PASS). Each member involved in rescue, fire suppression, or other hazardous duties after January 1, 2000, shall be provided with and shall use a PASS device in the hazardous area when self-contained breathing apparatus is in use. PASS devices shall meet the requirements of NFPA 1982, Standard on Personal Alert Safety Systems for Fire Fighters. Each PASS device shall be tested at least monthly and shall be maintained in accordance with the manufacturer's instructions.

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) Breathing Air Compressors and Cylinders. In addition to the requirements contained in 1910.134(i), air samples shall be taken every 6 months from the compressor and analyzed by the employer or an independent laboratory for Grade D breathing air. Air samples shall also be tested when the system is installed or repaired. Analysis shall be conducted according to ANSI/CGA Standard G7.1-1989 edition, Commodity Specification for Air.

(25) Identification of Hazardous Material Locations.

(a) A means shall be provided for identifying nonresidential premises where hazardous materials are stored, as defined in the Uniform Fire Code, 1991 edition, as amended by the State of Oregon, effective July 15, 1992, under Articles 4 and 80, and in quantities as set forth in the hazardous material permit required by Article 4 of the Uniform Fire Code.

(b) Hazardous chemicals required to be identified by this section are those defined in Article 9, Section 9.110, and Article 80, Section 80.101 of the Uniform Fire Code.

(26) Hazardous Material Response Plan.

(a) Fire department that expects to or plans to respond to hazardous material incidents shall develop a written response plan.

(b) The written response plan must contain the policies and procedures on:

(A) Pre-emergency planning and coordination with outside parties,

(B) Personnel roles, lines of authority, training, and communication,

(C) Emergency recognition and prevention,

(D) Safe distances;

(E) Scene security and control;

(F) Evacuation procedures;

(G) Decontamination;

(H) Emergency medical treatment and first aid;

(I) Personnel withdrawal procedures;

(J) Critique of response and follow-up;

(K) Personal protective equipment and emergency equipment and response procedures.

(c) The incident commander shall be responsible for:

(A) Identification of the hazardous substance and condition;

(B) Implementing emergency operations;

(C) Ensuring personal protective equipment is worn;

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(D) Limit access to hot zone to those with a specific mission assignment;

(E) Implementing decontamination procedures;

(F) Designating a safety officer;

(G) Using appropriately trained personnel;

(H) On scene medical surveillance for emergency responders.

(27) Fire Apparatus Area.

(a) Walkways around apparatus shall be kept free of obstructions.

(b) The station's apparatus floors shall be so far as practical kept free of grease, oil, and tripping hazards.

(c) No Class I or II flammable liquids shall be used for cleaning purposes to remove grease or dirt from apparatus.

(d) Exhaust gases from diesel or gasoline apparatus within buildings shall be maintained within the limits of OAR 437, Division 2/Z, OAR 437-002-0382, Oregon Air Contaminant Rules.

(28) Design and Construction of Fire Apparatus.

(a) All fire apparatus with the exception of specialized apparatus shall conform to OAR 437, Division 2/N, Oregon Rules for Commercial and Industrial Vehicles, OAR 437-002-0223.

(b) Employers who have purchased used fire apparatus or used military equipment prior to the effective date of this division shall not be required to bring them under a more stringent code than the one in force at the time the apparatus was manufactured. The exception to this rule would be seat belts and communication systems between the tailboard and driver compartment as required by OAR 437-002-0182(29) (Automotive Fire Apparatus Equipment) and roll bars on all open top off-road vehicles as required by OAR 437-002-0182(28)(f).

(c) Fire fighters' vehicle tailboards shall not project outboard of the vehicle sides or fenders and shall be designed to provide safe footing.

(d) Exhaust systems shall be installed and maintained in proper condition and shall be so designed as to minimize the exposure of the fire fighter to the exhaust gases.

(e) The loaded gross weight and empty height of the vehicle shall be posted in the vehicle such that it can be clearly read by the driver.

(f) Roll bars shall be in place on all open top off-road vehicles for rollover protection.

(29) Automotive Fire Apparatus Equipment.

(a) All equipment on a vehicle shall be adequately secured when the vehicle is in motion.

(b) Workers being transported by fire department vehicles shall ride only in designated secure positions. Safety restraints shall be provided for fire fighters riding the tailboard. (See also OAR 437, Division 2/N, Oregon Rules for Commercial and Industrial Vehicles, OAR 437-002-0223.)

(c) Vehicles with obstructed view to the rear of the vehicle when backing, shall be equipped with:

(A) An automatic back-up alarm which shall be sounded immediately on backing; or

(B) A fire fighter, who is visible in the driver's left-side mirror, shall stand to the rear of the truck to guide the driver while backing.

(d) Fire fighting vehicles shall be brought to a full stop before workers disembark.

(e) If workers are required to ride the tailboard, an electrical signal system or voice communication system shall be installed between the tailboard and the driver's compartment. A code of signals shall be used for controlling the movement of the vehicle.

(f) When traffic flow is inhibited or encroachment of the traffic lane occurs, vehicles equipped with emergency warning lights shall be used to control traffic at emergency scenes. The use of traffic cones, fire department personnel, police, or other traffic control measures shall be used as soon as practical.

(30) Automotive Apparatus Maintenance and Repair. Each employer shall establish written records and procedures whereby apparatus has:

(a) A scheduled monthly maintenance check; or

(b) A maintenance check each time the apparatus is returned to the station following an emergency response, a drill, or any type of test drive.

(31) Tires. Tires which are excessively worn, cracked, deteriorated or damaged in any way shall not be used. All tires shall have a minimum tread depth of 2/32-inch.

(32) Aerial Devices.

(a) Aerial devices used for fire fighting shall be inspected and tested by a person competent in performing such tests and inspections in accordance with the recommendations of NFPA Standard 1914, 1991 edition, at least annually.

(b) Where defects are found in critical components of an aerial device, the repairs shall be tested and certified in accordance with NFPA

Standard 1914, 1991 edition, by a registered professional engineer or manufacturer of the apparatus or an American Welding Society (AWS) Certified Welding Inspector. A permanent record of such tests and repairs shall be maintained for each unit.

(33) Hose Drying Towers.

(a) Floor openings on hose tower platforms shall be equipped with a guardrail meeting the requirements of OAR 437, Division 2/D, 1910.23, Guarding Floor and Wall Openings and Holes.

(b) The toeboard requirements for elevated work platforms in hose drying towers shall not apply unless hand tools or objects other than hoses are carried onto the platforms.

(c) The requirements for ladders shall meet the requirements of OAR 437, Division 2/D, 437-002-0027, Fixed Ladders.

(d) Ropes used to hoist hose in the hose towers shall have a breaking strength to safe load strength (rated working load) ratio of 3 to 1.

(34) Drill Towers. Permanent fixed ladders on the outside of drill towers and drill buildings are exempt from the requirements of offset platform landings and ladder cage guards.

(35) Testing, Maintenance and Inspection of Fire Service Equipment.

The employer shall maintain and inspect fire service equipment at least annually and perform any tests recommended by the manufacturers at the date of manufacture, or the recommendations of NFPA or IFSTA.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-2000, f. & cert. ef. 1-28-00; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 3-2005, f. & cert. ef. 6-10-05

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

Adm. Order No.: WCD 4-2005

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Rules Amended: 436-105-0003, 436-105-0005, 436-105-0500, 436-105-0510, 436-105-0520, 436-110-0002, 436-110-0005, 436-110-0240, 436-110-0310, 436-110-0320, 436-110-0325, 436-110-0330, 436-110-0335, 436-110-0345, 436-110-0350, 436-110-0380, 436-110-0900

Subject: The agency adopts OAR 436-105, "Employer-at-Injury Program." These rules:

- Allow the insurer to request that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began; otherwise the rules in effect at the time of the request apply;
- Clarify that Employer-at-Injury Program benefits are available for "own motion" claim openings under ORS 656.278;
- Extend benefits to include a "skills building," class or course taken to enhance an existing skill or develop a new skill;
- Allow the insurer to accept updated restrictions and releases from a medical service provider treating the worker on a referral basis, with the exception of a regular work release;
- Do not require payroll records to show hours worked each day unless the worker has hourly restrictions;
- Provide that if the insurer or the Workers' Compensation Division disallows wage subsidy reimbursement for part of a payroll period, and payroll records do not show individual dates and hours worked, the gross wages will be divided by the number of days in the payroll period, and the prorated value of each day will be multiplied by the number of eligible days to determine the reimbursement amount for the payroll period;
- Provide for the compilation of up to 66 days of wage subsidy during a 24-month period, due to gaps in transitional work;
- Disallow reimbursement for any day during which the worker exceeds his or her injury-caused limitations - currently this terminates Employer-at-Injury Program benefits; however, if an employer uses a time clock, up to 30 minutes per day will be allowed for the

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worker to get to and from the time clock and the worksite without exceeding hourly restrictions;

- Allow the insurer or employer to get clarification about the worker's medical release any time prior to submitting the reimbursement request;

- Increase the maximum reimbursement from \$750 to \$1,000 for tuition, books, and fees for a class or course of instruction; provide that accredited on-line or accredited self-study courses qualify for reimbursement; and

- Allow reimbursement if the employer in good faith paid for the costs of a class or course after the worker agreed to take part in the training and then refused to attend.

The agency adopts OAR 436-110, "Preferred Worker Program." These rules:

- Increase access to Preferred Worker Program benefits by allowing the employer at injury to request reemployment assistance for modified regular employment or a new job offered to its worker - up to \$25,000 for a worksite modification, up to six months of wage subsidy, and obtained employment purchases;

- Redefine "hire date" such that requests for reemployment assistance received more than 30 days after the hire date can be processed - the hire date is then 12:01 AM the day following the request if the request is sent to the division more than 30 days after the start-work date;

- Delete the requirement that workers submit requests for premium exemption and wage subsidy within 90 days of the hire date and clarify how the effective dates will be determined.

- Clarify that Preferred Worker Program benefits are available for "own motion" claim openings under ORS 656.278;

- Provide that if the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment; and

- Provide that worksite modification may also include the means to protect modifications purchased by the Preferred Worker Program in an amount not to exceed \$2,500.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us

Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-105-0003

Applicability of Rules

(1) These rules apply to all individual Employer-at-Injury Programs begun on or after July 1, 2005. These rules apply to all reimbursement requests made to the division in accordance with OAR 436-105-0540(2) on or after July 1, 2005 regardless of the date an Employer-at-Injury Program began, unless the insurer requests that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-105-0005

Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(5) "Employer-at-Injury" means the organization in whose employ the worker sustained the injury or occupational disease or made the claim for aggravation, or the employer at the time of an Own Motion opening under ORS 656.278.

(6) "Fund" means the Workers' Benefit Fund.

(7) "Premium" means the premium which results from calculating payroll multiplied by applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification less any discount, assessments, surcharges, or taxes.

(8) "Regular employment" means the employment the worker held at the time of injury, the claim for aggravation, or Own Motion opening under ORS 656.278.

(9) "Reimbursable wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. Bonus pay shall be considered reimbursable only when provided as part of a written contract as a means to increase a worker's wages. Any other form of remuneration is not reimbursable.

(10) "Skills building" means a class or course of instruction taken by the worker for the purpose of enhancing an existing skill or developing a new skill. When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction.

(11) "Transitional Work" means temporary work with the employer-at-injury which is not the worker's full duty regular work and is assigned because the worker cannot perform full duty regular work. Transitional work must be within the worker's injury-caused limitations and may be created through modification of the worker's regular work, job restructuring, assistive devices, worksite modification(s), reduced hours, or reassignment to another job. Transitional work must be within the employer's course and scope of trade or profession, unless the work is "skills building."

(12) "Worker Leasing Company" means the person which provides workers, by contract and for a fee, as prescribed in ORS 656.850.

(13) "Work site" means a primary work area available for a worker to use to perform the required job duties. The work site may be the employer's, client's, or worker's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A work site may include a worker's personal property or vehicle if required to perform the job.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-105-0500

Insurer Participation in the Employer-At-Injury Program

(1) An insurer shall be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer shall notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice shall be issued:

(a) Upon acceptance or reopening of a non-disabling or disabling claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance shall contain the following language:

(a) The notice to the worker shall appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

(b) The notice to the employer-at-injury shall appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer shall administer the Employer-at-Injury Program according to these rules. The insurer shall assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (6) of this rule, from the medical service provider;

(b) Identify a transitional work position;

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(c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program Purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2).

(6) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the accepted conditions of the claim. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical releases qualify under these rules:

(A) A medical release that states the worker's specific restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work.

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (e) of this section;

(d) A medical release with no specific end date expires in 30 days, except medical releases that indicate the restrictions are permanent;

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, unless, within 14 days of the specific end date or missed appointment, the medical service provider provides a new medical release or a signed and dated statement that the previous medical release is still in effect;

(f) If the worker's medical service provider refers the worker to another medical service provider for treatment, restrictions specified in the medical release in effect at the time of the referral will not expire until the worker obtains a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization, except:

(A) The insurer may accept updated restrictions and releases from the medical service provider to whom the worker is referred except for a release to regular work; and

(B) If the worker does not obtain a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization within 30 days from the last referral appointment, the medical release will expire on the date of the last treatment with the referral medical service provider.

(g) An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last *Employer-at-Injury Program Reimbursement Request*. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the Wage Subsidy period as follows:

(A) Payroll records shall state the payroll period, wage rate(s), and the worker's gross wages for the Wage Subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy;

(C) If the insurer or the division disallows reimbursement for part of a payroll period, and the payroll record does not indicate the individual dates and hours worked, the gross wages will be divided by the number of days in the payroll period. The prorated value of each day will be multiplied

by the number of eligible days to determine the reimbursement amount for the payroll period; and

(D) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program Purchases;

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2);

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services, if applicable;

(h) The written acceptance by the worker when skills building is used as transitional work; and

(i) Documentation, including course title, curriculum and accreditation for skills building used for transitional work when Employer-at Injury Program Purchases are requested.

(8) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)

Stats. Implemented: ORS 656.340 & 656.622

Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-105-0510

Eligibility and End of Eligibility for the Employer-at-Injury Program

(1) The eligibility criteria for an employer are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage during and through the Employer-at-Injury Program period;

(b) The employer is the employer at injury as defined in OAR 436-105-0005;

(c) The employer is re-employing an eligible worker while the worker's claim is open; and

(d) The employer is not currently ineligible for Employer-at-Injury Program benefits under OAR 436-105-0560.

(2) A worker is eligible for the Employer-at-Injury Program if the worker has an accepted Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify.

(3) Reasons for ending Employer-at-Injury Program eligibility include the following, whichever occurs first:

(a) The worker or employer no longer meets the eligibility provisions stated in sections (1) and (2) of this rule;

(b) The worker's claim is closed;

(c) The Employer-at-Injury Program reimbursement is requested; or

(d) Sanctions under OAR 436-105-0560 preclude eligibility.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78, WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0020, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0020; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0280; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0520; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-105-0520

Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening, for a non-disabling claim or a disabling claim. If a non-disabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-At Injury Program may be used again. The worker must return to transitional work in order for the employer to receive Employer-at-Injury

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Program assistance except as provided in paragraph (2)(d)(B) and (3)(a)(C) of this rule. Assistance available includes:

(1) Wage Subsidy provides 50 percent reimbursement of the gross wages paid the worker for transitional work. Wage Subsidy benefits are subject to the following conditions:

(a) A Wage Subsidy may not exceed 66 work days and must be completed within a 24 consecutive month period;

(b) A Wage Subsidy may not start or end with paid leave;

(c) Reimbursement is limited to wages for hours actually worked, or hours of paid leave;

(d) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;

(e) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

(2) Worksite Modification means altering a work site by renting, purchasing, modifying, or supplementing equipment, or changing the work process to enable a worker to work within the limitations imposed by the compensable injury or occupational disease. Maximum reimbursement is \$2,500. Worksite Modification assistance is subject to the following conditions:

(a) The worker's restrictions must be known on, or prior to, the date Worksite Modification purchases are initiated;

(b) The form of modification will be determined based on the worker's inability to perform the job due to the stated specific work restrictions caused by the compensable injury or occupational disease. The insurer makes the approval/denial decision and may deny a Worksite Modification if it determines the modification will be of little or no use to the worker during the Employer-at-Injury Program;

(c) The insurer may email the division's Reemployment Assistance Unit for help in determining the appropriateness of Worksite Modifications. The Reemployment Assistance Unit consultants will use the restriction information provided by the insurer, and their own professional judgment and experience to answer the insurer. The following information should be emailed to PWP.Oregon@state.or.us:

(A) Worker's name, date of injury, and claim number;

(B) Job description of transitional work including physical demands;

(C) Accepted conditions and any surgery performed;

(D) Worker's restrictions at the time purchases were or are to be initiated; and

(E) Modification items being requested.

(d) Modifications must be provided for and used by the worker during the Employer-at-Injury Program, except under the following conditions:

(A) The modification equipment had been ordered during the Employer-at-Injury Program, and documentation is provided that the equivalent modification item(s) were loaned to and used by the worker while the worker and employer were eligible for the Employer-at-Injury Program; or

(B) The employer can demonstrate that the modification(s) were provided in good faith and the worker refused to return to work.

(e) The maximum reimbursement for a chair is \$1000;

(f) Worksite Modification items become the employer's property upon the end of the Employer-at-Injury Program, except for modification items unique to the worker, such as a custom-designed tool to adapt the worker's prosthesis to a job-related task. Such items become the worker's property;

(g) Justification for a Worksite Modification must be documented and include a written statement of the worker's specific work restrictions from the medical service provider; identification of job duties which exceed the worker's stated limitations; and a statement of how the Worksite Modification overcame the worker's restrictions.

(3) Employer-at-Injury Program Purchases are limited to:

(a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skill building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum reimbursement is \$1,000. Tuition, books, fees, and required materials shall be provided under the following conditions:

(A) Instruction must be provided by an educational entity accredited or licensed by an appropriate body or be an accredited on-line or accredited self-study course;

(B) Costs for tuition, books, fees, and required materials may be fully reimbursed if the worker began participation in the class or course while eligible for the Employer-at-Injury Program; or

(C) The employer in good faith paid for the costs of the class or course after the worker agreed to take part in the training and then the worker refused to attend.

(b) Tools and equipment required for the transitional work position limited to items mandatory for employment. Tools and equipment will be provided, subject to the following conditions:

(A) Purchases must not include items the worker possesses or duplicate Worksite Modification items;

(B) Tools and equipment may be rented or purchased;

(C) Tools and equipment that were purchased become the employer's property upon the end of the program;

(D) Tools and equipment are for future transitional work unless the tools and equipment are assigned to the worker due to the worker's injury-caused permanent limitations;

(E) The purchase of tools and equipment does not qualify for reimbursement if their use exceeds the worker's injury-caused medical release; and

(F) The maximum reimbursement is \$1000;

(c) Clothing required for the job, except clothing the employer normally provides or the worker already possesses. Clothing becomes the worker's property. Maximum reimbursement is \$400.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 4367-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0510; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0002

Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the Preferred Worker Program, who is qualified, and how to receive assistance and reimbursements.

(2) The Preferred Worker Program encourages the reemployment of workers whose on-the-job injuries have resulted in permanent disabilities and who cannot return to the employment they had at the time of injury, claim for aggravation, or own motion opening under ORS 656.278, because of those disabilities by providing incentives to employers.

(3) The Preferred Worker Program is a worker and employer-at-injury activated program. The program consists of Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, Obtained Employment Purchases, and Worksite Modification. A Preferred Worker may offer reemployment assistance to an employer. The employer-at-injury may also request reemployment assistance for modified regular employment or a new job offered to their worker.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 4367-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0005

Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

ADMINISTRATIVE RULES

(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(4) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim which limits the worker from performing one or more of the worker's regular job duties.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Division approval" means a Preferred Worker agreement signed by an authorized division representative.

(7) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.

(8) "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division shall determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries resulting in permanent disability.

(9) "Fund" means the Workers' Benefit Fund.

(10) "Hire date" means the date the worker started work for the employer in the employment for which benefits are requested if the request for Preferred Worker Program assistance is sent to the division prior to or within 30 calendar days after the start-work date. In calculating the 30-day period under this section, the hire date is not included, and if the 30th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 30-day period. The hire date is 12:01 AM the day following the request if the request is sent to the division more than 30 days after the start-work date.

(11) "Premium" means premium which results from a calculation which takes payroll multiplied by applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification less any discounts, assessments, surcharges, or taxes.

(12) "Regular employment" means the employment the worker held at the time of the injury, claim for aggravation, or own motion opening under ORS 656.278. Regular employment which has been substantially modified as described in OAR 436-110-0380 is not regular employment for purposes of the Preferred Worker Program.

(13) "Reimbursable wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. Bonus pay shall be considered reimbursable only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one-time bonuses paid at the employer's discretion, and safety bonuses, are not reimbursable. Wages do not include tips, discretionary bonuses, paid leave cash-outs, employee insurance or benefits programs, employee discounts, or other forms of remuneration not included as part of the worker's gross wages. Benefits paid as wages or cash, even if reported as part of a worker's gross wages, are not subject to reimbursement.

(14) "Worksite" means a primary work area which is in Oregon, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, worker's, or worker leasing company's client's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. If the "worksite" is mobile, it must be available in Oregon for inspection and modification.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0010, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0240

Insurer Participation in the Preferred Worker Program

(1) The insurer of the employer at injury shall be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the Preferred Worker Program.

(2) The insurer shall notify the worker and employer at injury in writing of the reemployment assistance available from the fund. A notice shall be issued:

(a) Within five days of a worker's release for work after the worker has been declared medically stationary by the attending physician;

(b) Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

(c) Upon approval of a Claim Disposition Agreement.

(3) Pursuant to section (2) of this rule, the Notice to the Worker shall appear in bold type and contain the following language:

The Preferred Worker Program helps Oregon's eligible injured workers get back to work. If you have permanent limitations as a result of an Oregon compensable injury, and your medical care provider has determined you will not be able to return to the employment you held at the time of your injury or aggravation because of those limitations, you may qualify as a Preferred Worker and receive reemployment assistance. To find out whether you qualify, contact the Preferred Worker Program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (toll-free from Oregon only), (503) 947-7993 (TTY), or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161 (toll-free from Oregon only), or FAX (541) 776-6246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

(4) Under section (2) of this rule, the Notice to the Employer shall appear in bold type and contain the following language:

If your worker is unable to return to regular work because of injury-caused limitations, you may be eligible for the Preferred Worker Program incentives including Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, and Worksite Modification, which you may use to re-employ your worker. You must request Preferred Worker Program assistance from the Workers' Compensation Division within 180 days of the worker's claim closure date. To find out about the Preferred Worker Program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (toll-free from Oregon only), (503) 947-7993 (TTY), or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161 (toll-free from Oregon only), or FAX (541) 776-6246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

(5) The insurer shall provide the division with Preferred Worker information in the form and format the director prescribes in OAR 436-030, upon the following:

(a) Claim closure according to ORS 656.268;

(b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of an Administrative Law Judge, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals, or stipulation which grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a Claim Disposition Agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

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

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)

Stats. Implemented: ORS 656.340(1), (2), (3), 656.622 & 656.726(4)

Hist.: WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0017; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0290

Employer at Injury Use of the Preferred Worker Program

The conditions for the employer at injury to activate the Preferred Worker Program include:

(1) The employer at injury must request Preferred Worker Program assistance from the division within 180 days of the worker's claim closure date, with the following exception. When Worksite Modifications are provided, and the modifications are completed and verified by the division more than 150 days after the worker's claim-closure date, the employer at injury will have 30 calendar days from the verification date to request other assistance.

(2) In calculating the 180-day period under this rule, the claim closure date will not be included, and if the 180th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 180-day period.

(3) The employment for which benefits are requested must be within the worker's injury-caused restrictions, unless Worksite Modifications are requested to comply with this section. In this case no other Preferred Worker Program benefits will be approved until all the modifications are in place and verified by a representative of the division.

(4) The worker must agree to accept the new or modified regular job in writing. The job offer must include:

(a) The start date. If the job starts after the modifications are in place, so note;

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- (b) Wage and hours;
- (c) Job site location; and
- (d) Description of job duties.

(5) If the employer at injury uses Worksite Modification assistance and the employer or worker later requests additional modifications for the same job, the employer's Worksite Modification benefit will be exhausted before using the worker's Worksite Modification benefits.

(6) All other provisions under OAR 436-110 apply unless otherwise indicated.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0310

Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases, are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage;

(b) The employer complies with the Oregon Workers' Compensation Law;

(c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker according to ORS 656.027;

(d) If the employer is a worker leasing company, it must be licensed with the division; and

(e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

(a) The worker has an accepted disabling Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) Because of injury-caused limitations, medical evidence indicates the worker will not be able to return to regular employment as defined in OAR 436-110-0005 under the most recent disabling claim or claim opening. If the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment. If the worker was previously found eligible under that claim, the worker will not be eligible again on that claim closure. Subsequent eligibility determination will be based on claim openings that occur after the date that the most recent *Preferred Worker Identification Card* is issued; and

(c) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury which gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

(4) A worker or employer-at-injury may not use Preferred Worker benefits, except Worksite Modification, for regular employment or substantially similar employment except as specified in OAR 436-110-0380.

(5) Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by a worker or employer to obtain assistance;

(b) Failure of a worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a *Preferred Worker Program Agreement*;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The claim upon which eligibility was determined is subsequently denied in accordance with ORS 656.262;

(f) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;

(g) The employer does not maintain Oregon workers' compensation insurance coverage, except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases;

(h) The current *Preferred Worker Identification Card* expires without being activated, with the following exception. If the worker's card expired and the worker's job modification is determined to be "substantial" under OAR 436-110-0380, the worker can activate Premium Exemption within 30 calendar days from the date the division determines the modification is "substantial," unless any of subsections (a) through (f) apply; or

(i) The current *Preferred Worker Eligibility Card* expires, with the following exception. When Premium Exemption has expired and the worker's job modification is determined to be "substantial" under OAR 436-110-0380, the worker will be eligible to request Wage Subsidy and Obtained Employment Purchases within 30 calendar days from the date the division determines the modification is "substantial," unless any of subsections (a) through (f) apply.

(6) If there is an active *Preferred Worker Program Agreement*, the division will not end Preferred Worker eligibility until termination of the agreement if a Disputed Claim Settlement according to ORS 656.289 settles that portion of the claim from which eligibility arose or the claim is subsequently denied according to ORS 656.262. Under an employer-at-injury activated agreement Premium Exemption ends when the job ends, or three years from the effective date of Premium Exemption, whichever occurs first. Under a worker-activated agreement, Premium Exemption ends either at the expiration date shown on the *Preferred Worker Eligibility Card* or when the job ends, whichever occurs first. When this occurs, the division will issue written notification to the worker if the assistance was worker activated. The worker must notify all affected parties. If the job ends before the expiration date shown on the card, the Preferred Worker card must be surrendered to the division. If the assistance was employer activated, the division will issue written notification to the employer.

(7) The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers' compensation insurance coverage.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78, WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0020, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0020; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered to 436-110-0280; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0320

Preferred Worker Cards

This rule does not apply to employer-activated assistance.

(1) The division may issue two types of Preferred Worker cards to eligible workers. The cards identify the worker as being eligible to offer an employer Preferred Worker Program assistance. Conditions for using the Preferred Worker cards include:

(a) A worker can have only one valid Preferred Worker card at a time;

(b) A Preferred Worker card is valid for three years from the date of issue. The three-year period cannot be interrupted or extended; and

(c) A Preferred Worker card may be reissued upon loss of the original card during and for the three-year period the original card was issued.

(2) The first card issued is a *Preferred Worker Identification Card*. The worker and employer use this card to start Premium Exemption by completing the card and returning it to the division. When worker eligibility criteria are met, the division issues this card as follows:

(a) Automatically at the time of claim closure based upon insurer submission of Preferred Worker information as specified in OAR 436-110-0240(5);

(b) Prior to claim closure when the worker has available, immediate employment with an employer who meets the eligibility criteria under OAR 436-110-0310(1). Workers or their representatives may contact the division directly to request an eligibility determination and a Preferred Worker card;

(c) When notified by the worker or their representative that there is a claim closure by a Claim Disposition Agreement, a Board's Own Motion or insurer's own motion;

(d) Upon request by the worker or their representative any time after claim closure; or

(e) If, as a result of a new claim or claim reopening, a Preferred Worker meets the Preferred Worker Program eligibility criteria, the division shall issue a new *Preferred Worker Identification Card*. The later card shall be used for subsequent benefits.

(3) The second card issued is the *Preferred Worker Eligibility Card*. The division sends the Preferred Worker this card upon approval of Premium Exemption. This card shows the three-year Premium Exemption period. The worker may offer other employers Preferred Worker benefits for the remainder of the time shown on this card.

(4) The division may inactivate a Preferred Worker card if:

(a) The Preferred Worker card was issued in error; or

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(b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310(5) applies.

(5) If the division finds that a worker who has requested a Preferred Worker card is ineligible, the division shall notify the worker in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the worker's appeal rights as given in OAR 436-110-0007.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0022; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0325

Premium Exemption General Provisions

(1) Premium Exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a Preferred Worker during the time Premium Exemption is in effect, up to a maximum of three (3) years. Premium Exemption may not be extended. While actively using Premium Exemption, the employer does not report, and the insurer cannot use, the Preferred Worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-070. The employer shall start paying insurance premiums and premium assessments when Premium Exemption ends.

(2) Premium Exemption must be activated in order to use Claim Cost Reimbursement and Wage Subsidy unless OAR 436-110-0310(5)(i) applies. Requirements regarding Premium Exemption and Obtained Employment Purchases are provided in OAR 436-110-0346 and 436-110-0347.

(3) If the division does not approve Premium Exemption, the division will notify the party who requested the assistance in writing. Such notice will provide the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(4) Upon approval of Premium Exemption, the division will issue a Notice of Premium Exemption to the employer, employer's insurer, and the insurer of the employer at injury.

(5) If a worker covered under Premium Exemption incurs a compensable injury or occupational disease during the Premium Exemption period, the employer must notify its insurer of the injury. If the employer fails to note the Preferred Worker status when the Form 801 was filed with the insurer, the employer must notify the insurer as soon as possible that the injury or disease was incurred by a Preferred Worker.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0326

Premium Exemption — Employer at Injury Activated

Premium Exemption is activated by the employer at injury as follows:

(1) A completed and signed *Employer at Injury, Premium Exemption and Wage Subsidy Agreement* must be sent to the division. The worker's agreement in writing to accept the new or modified regular job must accompany the agreement or the request will not be accepted.

(2) When approved by the division, the effective date for Premium Exemption is the "hire date" as defined in OAR 436-110-0005.

(3) If Worksite Modification is needed for the worker to perform all the required job duties within the injury-caused restrictions, the employer at injury is not eligible for Premium Exemption until all modifications are in place and verified by a representative of the division. The date of the verification will be considered the date the worker started work for the employer in employment for which benefits are requested.

(a) If the date of the verification done by the division is more than 150 days after the worker's claim closure, the employer at injury will have 30 days to send the completed and signed agreement to the division; and

(b) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet "sub-

stantial modification" criteria as determined by the division in accordance with OAR 436-110-0380.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0327

Premium Exemption — Worker Activated

Premium Exemption is activated by the worker as follows:

(1) When an eligible Preferred Worker issued a *Preferred Worker Identification Card* accepts employment with Premium Exemption requested, the worker and employer must complete the *Preferred Worker Identification Card* and send it to the division. Upon approval by the division the effective date will be the hire date as defined in OAR 436-110-0005.

(2) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet "substantial modification" criteria as determined by the division in accordance with OAR 436-110-0380 before Premium Exemption can be activated.

(3) Upon approval of Premium Exemption, the division will issue the worker a *Preferred Worker Eligibility Card* that shows the Premium Exemption start and end dates.

(4) The worker may use a *Preferred Worker Eligibility Card* to obtain new employment and to provide subsequent employers with Premium Exemption for the remainder of the three-year Premium Exemption period.

(5) Employers who subsequently employ a Preferred Worker must photocopy the *Preferred Worker Eligibility Card* as evidence of Premium Exemption, return the card to the worker, and distribute copies as follows:

(a) Send one copy to its insurer as notice that a Preferred Worker is employed using Premium Exemption; and

(b) Keep one copy on file.
Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0330

Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720, Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claims costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including insurer medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor to be applied to claim costs will be as published in *Bulletin 316*; and

(e) The claim shall not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(2) The insurer shall request Claim Cost Reimbursement as follows:

(a) All requests for reimbursement shall be made within one year of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation shall include, but not be limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement shall not include:

(a) Claim costs for any injury which did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

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- (d) Penalties, fines or filing fees;
 - (e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;
 - (f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or
 - (g) Reimbursable Employer-at-Injury Program costs.
- (4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts shall be refunded to the division and, as applicable, future reimbursements denied if, upon audit, any of the following is found to apply:
- (a) Reimbursement has been made for any of the items specified in section (3) of this rule;
 - (b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;
 - (c) The separate payments of compensation have not been documented;
 - (d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;
 - (e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.
- (5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) If an employer fails to notify its insurer of the "Preferred Worker" status when the *Form 801* is submitted or fails to send its insurer a copy of the *Preferred Worker Eligibility Card*, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer shall correct all records previously filed which include claim costs in any dividend, retrospective rating, or any claim valuation for experience rating performed.

(7) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition shall be submitted to the division prior to submitting the disposition to the Workers' Compensation Board for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition shall include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board approval, which specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

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

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0260 & 436-110-0300; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0335

Wage Subsidy General Provisions

Wage Subsidy provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are subject to the following conditions:

(1) Premium exemption must be activated to use Wage Subsidy, unless OAR 436-110-0310(5)(i) applies;

(2) A Wage Subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an

exceptional disability as defined in OAR 436-110-0005. For a worker with an exceptional disability, the Wage Subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(3) A *Wage Subsidy Agreement* may be interrupted once for reasonable cause and extended to complete the *Wage Subsidy Agreement* on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers' compensation insurance coverage is not "reasonable cause," and no extension will be granted;

(4) A Preferred Worker's pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(5) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(a) First, examine the wages paid by the employer for other workers doing the same job;

(b) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and

(c) If the labor market survey does not support the wage rate request, the division will determine the wage subject to reimbursement.

(6) Preferred Worker Program Wage Subsidies may not be combined with subsidies from other sources;

(7) If the worker's employer changes during the *Wage Subsidy Agreement* period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310;

(8) Upon approval of the *Wage Subsidy Agreement*, the division will send a copy of the agreement to the worker if it is worker activated, and will always send a copy of the agreement with a *Wage Subsidy Reimbursement Request* form to the employer;

(9) If the division does not approve the *Wage Subsidy Agreement*, the division will notify the party who made the request, in writing. Such notice will give the basis for the decision, the applicable rule(s), and the appeal rights as given in OAR 436-110-0007;

(10) The employer may request reimbursement of wages paid to the worker, based on the amount agreed to on the *Wage Subsidy Agreement* form or the amount paid to the worker, whichever is less. An employer may request reimbursement, interruption, or extension of a Wage Subsidy for a part of a day the worker worked, but the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the Wage Subsidy;

(11) Requests for reimbursement must not be submitted more frequently than once every two weeks. A completed and signed *Wage Subsidy Reimbursement Request* form must be submitted to the division with a copy of the worker's payroll records. The payroll record must state the dates (daily or weekly), hours, wage rate, and the worker's gross wage. Payroll records must be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(12) All requests for reimbursement must be made within one year of the *Wage Subsidy Agreement* termination date.

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

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0336

Wage Subsidy — Employer at Injury Activated

Wage Subsidy is activated by the employer at injury as follows:

(1) The Wage Subsidy is combined with Premium Exemption.

(2) When Premium Exemption is approved, Wage Subsidy is also approved and is effective on the same date.

(3) The employer at injury may use Wage Subsidy once during an eligibility period.

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Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0337

Wage Subsidy — Worker Activated

A Wage Subsidy may be requested by a worker and employer and the employer reimbursed as follows:

- (1) The worker must be eligible for Wage Subsidy on the hire date.
- (2) A *Wage Subsidy Agreement* must be completed and signed by the worker and employer and submitted to the division.
- (3) When approved by the division, the effective date for the Wage Subsidy is the “hire date” as defined in OAR 436-110-0005.
- (4) Except as otherwise provided in these rules, a Preferred Worker may use Wage Subsidy twice during an eligibility period, once with one employer and once with a different employer.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0345

Obtained Employment Purchases — General Provisions

(1) An Obtained Employment Purchase is assistance necessary for a worker to accept a job or to continue employment within three years of the hire date. If the employer pays for the same assistance for other workers performing the same job, it does not qualify as an Obtained Employment Purchase. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers’ compensation law. All purchases become the worker’s property upon employment in the job for which they are required.

(2) Obtained Employment Purchases are limited to:

(a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum reimbursement is \$1000;

(b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$500;

(c) Tools and equipment mandatory for employment, such as starter sets. Purchases shall not include items the worker possesses, duplicate Worksite Modification items, or vehicles. Maximum reimbursement is \$2,000;

(d) Clothing required for the job, not including clothing the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses, or other items which are not basic clothing. Maximum reimbursement is \$400;

(e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker’s primary residence. When the worker’s permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker’s primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use per eligibility. Reimbursement is limited to:

(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Reimbursement of lodging and meals are limited to a maximum period of two weeks. Reimbursement of mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker’s primary residence limited to first month’s rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month’s rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month’s current dues, required by a labor union; and

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum reimbursement is \$500.

(3) Upon division approval, the division will send a copy of the agreement and, if applicable, a completed *Authorization for Payment* form or other instrument of payment.

(4) A worker, employer, vocational assistance provider, or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

(5) If the division does not approve the Obtained Employment Purchase, the division will notify the party who requested the assistance in writing. Such notice will give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(6) Costs of Obtained Employment Purchases may be paid by reimbursement, by an *Authorization for Payment*, or by other instrument of payment approved by the director.

(7) The division will not purchase directly or otherwise assume responsibility for Obtained Employment Purchases.

(8) Reimbursed costs will not be charged by the insurer to the employer as claim costs or by any other means.

(9) All requests for reimbursement must be made within one year of the *Obtained Employment Purchase Agreement* end date.

(10) Once the division provides an Obtained Employment Purchase item, the division will not replace that item unless the item was stolen, or destroyed by nature or an act of God, or in the case of clothing for new employment, the clothing previously provided is no longer usable. The loss must be uninsured and the division may require a police report to verify the loss.

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

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97. Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0346

Obtained Employment Purchases — Employer at Injury Activated

Conditions for use of Obtained Employment Purchases by the employer at injury are as follows:

(1) Premium Exemption must be active on the worker’s hire date in order to use Obtained Employment purchases.

(2) The employer must submit a completed *Obtained Employment Purchase Agreement* listing item(s) that are required of all workers performing the job for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job. If the labor market survey does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s).

(3) The employer at injury may use each Obtained Employment Purchase category once during a period of eligibility.

(4) Obtained Employment Purchases will only be provided after the worker’s hire date, except as follows:

(a) If purchases are necessary prior to the worker’s hire date, the employer at injury must submit the written job acceptance by the worker with the agreement form.

(b) Subsection (a) of this section does not apply to workers receiving vocational assistance under OAR 436-120. If the worker is receiving vocational assistance, the employer at injury may only request Obtained Employment Purchases for purchases made after the worker’s hire date.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0347

Obtained Employment Purchases — Worker Activated

Conditions for use of Obtained Employment Purchases by a worker are as follows:

(1) Except for moving expenses, the worker and employer must submit a completed *Obtained Employment Purchase Agreement* listing item(s) that are required of all workers performing the job for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job. If the labor market survey

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does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s).

(2) Premium Exemption must be active on the worker's hire date in order to use Obtained Employment Purchases, unless OAR 436-110-0310(5)(i) applies. Obtained Employment Purchases will only be provided after the worker's hire date, except as follows:

(a) If purchase(s) are necessary prior to the worker's hire date and prior to activation of Premium Exemption, the worker and employer must submit the completed and signed *Preferred Worker Identification Card* to the division along with the *Obtained Employment Purchase Agreement* form.

(b) If purchase(s) are necessary prior to the worker's hire date and Premium Exemption has previously been activated, the employer may be required to submit a letter of intent to hire along with the *Obtained Employment Purchase Agreement*.

(c) Subsections (a) and (b) of this section do not apply to workers receiving vocational assistance under OAR 436-120. These workers may only request Obtained Employment Purchases for purchases made after the worker's hire date.

(3) If Obtained Employment Purchases are to be used with a non-subject employer in Oregon, Premium Exemption is not activated.

(4) Except as otherwise provided in these rules, a Preferred Worker may use each Obtained Employment Purchase category twice during a period of eligibility, once with one employer and once with a different employer.

(5) A Preferred Worker who is receiving return-to-work follow-up services under OAR 436-120 may be eligible for Obtained Employment Purchases. This is the only condition under which a worker receiving vocational assistance under OAR 436-120 may be eligible for these purchases.

(6) Obtained Employment Purchases may be requested by a Preferred Worker as follows:

(a) The worker must call or write the division directly for assistance in receiving Obtained Employment Purchases. Requests made beyond three years from the hire date will not be considered.

(b) The *Obtained Employment Purchase Agreement* form must be completed and signed by the worker and employer and submitted to the division. If the request is for moving expenses, only the worker's signature is required.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0350

Worksite Modification — General Provisions

(1) Worksite Modification means altering a worksite in Oregon, or available for inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Worksite Modification may also include the means to protect modifications purchased by the Preferred Worker Program in an amount not to exceed \$2500.

(2) Conditions for the use of Worksite Modification assistance are as follows:

(a) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate Worksite Modifications, the Reemployment Assistance Unit consultants have discretion to use reports by a medical service provider specific to the worker, specific documented "best practices" described by a medical service provider or authority, and their own professional judgement and experience;

(b) A job analysis which includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;

(c) Modifications may be provided to allow a worker to return to regular employment, as described in OAR 436-110-0380;

(d) Modifications are limited to a maximum of \$25,000 for one job. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005;

(e) Modifications not to exceed \$1,000 may be provided which would reasonably be expected to prevent further injury or exacerbation of the worker's accepted condition. Appropriateness of this type of modification will be determined by a Reemployment Assistance Consultant based upon his or her professional judgment and experience, reports by a medical serv-

ice provider specific to the worker, or specific documented "best practices" described by a medical service provider or authority. Costs of the modification(s) are included in the calculation of the total Worksite Modification costs;

(f) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120 or other similar on-the-job training programs including, but not limited to, those administered by the state of Oregon Employment Department and Department of Human Resources, Vocational Rehabilitation Division, except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided. A modification will not be approved for any other type of training;

(g) Modifications limited to \$2,500 may be provided to protect the items approved in the *Worksite Modification Agreement* from theft, or damage from the weather. Insurance policy premiums will not be paid;

(h) When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;

(i) Rented or leased vehicles and other equipment will not be modified;

(j) Modifications must be reasonable, practical, and feasible, as determined by the division. The director shall have final authority to make Worksite Modification decisions involving the use of the fund;

(k) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;

(l) A modification may include tools, equipment, fixtures, or furnishings not customarily provided by an employer, installation of equipment or machinery, or alteration of permanent structures;

(m) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification, and consultative services consisting of engineering, architectural, ergonomic, and similar services required to determine the feasibility, to recommend, to design, or to perform a Worksite Modification;

(n) Rental of Worksite Modification items and consultative services require division approval and are limited to a cost of up to \$3,500 each. The cost for rental of Worksite Modification items and consultative services does not apply toward the total cost of a Worksite Modification;

(o) Modification equipment shall become the property of the employer, worker, or worker leasing company's client on the "end date" of a *Worksite Modification Agreement* or when the worker's employment ends, whichever occurs first. The division shall determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property. When assigning ownership of equipment the division will consider several factors including but not limited to the following:

(A) Whether it is unique to the worker, employer, or client;

(B) Whether it is mobile, portable, and easily transferable;

(C) Whether it is integral to the employer's or client's business operation;

(D) Whether it is attached to the employer's or client's property, premises, or equipment; and

(E) Whether it is installed in or on the worker's personal property or premises.

(p) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. The cost of the services described in this subsection does not apply toward the total cost of a Worksite Modification;

(q) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

(r) The employer shall not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(s) The worker shall not dispose of the property provided for the modification while employed in work for which the modification is necessary

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or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A Worksite Modification may be requested by a worker or employer at injury and costs reimbursed as follows:

(a) The worker or employer may develop a Worksite Modification without division assistance or may contact the division directly for Worksite Modification assistance;

(b) Upon contact from the worker or employer, the division will provide instruction on how to proceed with the modification. The division may schedule an on-site visit to assist in identifying appropriate forms of modification;

(c) When the cost of the modification is \$2,500 or less, a *Worksite Modification Agreement (Limited to \$2,500)* form may be completed and sent to the division. The division may request additional support information;

(d) When the cost of the modification is over \$2,500, the division will issue a *Worksite Modification Agreement* form upon determination that the modification is appropriate;

(e) Upon division approval, the division will send copies of the agreement to the parties to the agreement. The division will send the party purchasing the modification an *Authorization for Payment* form or other instrument of payment approved by the director;

(f) The worker, employer, private rehabilitation organization, or insurer may request reimbursement by submitting to the division proof of payment for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and

(g) If the division does not approve the Worksite Modification, the division shall notify the party who made the request, in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(4) Costs of Worksite Modifications may be paid by reimbursement, an *Authorization for Payment*, or by other instrument of payment approved by the director.

(5) The division shall not purchase directly or otherwise assume responsibility for Worksite Modifications.

(6) Reimbursed costs shall not be charged by the insurer to the employer as claims costs or by any other means.

(7) If the cost for a single item, except for a chair, is over \$2,500, three (3) competitive quotes shall be obtained. If a chair costs over \$1,000, three (3) competitive quotes shall be obtained. Quotes are competitive when they are from three different vendors and the items being quoted meet the same specifications. If three competitive quotes are not available, documentation of efforts to obtain three competitive quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance, delivery time, and vendor availability to service or maintain the item.

(8) All requests for reimbursement shall be made within one year of the *Worksite Modification Agreement* termination date.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0010, 436-110-0020, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0351

Worksite Modification — Employer at Injury Activated

Conditions for use of Worksite Modifications by the employer at injury are as follows:

(1) The employer at injury may use Worksite Modification assistance once for a job provided for their injured worker, or a second time if the worker changes to another job with the employer at injury within allowable timeframes.

(2) Modifications are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005.

(3) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* prior to any reimbursement or *Authorization for Payment*.

(4) Modifications may be provided for requests received within 180 days from the worker's claim closure date. Additional modifications may be provided under an approved agreement by addendum for requests received within three years from the date the worker started work for the employer in employment for which the Worksite Modification request was made.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0352

Worksite Modification — Worker Activated

Conditions for use of Worksite Modification assistance by the worker are as follows:

(1) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* form, prior to any reimbursement or *Authorization for Payment*.

(2) Modifications may be provided for requests received within three years from the following:

(a) The date the worker started work for the employer in employment for which the Worksite Modification request was made;

(b) The date the worker returned to regular employment or substantially similar employment if the employment began prior to claims closure; or

(c) The date of claim closure.

(3) A worker may use Worksite Modification assistance once with one employer and once with a second employer, or twice with the same employer if there is a job change.

(4) Modifications after June 30, 1990, are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in OAR 436-110-0005. This maximum is not reduced by the use of Worksite Modifications by the employer at injury.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0380

Return to Regular Employment

(1) If the worker has an accepted Oregon disabling claim and is unable to return to regular employment as a result of permanent restrictions from the accepted conditions of that claim, Worksite Modification may be provided to allow the worker to return to regular employment or employment substantially similar in nature, duties, and responsibilities, regardless of whether the worker has received a Preferred Worker Card. The employment for which benefits are requested by the worker or employer at injury will not be considered to have started until all necessary modifications are in place and verified by a representative of the division.

(2) The division shall determine a substantial modification based upon the extent of the modifications necessary to accommodate the worker's permanent limitations from compensable Oregon injuries. The modifications provided must be sufficient for the worker to perform all required job duties within these restrictions. The modification is "substantial" if any one of the factors given in subsections (a), (b), and (c) of this rule apply. When making its decision, the division may consider other factors in addition to whether the modification significantly impacts the following:

(a) Changes how the worker performs essential job duties;

(b) Reduces the physical exertion required; or

(c) Affects the employer's work process.

(3) The provision of the following Worksite Modification items or similar items by themselves do not constitute a substantial modification:

(a) Ergonomic chair;

(b) Anti-fatigue mat;

(c) Slant board;

(d) Anti-vibration wrap for tools;

(e) Special pen or pencil;

(f) Footrest;

(g) Wristrest; or

(h) Changing the height of a work surface.

(4) If the division determines the modification is not substantial as defined in sections (2) and (3) of this rule, Premium Exemption cannot be activated. If the worker does not have a *Preferred Worker Card*, none will be issued.

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(5) If the division determines the modification is substantial as defined in sections (2) and (3) of this rule the following will occur:

(a) If the worker does not have a *Preferred Worker Identification Card*, the division will issue a card after the modification is in place.

(b) If the worker already has a *Preferred Worker Identification Card*, it may be activated. The worker will be notified by the division in writing of his or her rights under these rules.

(c) If the employer at injury requested the assistance the division will notify the employer in writing and provide instructions about activating Premium Exemption.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

436-110-0900

Sanctions

(1) Any person who knowingly makes any false statement or representation to the director or an employee of the director for the purpose of obtaining any benefit or payment from the Preferred Worker Program or who knowingly misrepresents the amount of a payroll, or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, an insurer, an employer, or a Preferred Worker include, but are not limited to, the following:

(a) Misrepresenting information in order to obtain reemployment assistance. Two examples of misrepresentation are:

(A) Changing a job description or job title where there are not corresponding job duty changes in order to obtain benefits; and

(B) Obtaining a worker's signature on incomplete, incorrect, or blank agreements or reimbursement requests.

(b) Making a serious error or omission which resulted in the division approving a *Preferred Worker Program Agreement*, issuing a Preferred Worker card, or reimbursing claim costs in error;

(c) Failing to abide by the terms and conditions of a *Preferred Worker Program Agreement*;

(d) Failing to abide by the provisions of these rules or ORS 656.990;

(e) Failing to return required receipts or invoices;

(f) Submitting false reimbursement requests or job analyses;

(g) Altering an *Authorization for Payment* form or purchasing unauthorized items; or

(h) Failing to return a Preferred Worker card if requested by the division.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person being sanctioned to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(b) Prohibiting the person being sanctioned from negotiating or arranging reemployment assistance for such period of time as the director deems appropriate;

(c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;

(d) Ordering an employer or worker ineligible for reemployment assistance for a specific period of time; and

(e) Pursuing civil or criminal action against the party.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622 & 656.990

Hist.: WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0110; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0500; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05

Adm. Order No.: WCD 5-2005

Filed with Sec. of State: 5-26-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 3-1-05

Rules Amended: 436-050-0003, 436-050-0440, 436-050-0460, 436-050-0480

Subject: OAR 436-050, "Employer/Insurer Coverage Responsibility," has been amended to:

- Increase the initial license fee and license renewal fee for a worker leasing company from \$1,250 to \$2,050; and
- Increase the penalties for operating as a worker leasing company without a license.

Direct questions to: Fred Bruyns, Rules Coordinator; phone (503) 947-7717; fax (503) 947-7581; or e-mail fred.h.bruyns@state.or.us

Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-050-0003

Applicability of Rules

(1) These rules are effective June 1, 2005, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.

(b) ORS 656.029 — Independent contractor status.

(c) ORS 656.126 — Coverage while temporarily in or out of state.

(d) ORS 656.407 — Qualifications of insured employers.

(e) ORS 656.419 — Guaranty contracts.

(f) ORS 656.423 — Cancellation of coverage by employer.

(g) ORS 656.427 — Termination of guaranty contract or surety bond liability by insurer.

(h) ORS 656.430 — Certification of self-insured employer.

(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.

(j) ORS 656.443 — Procedure upon default by employer.

(k) ORS 656.447 — Sanctions against insurer for failure to comply with contracts, orders or rules.

(l) ORS 656.455 — Records location and inspection.

(m) ORS 656.745 — Civil penalties.

(n) ORS 656.850 and 656.855 — Worker-leasing companies.

(o) ORS 731.475 — Insurer's in-state location.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855 & 731.475

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05

436-050-0440

Qualifications, Applications, and Renewals for License as a Worker-Leasing Company

(1) Each applicant for initial license or renewal as a worker-leasing company shall:

(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state;

(b) Maintain workers' compensation coverage pursuant to ORS 656.017; and

(c) Pay the required licensing fee of \$2,050.

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license on Form 440-2466. The form and accompanying documentation must include:

(a) Legal name;

(b) Mailing address;

(c) In-state and out-of-state phone numbers;

(d) FEIN or other tax reporting number;

(e) Type of business;

(f) Physical address for Oregon principal place of business;

(g) Assumed business names;

(h) Name of workers' compensation insurer (or "self-insured") and policy number;

(i) WCD employer number, if any;

ADMINISTRATIVE RULES

(j) Names and titles of authorized representatives, including the Oregon representative;

(k) List of controlling persons holding or controlling 10 percent or more interest in the company, including their names, titles, residence addresses, and dates of birth;

(l) A record of any present or prior worker leasing company services provided in any state and an explanation of those services;

(m) A letter of verification or good standing from the controlling regulatory agency of those states in which a worker leasing license or certification is currently held;

(n) Verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 440-2466, the worker leasing license application;

(o) A record of any actions in which an essential element of the action involved fraud, theft, or embezzlement of monies on the part of the applicant or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

(C) Guilty pleas;

(D) Judgments; or

(E) Administrative actions.

(p) Full details regarding any action taken under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and license number for any actions against a license.

(q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS Chapter 654, *The Oregon Safe Employment Act*, and collect the information necessary to establish each client's experience rating; and

(r) A notarized signature of an authorized representative of the applicant.

(3) Incomplete or incorrectly completed application packages will be rejected and returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.

(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation of each individual applicant and controlling person. If the application is approved, the director will issue a license.

(5) Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee.

Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855

Stats. Implemented: ORS 656.850 & 656.855

Hist.: WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01;

WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04;

WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05

436-050-0460

Disqualification, Suspension, Revocation of License

(1) The director may disqualify, suspend or revoke the worker-leasing company's license upon a determination that the worker-leasing company has failed to comply with ORS 656.850, 656.855, or these rules. Reasons for disqualification, suspension or revocation include, but are not limited to:

(a) Insolvency, whether the worker-leasing company's liabilities exceed their assets or the worker-leasing company cannot meet its financial obligations;

(b) If the worker-leasing company or any controlling person has been convicted of dishonest, fraudulent or illegal practices or conduct in any business or profession;

(c) If any controlling person has been convicted of a crime within the past 10 years, an essential element of which is fraud, theft, or embezzlement of monies;

(d) If the worker-leasing company has willfully violated or has failed to comply with any provisions of ORS Chapters 654, 656, 659, 659A, 731 or 737; or any provisions of these rules; or

(e) If the worker-leasing company is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker-leasing business.

(2) For the purposes of this rule:

(a) "Disqualification" and its variations means a refusal by the director to issue a license to a prospective worker-leasing company for failure to meet the requirements of ORS 656.850, 656.855, or these rules.

(b) "Suspension" and its variations means a stopping by the director of the worker-leasing company's authority to provide leased workers to clients for a specified period of time.

(c) "Revocation" and its variations means a permanent stopping by the director of the worker-leasing company's authority to provide leased workers to clients.

(d) "Show-cause hearing" means an informal meeting with the director in which the worker-leasing company shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke a worker-leasing company's authority to provide leased workers to clients.

(3) Suspension or revocation under this rule will not be made until the worker-leasing company has been given notice and the opportunity to be heard through a show-cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker-leasing company.

(4) A show-cause hearing may be held at any time the director finds that a worker-leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the worker-leasing company establishes to the director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to two years.

(7) After a revocation of a worker-leasing company's authority to provide leased workers to clients has been in effect for five years or longer, it may reapply for license.

(8) Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and 436-001.

(9) Notwithstanding section (3) of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker-leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.

(10) A disqualification, suspension or revocation will apply to any new entity created from the disqualified, suspended, or revoked entity through the sale, transfer or conveyance of ownership interest or of the entity's assets to another entity which takes over its operations.

Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855

Stats. Implemented: ORS 656.850 & 656.855

Hist.: WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01;

WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05

436-050-0480

Assessment of Civil Penalties

(1) The director may assess a civil penalty against an employer who fails to respond to requests for information and fails to meet the requirements of 436-050-0470. The matrix attached to these rules in Appendix "A" will be used in assessing these penalties. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(2) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty based on the matrix in Appendix "B," attached to these rules.

(3) An employer who is found to be operating a worker leasing company without having obtained a license or having failed to renew a license pursuant to ORS 656.850(2), may be assessed a civil penalty based on the matrix attached to these rules in Appendix "C."

(4) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month in which an employer provides leased workers to a client without having first obtained a worker leasing license.

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

Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855

Stats. Implemented: ORS 656.850 & 656.855

Hist.: WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05

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ADMINISTRATIVE RULES

Subject: The agency adopts OAR 436-001-0265, "Attorney Fees." This rule:

- Clarifies that extraordinary circumstances, for the purpose of determining attorney fees, are not established by merely exceeding eight professional hours or exceeding a benefit to the worker of \$6000.

The agency adopts OAR 436-120, "Vocational Assistance to Injured Workers." These rules:

- Combine vocational evaluation with eligibility evaluation for vocational assistance, thus shortening the vocational preparation time by up to 45 days;

- Require that the insurer contact the Workers' Compensation Division to schedule a conference if the insurer has not approved a return-to-work plan within 90 days of finding the worker is entitled to a training plan, or within 45 days of finding the worker is entitled to a direct employment plan. The conference may be postponed for a period of time agreeable to the parties. The insurer or worker may also request a conference when any other delays in the vocational rehabilitation process occur;

- Clarify the process for calculating the adjusted weekly wage when the worker held multiple jobs at the time of injury or aggravation, or held one or more jobs in addition to receiving unemployment insurance benefits;

- Clarify that extraordinary circumstances, for the purpose of determining attorney fees, are not established by merely exceeding eight professional hours or exceeding a benefit to the worker of \$6000;

- Require that if the employer at injury has activated Preferred Worker benefits, the insurer must send the worker notice of "deferral of vocational assistance eligibility determination," to inform the worker that the insurer will not complete the vocational eligibility process;

- Provide that modified or new employment that results from an employer activated use of the preferred worker program, under OAR 436-110, will be considered "suitable": (a) nine months from the effective date of premium exemption if there are no worksite modifications, (b) twelve months from the effective date of a worksite modification agreement, (c) when the worker is terminated for cause; or (d) when the worker voluntarily resigns for a reason unrelated to the work injury; and

- Require that the notice of eligibility also include a notice of entitlement that informs the worker which type of assistance will be provided, direct employment or training.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us.

Rules are available on the Internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0265

Attorney Fees

(1) In cases where the director is required to assess an attorney fee under ORS 656.385(1):

(a) The fee must be based on the factors listed in ORS 656.385(1).

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed \$2,000 nor fall outside the ranges provided in the following matrix: [Matrix not included. See ED. NOTE.]

(c) Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) In cases under ORS 656.245, 656.260, or 656.327, the factors listed in OAR 436-010-0008(13) may also be considered.

(e) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

(a) The complexity of the issue(s) involved;

(b) The quality of the legal representation;

(c) The value of the interest involved;

(d) The nature of the proceedings;

(e) The risk in a particular case that an attorney's efforts may go uncompensated;

(f) The assertion of frivolous issues or defenses;

(g) A statement of services, if submitted within seven days of the hearing date, unless the administrative law judge instructs otherwise; and

(h) Any other relevant consideration deemed appropriate by the administrative law judge or director.

(3) In cases under ORS 656.262(11) where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.

(4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0275.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.262, 656.385, 656.388 and 656.704(2)

Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0004

Notices and Reporting Requirements

(1) The insurer shall inform a worker with a compensable injury of the employment reinstatement rights and responsibilities of the worker under ORS chapter 659A and this rule. This information shall be given:

(a) At the time of claim acceptance, pursuant to ORS 656.262(6);

(b) At the time of contact of the worker under OAR 436-120-0320 about the need for vocational assistance, pursuant to ORS 656.340(2); and

(c) Within five days of receiving knowledge of the attending physician's release of the worker to return to work, pursuant to ORS 656.340(3), the insurer shall inform the worker about the opportunity to seek reemployment or reinstatement under ORS 659A.043 and 659A.046, and inform the employer about the worker's reemployment rights.

(2) All notices and warnings to the worker issued pursuant to OAR 436-120 shall be in writing, signed and dated, and state the basis for the decision, the effective date of the action, the relevant rule(s), the worker's appeal rights required pursuant to this rule, and the telephone number of the Ombudsman for Injured Workers. However, the insurer's response does not need to be in writing when the insurer approves a worker's request for a particular vocational service. All notices and warnings are subject to the following conditions:

(a) The following headings shall be used for the following notices. Should one notice be used for multiple actions, all appropriate headings shall be listed:

(A) Eligibility. This notice must inform the worker which category of vocational assistance will be provided: NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE AND NOTICE OF ENTITLEMENT TO TRAINING (or) NOTICE OF ENTITLEMENT TO DIRECT EMPLOYMENT SERVICES, EFFECTIVE (date)

(B) Ineligibility: NOTICE OF INELIGIBILITY FOR VOCATIONAL ASSISTANCE, EFFECTIVE (date)

(C) Selection or change of provider: SELECTION OF (OR CHANGE OF) VOCATIONAL ASSISTANCE PROVIDER, EFFECTIVE (date)

(D) End of training: NOTICE OF TRAINING END, EFFECTIVE (date)

(E) End of eligibility: NOTICE OF END OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE, EFFECTIVE (date)

(F) Deferral of vocational assistance eligibility determination: NOTICE OF DEFERRAL OF VOCATIONAL ASSISTANCE ELIGIBILITY DETERMINATION, EFFECTIVE (date)

(b) Warning letters do not require specific language in the headings but should include a heading clearly indicating the purpose of the warning.

(c) The insurer shall simultaneously send a copy to the worker's representative. Failure to send a copy of the notice to the worker's representative stays the appeal period until the worker's representative receives actual notice.

(d) All notices and warnings except those notifying a worker of eligibility, entitlement to training or deferral of vocational assistance eligibility shall contain the worker's appeal rights in bold type, as follows:

"If you disagree with this decision, you should contact (person's name and insurer) within five days of receiving this letter to discuss your concerns. If you are still dissatisfied, you must contact the Workers' Compensation Division within 60 days of receiving this letter or you will lose your right to appeal this decision. A consultant with the division can talk with you about the disagreement and, if necessary, will review your appeal. The address and telephone number of the division are: (address and telephone number of the Workers' Compensation Division)."

ADMINISTRATIVE RULES

(3) If the insurer is unable to determine eligibility or make a decision regarding a particular vocational service because of insufficient data, the insurer shall explain what information is necessary and when it expects to determine eligibility or make a decision.

(4) Notice of Eligibility for vocational assistance and Notice of Entitlement to Training (or) Notice of Entitlement for Direct Employment Services shall include the following:

(a) Selection of the category of vocational assistance. When direct employment services are selected, the notice must state the worker is not entitled to training and must include the appeal rights language in OAR 436-120-0004(2)(d) ;

(b) The worker's rights and responsibilities;

(c) Procedures for resolving dissatisfaction with an action of the insurer regarding vocational assistance;

(d) The current list of vocational assistance providers, and an explanation of the worker's participation in the selection of a vocational assistance provider. This notice shall include the following language in bold type:

"If you have questions about the vocational counselor selection process, contact (use appropriate reference to the insurer). If you still have questions contact the Workers' Compensation Division's toll free number (use appropriate telephone number)."

(e) Information about potential reemployment assistance under OAR 436-110.

(5) Notice of Ineligibility for vocational assistance is subject to the following conditions:

(a) The notice shall be sent to the worker by both regular and certified mail.

(b) The notice shall include information about services which may be available at no cost from the Employment Department or the Office of Vocational Rehabilitation Services, and reemployment assistance under OAR 436-110.

(c) If the notice is based on a finding of "no substantial handicap," it shall list some suitable occupations.

(d) If the insurer is not required to determine eligibility pursuant to OAR 436-120-0320(2), no Notice of Ineligibility is required unless the worker or worker's representative requested a determination of eligibility. When the ineligibility is due to no permanent disability award, the notice must inform the worker of entitlement to an eligibility determination upon a final order granting permanent disability.

(6) Notice of Denial of Vocational Service shall be given by the insurer.

(7) The approved, denied or amended return-to-work plan shall be sent to the worker. Notification of Denial of Return-to-Work Plan shall identify any components of the plan that the insurer did not approve.

(8) Notice of End of Training shall state whether the worker is entitled to further training. The effective date of the end of training letter shall be the worker's last date of attendance.

(9) Notice of End of Eligibility for vocational assistance shall be sent by both regular and certified mail to the worker.

(10) Notice of Deferral of Vocational Assistance Eligibility Determination is subject to the following conditions:

(a) The notice must be sent to the worker by both regular and certified mail.

(b) The notice must inform the worker that the insurer will not complete the vocational eligibility process because the employer at injury has activated preferred worker benefits and the worker has chosen to accept the job offer from the employer at injury. The notice must also inform the worker that, if the job has not begun by the hire date listed in the job offer letter, the worker can request that the vocational eligibility determination be completed.

(c) This notice must include the following language in bold type:

"If you have questions about the deferral of the vocational eligibility process, contact (use appropriate reference to the insurer). If you still have questions contact the Workers' Compensation Division's toll free number (use appropriate telephone number)."

(11) Warnings to the worker shall state what the worker must do within a specified time to avoid ineligibility or the ending of eligibility or training.

(12) The insurer shall simultaneously send a copy of the following notices to the department:

(a) Notice of Eligibility;

(b) Notice of Ineligibility;

(c) Approved Return-to-Work Plan and any amendments;

(d) Notice of End of Training;

(e) Notice of Ending of Eligibility for Vocational Assistance; and

(f) Notice of Deferral of Vocational Assistance Eligibility Determination

(13) The insurer shall file a closing status report with the division for each eligible worker within 30 days after eligibility ends. The insurer shall report the following information:

(a) The date and reason for ending of eligibility, return-to-work and vocational assistance provider information.

(b) For post-1985 injuries, the insurer shall also report cost information for eligibility determination and vocational services provided under these rules as required by the director.

Stat. Auth.: ORS 656.340(9), 656.726(3) & 192.410 - 192.505

Stats. Implemented: ORS 656.340(5) & 656.340(7)

Hist.: WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0600, 436-120-0610 & 436-120-0620 [WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0005

Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrative approval" means approval of the director.

(2) "Cost-of-living matrix" is a chart issued annually by the director in Bulletin 124 or in an addendum to Bulletin 124 which publishes the conversion factors, effective July 1 of each year, used to adjust for changes in the cost-of-living rate from the date of injury to the date of calculation. The conversion factor is based on the annual percentage increase or decrease in the average weekly wage, as defined in ORS 656.211.

(3) "Division" refers to the Workers' Compensation Division of the Department of Consumer and Business Services.

(4) "Employer at injury" means an employer in whose employ the worker sustained the compensable injury, or occupational disease.

(5) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer. A vocational assistance provider acting as the insurer's delegate may provide notices and warnings required by OAR 436-120.

(6) "Permanent employment" is a job with no projected end date or a job which had no projected end date at time of hire. Permanent employment may be year-round or seasonal.

(7) "Physical Demand Characteristics of Work" Strength Rating: The physical demands strength rating reflects the estimated overall strength requirements of the job, which are considered to be important for average, successful work performance. The following definitions are used: "occasionally" is an activity or condition that exists up to 1/3 of the time; "frequently" is an activity or condition that exists from 1/3 to 2/3 of the time; "constantly" is an activity or condition that exists 2/3 or more of the time.

(a) Sedentary Work (S): Exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) Light Work (L): Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

(c) Medium Work (M): Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Light Work.

(d) Heavy Work (H): Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Medium Work.

(e) Very Heavy (VH): Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess

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of 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Heavy Work.

(8) "Reasonable cause" may include, but is not limited to, a medically documented limitation in a worker's activities due to illness or medical condition of the worker or the worker's family, financial hardship, or circumstances beyond the reasonable control of the worker. "Reasonable cause" for failure to provide information or participate in activities related to vocational assistance will be determined based upon individual circumstances of the case.

(9) "Reasonable labor market": An occupation can be said to have reasonable employment opportunities if competitively qualified workers can expect to find equivalent jobs in the occupation within a reasonable period of time. A reasonable period of time, for workers in the majority of occupations, would be the six months that they could collect regular unemployment insurance benefits, if they were entitled to them. (*Oregon Occupational Projections Handbook, 2002-2008*)

(10) "Regular employment" means the employment the worker held at the time of the injury or at the time of the claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work prior to the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury; when the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.

(11) "Substantial handicap to employment," as determined under OAR 436-120-0340, means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment. "Knowledge," "skills," and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(c) "Abilities" means the cognitive, psychological, and physical capability to apply the worker's knowledge and skills.

(12) "Suitable employment" or "suitable job" means employment or a job:

(a) For which the worker has the necessary physical capacities, knowledge, skills and abilities;

(b) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles one-way modified by other factors including, but not limited to:

(A) Wage of the job. A low wage may justify a shorter commute;

(B) The pre-injury commute;

(C) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;

(D) Commuting practices of other workers who live in the same geographic area; and

(E) The distance from the worker's residence to the nearest cities or towns which offer employment opportunities;

(c) Which pays or would average on a year-round basis a suitable wage as defined in section (13) of this rule;

(d) Which is permanent. Temporary work is suitable if the worker's job at injury was temporary; and the worker has transferable skills to earn, on a year-round basis, a suitable wage as defined in section (13) of this rule; and

(e) Modified or new employment that results from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110, will be considered "suitable":

(A) Nine months from the effective date of the premium exemption if there are no worksite modifications; or

(B) Twelve months from the effective date of the worksite modification agreement; or

(C) If the worker is terminated for cause; or

(D) If the worker voluntarily resigns for a reason unrelated to the work injury.

(13) "Suitable wage" means:

(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage as defined in OAR 436-120-0007.

(b) For the purpose of providing and/or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjust-

ed weekly wage, if the wage is as close as possible to the adjusted weekly wage.

(14) "Transferable skills" means the knowledge and skills demonstrated in past training or employment which make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.

(15) "Vocational assistance" means any of the services, goods, allowances and temporary disability compensation under these rules to assist an eligible worker return to work. This does not include activities for determining a worker's eligibility for vocational assistance.

(16) "Vocational assistance provider" means an insurer or other public or private organization, authorized under these rules to provide vocational assistance to injured workers.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCB 7-1966, f. & ef. 6-30-66; WCB 6-1973, f. 12-20-73, ef. 1-11-74; WCB 45-1974(Temp), f. & ef. 11-5-74; WCD 4-1975(Admin), f. 2-6-75, ef. 2-25-75; WCB 1-1976, f. 3-29-76, ef. 4-1-76; WCD 3-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 1-1978(Admin), f. & ef. 2-1-78; WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0005, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0007

Establishing the Adjusted Weekly Wage to Determine Suitable Wage

To determine a suitable wage as defined in OAR 436-120-0005(13), the insurer shall first establish the adjusted weekly wage as described in this rule. The insurer must calculate the "adjusted weekly wage" whenever determining or redetermining a worker's eligibility.

(1) For the purposes of this rule, the following definitions apply:

(a) "Adjusted weekly wage" is the wage currently paid as calculated under this rule.

(b) "Cost-of-living adjustments" or "collective bargaining adjustments" are increases or decreases in the wages of all workers performing the same or similar jobs for a specific employer. These adjustments are not variations in wages based on skills, merit, seniority, length of employment, or number of hours worked.

(c) "Earned income" means gross wages, salary, tips, commissions, incentive pay, bonuses and the reasonable value of other consideration (housing, utilities, food, etc.) received from all employers for services performed from all jobs held at the time of injury or aggravation. Earned income also means gross earnings from self-employment after deductions of business expenses excluding depreciation. Earned income does not include fringe benefits such as medical, life or disability insurance, employer contributions to pension plans, or reimbursement of the worker's employment expenses such as mileage or equipment rental.

(d) "Job at aggravation" means the job or jobs the worker held on the date of the aggravation claim; or, for a worker not employed at time of aggravation, the last job or concurrent jobs held prior to the aggravation. Volunteer work does not constitute a job for purposes of this subsection.

(e) "Job at injury" is the job on which the worker originally sustained the compensable injury. For an occupational disease, the job at injury is the job the worker held at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease.

(f) "Permanent, year-round employment" is permanent employment in which the worker worked or was scheduled or projected to work in 48 or more calendar weeks a year. Paid leave shall be counted as work time. Permanent year-round employment includes trial service. It does not include employment with an annual salary set by contract or self-employment.

(g) "Temporary disability" means wage loss replacement for the job at injury.

(h) "Trial service" is employment designed to lead automatically to permanent, year-round employment subject only to the employee's satisfactory performance during the trial service period.

(2) The insurer shall determine the nature of the job at injury or the job or jobs at aggravation by contacting the employer or employers to verify the worker's employment status. All figures used in determining a weekly wage by this method shall be supported by verifiable documentation such as the worker's state or federal tax returns, payroll records, or reports of earnings or unemployment insurance payments from the Employment Department. The insurer shall calculate the worker's adjusted weekly wage as described by this rule.

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(3) When the job at injury or the job at aggravation was temporary or seasonal, calculate the worker's average weekly wage as follows, then convert to the adjusted weekly wage as described in section (6) of this rule:

(a) When the worker's regular employment is the job at injury and the worker did not hold more than one job at the time of injury, and did not receive unemployment insurance benefits during the 52 weeks prior to the injury, the worker's average weekly wage is the same as the wage upon which temporary disability is based.

(b) When the worker's regular employment is the job at aggravation and the worker did not hold more than one job at the time of aggravation, and did not receive unemployment insurance benefits during the 52 weeks prior to the aggravation, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025.

(c) If the worker held more than one job at the time of the injury or aggravation, and did not receive unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, divide the worker's earned income by the number of weeks the worker worked during the 52 weeks prior to the date of injury or aggravation.

(d) If the worker held one or more jobs at the time of the injury or aggravation, and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, combine the earned income with the unemployment insurance payments and divide the total by the number of weeks the worker worked and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation.

(4) When the job at injury was other than as described in section (3) of this rule, use the weekly wage upon which temporary disability was based, and then convert the weekly wage to the adjusted weekly wage as described in section (6) of this rule.

(5) When the job at aggravation was other than as described in section (3) of this rule, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025, and then convert to the adjusted weekly wage as described in section (6) of this rule.

(6) Adjusted weekly wage: After arriving at the weekly wage pursuant to this rule, establish the adjusted weekly wage by determining the percentage increase or decrease from the date of injury or aggravation, or last day worked prior to aggravation, to the date of calculation, as follows:

(a) Contact the employer at injury or aggravation regarding any cost-of-living or collective bargaining adjustments for workers performing the same job. When the worker held two or more jobs at aggravation, contact the employer for whom the worker worked the most hours. Adjust the worker's weekly wage by any percentage increase or decrease;

(b) If the employer at injury or aggravation is no longer in business and the worker's job was covered by a union contract, contact the applicable union for any cost-of-living or collective bargaining adjustments. Adjust the worker's weekly wage by the percentage increase or decrease; or

(c) If the employer at injury or aggravation is no longer in business or does not currently employ workers in the same job category, adjust the worker's weekly wage by the appropriate factor from the cost-of-living matrix.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stat. Implemented: ORS 656.340(5) & (6)

Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; 436-120-0030 Renumbered to 436-120-0075; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from OAR 436-120-0025; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; Renumbered from 436-120-0310, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0008

Administrative Review and Contested Cases

(1) Administrative review of vocational assistance matters: Under ORS 656.283(2) and 656.340(4), a worker wanting review of any vocational assistance matter must apply to the director for administrative review. Also, under ORS 656.340(11) and OAR 436-120-0320(11) when the worker and insurer are unable to agree on a vocational assistance provider, the insurer shall apply to the director for administrative review. Because effective vocational assistance is best realized in a nonadversarial environment, the first objective of the administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director shall close the record and issue a Director's Review and Order as described in subsections

(f) and (g) of this section. A worker need not be represented to request or to participate in the administrative review process, which is as follows:

(a) The worker's request for review must be mailed or otherwise communicated to the department no later than the 60th day after the date the worker received written notice of the insurer's action; or, if the worker was represented at the time of the notice, within 60 days of the date the worker's representative received actual notice. Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.

(b) The worker, insurer, employer at injury, and vocational assistance provider shall supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director. Upon the director's request, any party to the dispute shall provide available information within 14 days of the request. The insurer shall promptly schedule, pay for, and submit to the director any medical or vocational tests, consultations, or reports required by the director. The worker, insurer, employer at injury, or vocational assistance provider shall simultaneously send copies to the other parties to the dispute when sending material to the director. If necessary, the director will assist an unrepresented worker in sending copies to the appropriate parties. Failure to comply with this subsection may result in the following:

(A) If the worker fails to comply without reasonable cause, the director may dismiss the administrative review as described in subsection (d); or, the director may decide the issue on the basis of available information.

(B) If the insurer, vocational assistance provider, or employer at injury fails to comply without reasonable cause, the director may decide the issue on the basis of available information.

(c) At the director's discretion, the director may issue an order of deferral to temporarily suspend administrative review. The order of deferral will specify the conditions under which the review will be resumed.

(d) The director may issue an order of dismissal under appropriate conditions.

(e) The director shall issue a letter of agreement when the parties resolve a dispute within the scope of these rules. Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. The agreement will become effective on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may reconsider approval of the agreement upon the director's own motion or upon a motion by a party. The director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the review.

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director shall issue a final order, including the notice of record contents. The parties will have 60 days from the issuance of the order to request a contested case hearing before the director.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the contested case order is issued.

(h) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(i) Any party requesting reconsideration or responding to a reconsideration request shall simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(j) A request for reconsideration does not stay the 60-day time period within which the parties must request a contested case hearing.

(2) Attorney fees: In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer as provided in ORS 656.385 (§2, ch. 756, OL 2003). The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the

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case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix: [Matrix not included. See ED. NOTE.]

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

(A) A current, valid retainer agreement, and

(B) A statement of hours spent on the case if greater than two hours.

In the absence of such a statement, the director will assume the time spent on the case was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to the following:

(A) Where there is a return-to-work plan that includes the disputed service(s), the assumed value is the cost of the disputed service(s) as projected in the plan;

(B) Where the service(s) have not been incorporated in an existing return-to-work plan, the assumed value is the actual or projected cost of the service(s) up to the amount allowed in the fee schedule provided in OAR 436-120-0720;

(C) For the purposes of applying the matrix, the value of an eligibility determination is assumed to be the maximum allowed in the fee schedule provided in OAR 436-120-0720 for completing an eligibility evaluation; the value of vocational assistance or a training plan, unless determined to be otherwise, is assumed to fall within the highest category provided in the above matrix; or

(D) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director. Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) In order to provide parties an opportunity to inform the director of agreements, or submit statements of extraordinary circumstances or professional hours for consideration in determining the attorney fee, the director will provide the parties notice by phone or fax at least 3 business days in advance that an order or other written resolution of the dispute will be issued. Any information or statements provided to the director must simultaneously be provided to all other parties to the dispute.

(e) An assessed attorney fee will be paid within 30 days of the date the order authorizing the fee becomes final.

(3) Contested cases regarding the director's administrative review: Under ORS 656.283, orders issued under subsection (1) (f) of this rule and dismissals issued under subsection (1)(d) of this rule may be appealed to the director for a contested case hearing as follows:

(a) The party must send the request for hearing in writing to the administrator of the Workers' Compensation Division and shall simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the order is contested.

(b) The party must mail the request to the division within 60 days of the date of the order.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(4) Contested cases regarding jurisdiction or reimbursement of costs: Under ORS 183.310 through 183.550 and 656.704(2), a worker may appeal an order of dismissal based on lack of jurisdiction under subsection (1)(d) of this rule, or, under ORS 183.310 through 183.550 and 656.704(2), an insurer may appeal department denial of reimbursement for vocational assistance costs under OAR 436-120-0730, as follows:

(a) The party must send the request for hearing to the administrator of the Workers' Compensation Division. The party must also simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the denial is contested.

(b) The party must mail the request to the division no later than the 30th day after the party received the dismissal or written denial.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(5) Contested case hearings of civil penalties: Under ORS 656.740 an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty pursuant to ORS 656.745 and OAR 436-120-0900 as follows:

(a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The party must file the request with the division within 60 days after the mailing date of the notice of the proposed order or assessment.

(c) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) The Hearings Division shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(6) Contested case hearings of sanctions and denials of certification or authorization by the director: Under ORS 183.310 through 183.550, an insurer sanctioned pursuant to ORS 656.447 and OAR 436-120-0900, a vocational assistance provider or certified individual sanctioned pursuant to ORS 656.340(9)(b) and OAR 436-120-0915, a vocational assistance provider denied authorization pursuant to ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification pursuant to ORS 656.340(9)(a) and OAR 436-120-0810 may appeal as follows:

(a) The party must send the request for administrative review in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the action is contested.

(b) The party must mail the request to the division no later than the 60th day after the party received notification of the action, unless the director determines there was good cause for delay or that substantial injustice may otherwise result.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

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

Stat. Auth.: ORS 656.704(2) & 656.726(4)

Stats. Implemented: ORS 183.310 - 183.555, 656.283(2), 656.340, 656.447, 656.740 & 656.745

Hist.: WCD 9-1982(Admin), f. 5-28-82, ef. 6-1-82; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0970, 5-1-85; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0191, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0210 & 436-120-0260; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0320

Determining Eligibility for Vocational Assistance and Selection of Vocational Assistance Provider

(1) Unless one of the provisions in section (2) below applies, the insurer shall contact a worker with an accepted disabling claim or claim for aggravation to begin the eligibility determination within five days of any of the following:

(a) The insurer's receipt of a request for vocational assistance from the worker. If the insurer does not know the worker's permanent limitations, the insurer shall contact the attending physician within 14 days of receiving the request for vocational assistance. The insurer shall notify the worker if the eligibility determination is postponed until permanent restrictions are known or can be projected.

(b) The insurer's receipt of a medical or investigative report sufficient to document a need for vocational assistance, including medical verification of projected or actual permanent limitations due to the injury.

(c) The insurer's knowledge that the claim qualifies for closure because the worker is medically stationary. If the claim qualifies for closure under ORS 656.268(1)(b) or (c), the insurer may postpone the determination until the worker is medically stationary or until permanent restrictions are known or can be projected, whichever occurs first.

(d) The worker is granted a permanent disability award.

(2) The insurer is not required to determine eligibility if:

(a) Eligibility has previously been determined under the current opening of the claim and there are no newly accepted conditions;

(b) The worker has returned to regular or other suitable employment with the employer at injury or aggravation; or

(c) The worker's claim was closed with no permanent disability award. The following by themselves do not make a worker ineligible for vocational assistance:

(A) A finding that a worker is not entitled to an additional award of permanent disability on aggravation, or

(B) A finding that a worker is not entitled to a permanent disability award because of an offset of permanent disability from a prior claim, or

(C) The worker disposes of permanent disability through a claim disposition agreement (CDA).

(3) The insurer must defer the determination of vocational assistance eligibility when the employer at injury activates preferred worker benefits under OAR 436-110 and the worker agrees to accept the new or modified regular job in writing.

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(a) There must be a written job offer which includes the following information:

- (A) The start date;
- (B) That the job does not begin until the modifications are in place;
- (C) Wage and hours;
- (D) Job site location; and
- (E) Description of job duties.

(b) The insurer must send the worker a Notice of Deferral of Vocational Assistance Eligibility Determination within 14 days of the worker's signature accepting the job offer.

(c) If preferred worker benefits cannot modify the job to accommodate the worker's restrictions, as verified by the division, or the employer, the worker, or division terminate the agreement, the insurer must complete the eligibility determination process within 30 days from the date of a determination that preferred worker benefits will not be provided.

(4) If the insurer receives a request for vocational assistance from the worker or the worker's representative and the insurer is not required to determine eligibility under section (2), the insurer shall notify the worker in writing, within 14 days of the request and provide:

- (a) The reasons the insurer is not required to determine eligibility,
- (b) The circumstance which would require the insurer to determine eligibility, and
- (c) The appropriate telephone number of the division, with instructions to contact the division with questions about vocational assistance eligibility requirements and procedures.

(5) Nothing in these rules prevents the insurer from finding a worker eligible and providing vocational assistance at any time.

(6) The insurer shall complete the eligibility determination within 30 days of the contact required in section (1) or if the eligibility determination was postponed within 30 days of receipt of verification of projected or actual permanent limitations. An eligibility evaluation may include a vocational evaluation that determines the category of assistance as defined in OAR 436-120-0400. The notice required under OAR 436-120-0004(2)(a)(A) must inform the worker which category of assistance will be provided.

(7) A vocational counselor certified under OAR 436-120 shall determine if a worker meets eligibility criteria.

(8) The insurer shall provide the vocational counselor with all existing relevant medical information regarding the worker's physical capacities and limitations.

(9) After the worker's permanent limitations are known or can be projected, the worker shall, upon written request from the insurer, provide vocationally relevant information needed to determine eligibility within a reasonable time set by the insurer.

(10) A worker entitled to an eligibility evaluation is eligible for vocational services if all the following additional conditions are met:

- (a) The worker is authorized to work in the United States.
- (b) The worker is available in Oregon for vocational assistance. The insurer shall consider the worker available in Oregon if the worker lives within commuting distance of Oregon or documents, in writing, willingness to relocate to or within commuting distance of Oregon within 30 days of being found eligible. The worker is responsible for costs associated with being available in Oregon. The requirement that the worker be available in Oregon for vocational assistance does not apply if the Oregon subject worker did not work and live in Oregon at the time of the injury.

(c) As a result of the limitations caused by the injury or aggravation, the worker:

- (A) Is not able to return to regular employment;
- (B) Is not able to return to any other suitable and available work with the employer at injury or aggravation; and
- (C) Has a substantial handicap to employment and requires assistance to overcome that handicap.

(d) None of the reasons for ineligibility under OAR 436-120-0350 applies under the current opening of the claim.

(11) Upon determining the worker eligible, the insurer and worker shall jointly select a vocational assistance provider. No later than 20 days from the date the insurer determined the worker eligible, the insurer shall either notify the worker of the selection of vocational assistance provider, or if the parties are unable to agree, refer the dispute to the director. The worker and insurer shall follow the same procedure to select a new vocational assistance provider.

(12) Unless all parties otherwise agree in writing, vocational assistance will be due at any given time with respect only to one claim of the worker. If the worker is eligible for vocational assistance under two or more claims, and there is a dispute about which claim gives rise to the need for vocational assistance pursuant to these rules, the director will select the

claim for the injury which results in the most severe vocational impact. If services are provided under more than one claim at a time pursuant to a written agreement of all parties, time and fee limits may extend beyond the limits otherwise imposed in these rules.

Stat. Auth.: ORS 656.726(4) & 656.340(9)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; Renumbered from OAR 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0340

Determining Substantial Handicap

(1) A certified vocational counselor shall perform a substantial handicap evaluation as part of the eligibility determination unless the insurer finds that the worker has a substantial handicap to employment.

(2) To complete the substantial handicap evaluation the vocational counselor shall submit a report documenting the following information:

- (a) Relevant work history for at least the preceding five years;
- (b) Level of education, proficiency in spoken and written English or other languages, where relevant, and achievement or aptitude test data if it exists;
- (c) Adjusted weekly wage as determined under OAR 436-120-0007 and suitable wage as defined by OAR 436-120-0005(13);
- (d) Permanent limitations due to the injury;
- (e) An analysis of the worker's transferable skills, if any;
- (f) A list of physically suitable jobs for which the worker has the knowledge, skills and abilities, which pay a suitable wage, and for which a reasonable labor market is documented to exist as described in subsection (g) below;

(g) An analysis of the worker's labor market utilizing standard labor market reference materials including but not limited to Employment Department (OED) information such as Oregon Wage Information (OWI), Oregon Comprehensive Analysis File and other publications of the Occupational Program Planning System (OPPS) and material developed by the division. When using the OWI data, the presumed standard shall be the 10th percentile unless there is sufficient evidence that a higher or lower wage is more appropriate. When such data is not sufficient to make a decision about substantial handicap, the vocational counselor shall perform individual labor market surveys as described in OAR 436-120-0410(7); and

(h) Consideration of the vocational impact of any limitations which existed prior to the injury.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.340(5) & (6)

Hist.: WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0350

Ineligibility and End of Eligibility for Vocational Assistance

A worker is ineligible or the worker's eligibility ends when any of the following conditions apply:

(1) The worker does not or no longer meets the eligibility requirements as defined in OAR 436-120-0320. The insurer must have obtained new information which did not exist or which the insurer could not have discovered with reasonable effort at the time the insurer determined eligibility.

(2) The worker is determined not to have permanent disability after a finding of eligibility.

(3) The worker's lack of suitable employment is not due to the limitations caused by the injury or which existed before the injury.

(4) The worker has been employed at least for 60 days in suitable employment after the injury or aggravation and any necessary worksite modification is in place, unless OAR 436-120-0350(17) applies.

(5) The worker, prior to beginning an authorized return-to-work plan, refused an offer of suitable employment, or left suitable employment after the injury or aggravation for a reason unrelated to the limitations due to the compensable injury. If the employer-at-injury offers employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(6) The worker, prior to beginning an authorized return-to-work plan, refused or failed to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to finding the worker ineligible or ending eligibility, the insurer shall document the existence of one

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or more suitable jobs which would have been available for the worker upon successful completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(7) The worker, after completing an authorized training plan, refused an offer of suitable employment.

(8) The worker has declined or has become unavailable for vocational assistance for reasonable cause. If the insurer does not believe the worker had reasonable cause, the insurer shall warn the worker prior to finding the worker ineligible or ending the worker's eligibility under this section. Declining vocational assistance to accept modified or new employment that results from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110, will be considered reasonable cause.

(9) The worker has failed, after written warning, to participate in the vocational assistance process, or to provide relevant information. No written warning is required if the worker refuses a suitable training site after the vocational counselor and worker have agreed in writing upon a return-to-work goal.

(10) The worker has failed, after written warning, to comply with the return-to-work plan. No written warning is required if the worker fails to attend 2 consecutive training days and fails, without reasonable cause, to notify the vocational counselor or the insurer.

(11) The worker's lack of suitable employment cannot be resolved by providing vocational assistance. This includes circumstances in which the worker cannot benefit from, or participate in, vocational assistance because of medical conditions unrelated to the injury.

(12) The worker has misrepresented a matter material to evaluating eligibility or providing vocational assistance.

(13) The worker has refused, after written warning, to return properly provided by the insurer or reimburse the insurer after the insurer has notified the worker of the repossession; or the worker has misused funds provided for the purchase of property or services. No vocational assistance shall be provided under the current or subsequent openings of the claim until the worker has returned the property or reimbursed the funds.

(14) The worker physically abused any party to the vocational process, or after written warning, has continued to sexually harass or threaten to physically abuse any party to the vocational process. This section does not apply if such behavior is the result of a documented medical or mental condition. In such a situation, eligibility should be ended under section (11) of this rule.

(15) The worker has entered into a claim disposition agreement (CDA) which disposes of vocational assistance eligibility. The parties may agree in writing to suspend vocational services pending approval by the Workers' Compensation Board (Board). The insurer shall end eligibility when the Board approves the CDA. No notice regarding the end of eligibility is required.

(16) The worker has received maximum direct employment services and is not entitled to other categories of vocational assistance.

(17) The worker has been suitably employed in modified or new employment that results from employer at injury activation of preferred worker benefits as provided in OAR 436-120-0005(12)(e).

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340

Hist.: WCD 11-1982(Temp), f. 12-29-82 eff. 1/1/83; WCD 2-1983, 6-30-83, eff. 6-30-83; WCD 5-1983, 12-14-83, eff. 1-1-84; Renumbered from OAR 436-061-0126, 5-1-85; WCD 7-1985, 12-12-85, eff. 1/1/86; Renumbered from OAR 436-120-0090, WCD 11-1987, 12-17-87, eff. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from OAR 436-120-0045; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0360

Redetermining Eligibility for Vocational Assistance

If a worker was previously found ineligible or the worker's eligibility ended for any of the reasons specified in sections (1) through (8), or any of the conditions described in sections (9) through (11) exists, the insurer shall redetermine eligibility upon notification of a change of circumstances. The insurer shall complete the eligibility evaluation within 35 days of the following:

(1) The worker, for reasonable cause, declined or was not available for vocational assistance, or the barrier causing the worker's lack of suitable employment could not be resolved by providing vocational assistance, and those circumstances have changed. The insurer may require the worker to provide documentation the barrier no longer exists, including medical or psychological reports relating to noncompensable conditions. If the worker declined vocational assistance to accept modified or new employment that resulted from an employer at injury activated use of the preferred

worker benefits, under OAR 436-110, and the job was not suitable, the worker must request redetermination within 30 days of termination of the employment for which preferred worker benefits were provided.

(2) The worker was not available in Oregon, and the worker becomes available. The worker must request redetermination within six months of the worker's receipt of the insurer's notice.

(3) The worker's claim was denied, and the claim is later accepted and all appeals exhausted.

(4) The worker was not awarded permanent disability and the worker is later awarded permanent disability.

(5) The worker was not authorized to work in the United States, and the worker is now authorized to work in the United States. The time limit set in this section applies to any worker found ineligible or whose eligibility ended because the worker was not authorized to work in the United States regardless of the date the notice of ineligibility or end of eligibility was issued. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker must:

(a) Request redetermination; and

(b) Submit evidence to the insurer that the worker has applied for authorization to work in the United States and is awaiting a decision by the U.S. Citizenship and Immigration Services (USCIS). The worker shall promptly provide the insurer with a copy of any decision by the USCIS. The insurer shall redetermine eligibility upon receipt of documentation of the worker's authorization to work in the United States.

(6) The worker was unavailable for vocational assistance due to short-term incarceration for a matter unrelated to the worker's claim and is now available. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker must:

(a) Request redetermination; and

(b) Submit evidence to the insurer that the worker is now available to participate in vocational assistance.

(7) The worker returned to work prior to the worker becoming medically stationary, and the physician later rescinded the release.

(8) The worker returned to work prior to becoming medically stationary, and the worker requests a redetermination within 60 days of the mailing date of the Notice of Closure.

(9) Prior to claim closure a worker's limitations due to the injury became more restrictive.

(10) Prior to claim closure the insurer accepts a new condition which was not considered in the original determination of the worker's eligibility.

(11) The worker's temporary disability compensation is redetermined and increased. The worker must make a written request to the insurer to redetermine vocational eligibility within 60 days of receiving notification of the increase in temporary disability compensation.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; Renumbered from OAR 436-120-0095; 12/17/87 as WCD 11-1987, f. & ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from OAR 436-120-0055; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0400

Selection of Category of Vocational Assistance

(1) The insurer shall select the category of vocational assistance prior to referral to a vocational assistance provider. The insurer shall notify the worker and document the reason for its decision.

(2) The insurer shall select one of the following categories of vocational assistance:

(a) Direct employment services, if the worker has the necessary transferable skills to obtain suitable new employment.

(b) Training, if the worker needs training in order to return to employment which pays a wage significantly closer to 100 percent of the adjusted weekly wage. "Significantly closer" may vary depending on several factors, including, but not limited to, the worker's wage at injury, adaptability, skills, geographic location, limitations and the potential for the worker's income to increase with time as the result of training.

(3) The insurer shall reconsider the category of vocational assistance within 30 days of the insurer's knowledge of a change in circumstances including, but not limited to, the following:

(a) A change in the worker's permanent limitations;

(b) A change in the labor market; or

(c) The category of vocational assistance proves to be inappropriate.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340(7)

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Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from OAR 436-120-0083 & 0085; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0410

Vocational Evaluation

A certified vocational counselor shall complete the vocational evaluation. Vocational evaluation may include one or more of the following:

(1) Vocational testing shall be administered by an individual certified to administer the test.

(2) A work evaluation shall be performed by a Certified Vocational Evaluation Specialist (CVE), certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(3) On-the-job evaluations shall evaluate a worker's work traits, aptitudes, limitations, potentials and habits in an actual job environment.

(a) First, the vocational counselor shall perform a job analysis to determine if the job is within the worker's capacities. The insurer shall submit the job analysis to the attending physician if there is any question about the appropriateness of the job.

(b) The evaluation should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(c) The evaluation does not establish any employer-employee relationship.

(d) A written report shall evaluate the worker's performance in the areas originally identified for assessment.

(4) Situational assessment is a procedure that evaluates a worker's aptitude or work behavior in a particular learning or work setting. It may focus on a worker's overall vocational functioning or answer specific questions about certain types of work behaviors.

(a) The situational assessment requires these steps: planning and scheduling observations; observing, describing and recording work behaviors; organizing, analyzing and interpreting data; and synthesizing data including behavioral data from other pertinent sources.

(b) The assessment should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(5) Work adjustment is work-related activities that assist workers in understanding the meaning, value, and demands of work. It may include the assistance of a job coach.

(6) Job analysis is a detailed description of the physical and other demands of a job based on direct observation of the job.

(7) Labor market surveys are obtained from direct contact with employers, other actual labor market information, or from other surveys completed within 90 days of the report date.

(a) A labor market survey is needed when standard labor market reference materials do not have adequate information upon which to base a decision, or there are questions about a worker's specific limitations, training and skills, which must be addressed with employers to determine if a reasonable labor market exists.

(b) The person giving the information must have hiring responsibility or direct knowledge of the job's requirements; and the job must exist at the firm contacted.

(c) The labor market survey report shall include, but is not limited to, the date of contact; firm name, address and telephone number; name and title of person contacted; the qualifications of persons recently hired; physical requirements; wages paid; condition of hire (full-time, part-time, seasonal, temporary); date and number of last hire(s); and available and anticipated openings.

(d) Specific openings found in the course of a labor market survey are not, in themselves, proof a reasonable labor market exists.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340(7)

Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0081; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0420; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0430

Direct Employment

(1) The insurer shall provide an eligible worker with four months of direct employment services dating from the date the insurer approves a direct employment plan or the completion date of an authorized training plan. Direct employment services include, but are not limited to, the following:

(a) Employment counseling.

(b) Job search skills instruction, which teaches workers how to write resumes, research the job market, locate suitable new employment, com-

plete employment applications, interview for employment, and develop other skills related to looking for suitable new employment.

(c) Job development, which assists the worker to contact appropriate prospective employers, and with related return-to-work activities.

(d) Job analysis.

(2) The insurer shall provide return-to-work follow-up for at least 60 days after the worker becomes employed to ensure the work is suitable and to provide any necessary assistance which enables the worker to continue the employment.

(3) Direct employment services are available for more than four months if the worker was unable to participate for reasonable cause.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340(7)

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0060, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; Renumbered from OAR 436-120-0030; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0075 & 436-120-0083; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0440

Training

(1) Training services include plan development, training, monthly monitoring of training progress, and job placement services as necessary.

(2) Training is limited to an aggregate of 16 months, subject to extension to 21 months by the director for a worker with an exceptional disability resulting from the compensable condition(s) and any limitations which existed prior to the injury or an exceptional loss of earning capacity.

(a) "Exceptional disability" is defined as disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than Class III as defined in OAR 436-035.

(b) An "exceptional loss of earning capacity" exists when no suitable training plan of 16 months or less is likely to eliminate the worker's substantial handicap to employment. The extension must allow the worker to obtain a wage "significantly closer," as described in OAR 436-120-0400(2)(b), to the worker's adjusted weekly wage and at least 10 percent greater than could be expected with a shorter training program.

(3) A worker enrolled and actively engaged in training shall receive temporary disability compensation subject to OAR 436-060, and payment of awards of permanent disability are suspended. At the insurer's discretion, training costs may be paid for periods longer than 21 months, but in no event shall temporary disability compensation be paid for a period longer than 21 months.

(4) The selection of plan objectives and kind of training shall attempt to minimize the length and cost of training necessary to prepare the worker for suitable employment. Notwithstanding OAR 436-120-0320(10)(b), the director may order the insurer, or the insurer may elect, to provide training outside Oregon if such training would be more timely, appropriate or cost effective than other alternatives. The plan must be developed and monitored by a vocational assistance provider certified pursuant to these rules.

(5) Training status continues during the following breaks:

(a) A regularly scheduled break of not more than six weeks between fixed school terms;

(b) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; and

(c) A period of illness or recuperation which does not prevent completion of the training by the planned date.

(6) On-the-job training prepares the worker for permanent, suitable employment with the training employer and for employment in the labor market at large. On-the-job training shall be considered first in developing a training plan. The following conditions apply:

(a) Training time is limited to a duration of 12 months.

(b) The on-the-job training contract between the training employer, the insurer, and the worker shall include, but is not limited to, the worker's name; the employer's legal business name, Workers' Compensation Division Employer Registration number, and the name of the individual providing the training; the training plan start and end dates; the job title, the job duties, and the skills to be taught; the base wage and the terms of wage reimbursement; and an agreement that the employer will pay all taxes normally paid on the entire wage and will maintain workers' compensation insurance for the trainee. If the training prepares a worker for a job unique to the training site, the contract must acknowledge that the training may not prepare the worker for jobs elsewhere.

(c) The insurer shall not reimburse the training employer 100 percent of the wages for the entire contract period.

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(d) The insurer shall pay temporary disability compensation as provided in ORS 656.212.

(e) The worker's schedule shall be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(7) Skills training is offered through a community college, based on predetermined curriculum, at the training employer's location. Skills training is subject to the following conditions:

(a) Training is limited to 12 months.

(b) Training does not establish any employer-employee relationship with the training employer. The activity is primarily for the worker's benefit. The worker does not receive wages. The training employer makes no guarantee of employing the worker when the training is completed.

(c) The training employer has a sufficient number of employees to accomplish its regular work and the training of the worker, and the worker does not displace an employee.

(d) The worker's schedule shall be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(8) Rehabilitation facilities training provides evaluation, training and employment for severely disabled individuals.

(9) Basic education may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment. It is limited to six months.

(10) Formal training may be offered through a vocational school licensed by an appropriate licensing body, or community college or other post-secondary educational facility which is part of a state system of higher education. Course load shall be consistent with the worker's abilities, limitations and length of time since the worker last attended school. Courses shall relate to the vocational goal.

(11) The worker is entitled to job placement assistance after completion of training.

(12) When the worker returns to work following training, the insurer shall monitor the worker's progress for at least 60 days to assure the suitability of employment before ending eligibility.

(13) Training ends and the plan shall be re-evaluated when any of the following occurs:

(a) A change in the worker's limitations which renders the training inappropriate.

(b) The worker's training performance is unsatisfactory and training is not likely to result in employment in that field. In an academic program, the worker fails to maintain at least a 2.00 grade point average for at least two grading periods or to complete the minimum credit hours required under the training plan. The vocational counselor shall report any unsatisfactory performance and the insurer shall give the worker a written warning of the possible end of training at the first indication of unsatisfactory performance.

(14) The insurer shall not provide any further training to a worker who has completed one training plan unless the worker has sustained a compensable aggravation or newly accepted condition which renders the worker incapable of obtaining suitable employment, or the previous plan was inadequate to prepare the worker for suitable employment because of an error or omission by the insurer.

(15) Training shall end if any of the following applies:

(a) The worker has successfully completed training;

(b) The worker's eligibility has ended under OAR 436-120-0350; or

(c) The worker is not enrolled and actively engaged in the training.

However, none of the following will be considered as ending the worker's training status:

(A) A regularly scheduled break of not more than six weeks between fixed school terms;

(B) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; or

(C) A period of illness or recuperation which does not prevent completion of the training by the planned date.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0060, WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; Renumbered from 436-120-0030, WCD 11-1987, f. 12-17-87, ef. 1-1-88; Renumbered from 436-120-0075 & 436-120-0085, WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0450 & 436-120-0460, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0500

Return-to-Work Plans: Development and Implementation

(1) A return-to-work plan should be a collaborative effort between the vocational counselor and the injured worker, and should include all the rights and responsibilities of the worker, the insurer, and the vocational counselor. Prior to submitting the plan to the insurer, the vocational counselor shall review the plan and plan support with the worker. Certain information may be excluded, as allowed by OAR 436-010. The injured worker must be given the opportunity to review the plan with the worker's representative prior to signing it. The vocational assistance provider shall confirm the worker's understanding of and agreement with the plan by obtaining the worker's signature. The counselor shall submit copies signed by the vocational counselor and the worker to all parties no later than 30 days after the selection of direct employment or 60 days after the selection of training. Circumstances beyond the insurer's and worker's control may necessitate an extension of this time frame.

(2) Within 14 days of receipt of the signed return-to-work plan, the insurer shall approve or reject the plan and notify the parties. If the insurer lacks sufficient information to make a decision, the insurer shall advise the parties what information is needed and when it expects to make a decision.

(3) If the insurer does not approve a return-to-work plan within 90 days of determining the worker is entitled to a training plan, or within 45 days of determining the worker is entitled to a direct employment plan, the insurer must contact the division within five days to schedule a conference. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the plan developer, and any other parties involved in the return-to-work process must attend the conference. The conference may be postponed for a period of time agreeable to the parties. The insurer or the worker may request a conference with the division if other delays in the vocational rehabilitation process occur.

(4) If, during development of a return-to-work plan, an employer offers the worker a job, the insurer shall perform a job analysis, obtain approval from the attending physician, verify the suitability of the wage, and confirm the offer is for a bona fide, suitable job as defined in OAR 436-120-0005(12). If the job is suitable, the insurer shall help the worker return to work with the employer. The insurer shall provide return-to-work follow-up during the first 60 days after the worker returns to work. If return to work with the employer is unfeasible or, during the 60-day follow-up the job proves unsuitable, the insurer shall immediately resume development of the return-to-work plan.

(5) If the vocational goal or category of assistance is later changed, the insurer shall amend the plan. All amendments to the plan shall be initiated by the insurer, vocational assistance provider, and the worker.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340(9)

Hist.: WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0172, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from OAR 436-120-0105 & 436-120-0170; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; Renumbered from 436-120-0600, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0510

Return-to-Work Plan Support

(1) The injured worker and vocational counselor shall work together to develop a return-to-work plan that includes consideration of the following:

(a) The injured worker's transferable skills;

(b) The injured worker's physical and mental capacities and limitations;

(c) The injured worker's vocational interests;

(d) The injured worker's educational background and academic skill level;

(e) The injured worker's pre-injury wage; and

(f) The injured worker's place of residence and that labor market.

(2) Return-to-work plan support shall contain, but is not limited to, the following:

(a) Specific vocational goal(s) and projected return-to-work wage(s).

(b) A description of the worker's current medical condition, relating the worker's permanent limitations to the vocational goals.

(c) A description of the worker's education and work history, including job durations, wages, Dictionary of Occupational Titles codes or other standardized job titles and codes, and specific job duties.

(d) If a direct employment plan, a description of the worker's transferable skills which relate to the vocational goals and a discussion of why

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training will not bring the worker a wage significantly closer to 100 percent of the adjusted weekly wage at the time of injury.

(e) If a training plan, a discussion of why direct employment services will not return the worker to suitable employment.

(f) A summary of the results of any evaluations or testing. If the results do not support the goals, the vocational assistance provider shall explain why the goals are appropriate.

(g) A summary of current labor market information which shows the labor market supports the vocational goals and documents that the worker has been informed of the condition of the labor market.

(h) A labor market survey as prescribed in 436-120-0410(7), if needed.

(i) If the labor market information does not support the goals, the vocational assistance provider shall explain why the goals are appropriate. The worker and worker's representative, if any, shall acknowledge in writing an awareness of the poor labor market conditions and a willingness to proceed with the plan in spite of these conditions. In the case of a training plan, this acknowledgment shall include an understanding the insurer will provide no additional training should the worker be unable to find suitable employment because of the labor market.

(j) A job analysis prepared by the vocational assistance provider, signed by the worker and by the attending physician or a qualified facility designated by the attending physician, and based on a visit to a worksite comparable to what the worker could expect after completing training. If the attending physician is unable or unwilling to address the job analysis and does not designate a facility as described above, the insurer may submit the job analysis to a qualified facility of its choice. The insurer shall submit the resulting information to the attending physician for concurrence. If the attending physician has not responded within 30 days of the date of request for concurrence, the plan may proceed.

(k) A signed on-the-job training contract, if applicable.

(l) A description of the curriculum, which must be term by term if the curriculum is for formal training.

(m) If material pertinent to a return-to-work plan is contained in a previous eligibility the insurer may attach a copy of the evaluation to the plan.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from OAR 436-120-0105; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0720

Fee Schedule and Conditions for Payment of Vocational Assistance Costs

(1) The director has established the following fee schedule for professional costs and direct worker purchases. The schedule sets maximum spending limits per claim opening for each category; however, the insurer may spend more than the maximum limit if the insurer determines the individual case so warrants. Spending limits are to be adjusted annually, effective July 1. The annual adjustment is based on the conversion factor described in OAR 436-120-0005(2) and published with the cost-of-living matrix.

(2) For workers found to have an exceptional disability or exceptional loss of earning capacity as defined in OAR 436-120-0440 the fee schedule spending limits for the Training category and DE/Training Combined category listed below shall be increased by 30%.

(3) Amounts include professional costs, travel/wait, and other travel expenses: [Table not included. See ED. NOTE.]

(4) Wage reimbursement for on-the-job training contracts are not covered by the fee schedule.

(5) Services and direct worker purchases provided after eligibility ends to complete a plan or employment is subject to the maximum amounts in effect at the time of closure.

(6) The insurer shall pay, within 60 days of receipt, the vocational assistance provider's billing for services provided under the insurer-vocational assistance provider agreement. The insurer shall not deny payment on the grounds the worker was not eligible for the assistance if the vocational assistance provider performed the services in good faith without knowledge of the ineligibility.

(7) An insurer entitled to claims cost reimbursement pursuant to OAR 436-110 for services provided pursuant to OAR 436-120 is subject to the following limitations:

(a) Optional services are not reimbursable.

(b) The director must approve eligibility before any services are provided. The request must be submitted on Form 1084.

(c) The insurer must obtain the director's approval in advance of the following actions:

(A) Notifying the worker of eligibility for vocational services;

(B) Any waiver of the provisions of OAR 436-120; or

(C) Exceeding the fee schedule.

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

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340 & 656.258

Hist.: WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0120, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0070 & 436-120-0215; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

436-120-0810

Certification of Individuals

Individuals determining workers' eligibility and providing vocational assistance shall be certified by the director and on the staff of an authorized vocational assistance provider, insurer, or self-insured employer.

(1) An applicant for certification shall submit an application, as prescribed by the director, demonstrating the qualifications for the specific classification of certification as described in OAR 436-120-0830.

(2) Department certification is not required to perform work evaluations, but the work evaluator must be certified by the professional organizations described in OAR 436-120-0410(2).

(3) The director may approve or disapprove an application for certification based on the individual's application.

(a) Certification shall be granted for five years. A vocational counselor who is nationally certified as described in OAR 436-120-0830(1)(a) shall be granted an initial certification period to coincide with their national certification.

(b) Individuals whose certification is denied under this rule may appeal as described in OAR 436-120-0008.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0205; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05

Department of Corrections Chapter 291

Adm. Order No.: DOC 6-2005

Filed with Sec. of State: 5-24-2005

Certified to be Effective: 5-24-05

Notice Publication Date: 3-1-05

Rules Adopted: 291-022-0105, 291-022-0115, 291-022-0125, 291-022-0130, 291-022-0140, 291-022-0150, 291-022-0160, 291-022-0170, 291-022-0180, 291-022-0190, 291-022-0200, 291-022-0210

Subject: Adoption of these rules is necessary to establish policy and procedures governing the use of force and security equipment by Department of Corrections (state) parole and probation officers in the performance of their official duties.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-022-0105

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to outline the authority of parole and probation officers in the use of physical force, firearms, and restraints.

(3) Policy: It is the policy of the Department of Corrections to authorize the use of physical force when and to the extent that it is reasonably believed to be necessary as specified in these rules. Parole and probation officers are authorized to use that amount of force that is necessary to overcome a threat, thereby minimizing the risk of injury to the officer and the threat.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

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291-022-0115

Definitions

(1) Chemical Agents: Chemical compounds that when deployed are designed to cause sufficient physiological effect to stop, control or temporarily immobilize an individual.

(2) Deadly Physical Force: Physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(3) Level of Force: The type of force employed, the degree of that type of force employed, and the circumstances within which the force is employed.

(4) Local State Director: A person within the Department of Corrections who reports to the Chief of Community Corrections and has responsibility for managing a state community corrections office within a particular county.

(5) Offender: Any person under supervision who is on parole, post-prison supervision, transitional leave, local control and/or probation status.

(6) Officer: Any state parole and probation officer certified as such by the Department of Public Safety Standards and Training.

(7) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, firearms, or other physical methods, for the purpose of overcoming the resistance to lawful authority.

(8) Physical Injury: Impairment of physical condition or substantial pain.

(9) Planned Use of Force: The use of force in situations where time and circumstances allow for consultation with, and approval by, higher ranking employees, and there is some opportunity to plan the actual use of force.

(10) Reasonable Force: That force which the officer can objectively articulate was reasonable given the active resistance or attempts at evasion by the offender and the facts known at the time by the officer.

(11) Reactive Use of Force: The use of force in situations where time and circumstances do not permit approval by higher ranking employees, or consultation or planning.

(12) Security Equipment: Firearms, ammunition, chemical agents, restraints and similar devices.

(13) Serious Physical Injury: Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(14) Security Restraints: Handcuffs, temporary cuffs (flexcuffs), and other similar equipment designed to control a person from injuring himself/herself, others, and to prevent escape.

(15) Show of Force: A demonstration of the current ability to use force, such as the massing of parole and probation officers or other officials.

(16) Totality of the Circumstances: All factors considered. With respect to use of force circumstances include, but are not limited to, comparative size; physical, emotional, and mental condition; skill level of combatants; nature of the offense; weapons; and availability of assistance.

(17) Use of Force: Any situation in which an employee uses physical force against an offender or other person, except those situations in which security restraints are used in a standard manner for arrest, escort, or transport.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0125

Applicability of the Rule

(1) All employees who supervise or work around offenders shall be thoroughly familiar with the departmental procedures of this rule.

(2) Those employees whose duties require them to be in both institutional and community situations shall be thoroughly familiar with all sections of this rule. Parole and probation officers shall follow the department's rule on Use of Force (Community Corrections) (OAR 291-022) for guidance and direction in use of force incidents.

(3) If there is any question about specific equipment, procedures, etc., in a use of force situation, an employee shall be directed by the location of the situation, either in an institution or the community, rather than by distinctions concerning where he/she is duty stationed.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0130

General Provisions — Use of Force

(1) Physical force shall be employed only as a last resort when it reasonably appears that other alternatives are not feasible to the situation. When the use of force is justified, only the degree and type of force that reasonably appears necessary to accomplish the authorized objective shall be used. Force shall be de-escalated or terminated as soon as possible consistent with resuming and maintaining control of the situation.

(2) An officer shall consider all types and degrees of force available and begin with the lowest type and amount that is reasonable given the totality of the circumstance.

(3) Non-force alternatives, such as talking an offender into compliance, giving a warning, verbal command, or demonstrating a show of force, should be used before actual physical force, if time and circumstances permit.

(4) Immediate use of physical force is authorized in circumstances in which warnings and other non-force alternatives are not reasonable or available to the employee.

(5) An employee shall use caution prior to exercising the use of force, if time and circumstances permit, and mentally review the following:

- (a) Evaluate the situation for the elements of risk;
- (b) Report the situation to the supervisor; and
- (c) Request additional officers.

(6) The goal of any use of force in a given situation must be to attain a legitimate objective. There are only two purposes an officer can have in using force. All justifiable uses of force will fall into one, or both, of these categories:

- (a) Defense; and/or
- (b) Control.

(7) Provoking an offender to justify the use of physical force, or using physical force as punishment or discipline, is prohibited.

(8) First aid and/or medical attention shall be provided to an injured person as soon as safely possible following any use of force. This action shall be documented in the Use of Force Report.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0140

Reactive Use of Force

(1) Reactive Use of Force will be allowed for situations where time and circumstances do not permit approval by a supervisor or consultation or planning.

(2) Officers may use any available equipment or weapons to prevent the loss of life or serious bodily injury, if no other reasonable alternative or time is available.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0150

Deadly Use of Force

(1) Officers shall consider every reasonable means of control before resorting to the use of deadly force.

(2) Deadly force may be used upon the reasonable belief that an officer's life or safety, or the life or safety of another, is in imminent danger of death or serious bodily injury, given the totality of the circumstances known to the officer at the time of his/her action.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0160

Security Equipment

(1) Security Equipment:

(a) All security equipment shall require the approval of the Director or designee before being issued and used as department authorized security equipment.

(b) Only department authorized and/or issued equipment shall be used to apply physical force to individuals.

(c) Security equipment shall not be issued to or used by an employee who has not been trained in the proper use of such devices.

(d) Unless authorized by the local state director or written directive, the carrying or use of personal security equipment is prohibited.

(e) The local state director shall authorize the storage and use of security equipment.

(2) Security Restraints:

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(a) The standard routine use of security restraints for arrest, escort or transportation of an offender is not a use of force within the context of this rule.

(b) The use of security restraints is authorized to restrict, immobilize, and control the movement of offenders or for the purpose of officer safety.

(c) An arrestee shall be placed in security restraints with their hands behind their back, before and during transport. Exceptions may exist due to physical and/or medical conditions, at which point alternative methods may be utilized.

(d) Security restraints shall be applied consistent with the training and experience of the officer. Restraints will be checked for tightness and double locked.

(e) Officers shall ensure that unnecessary pressure is not placed on the offender's chest, back or neck while applying restraints. Officers shall maintain close observation of a restrained arrestee in order to detect breathing difficulties and/or loss of consciousness.

(f) The officer shall check at least every 30 minutes and verify the security restraints are not causing injury or an obvious medical problem for an arrestee whom has been placed in restraints as a result of a use of force situation.

(3) Chemical Agents:

(a) Authorization to carry a chemical agent shall be granted by the local state director.

(b) Authorization to carry department-issued chemical agents shall be limited to the performance of official duties.

(c) Officers authorized to carry a chemical agent shall carry the chemical agent whenever:

(A) Protective body armor is worn;

(B) A firearm is carried;

(C) An arrest is anticipated or when making an arrest; or

(D) A confrontation with vicious dogs or other dangerous animals is anticipated.

(d) An officer shall only discharge a chemical agent for the following:

(A) To defend the officer or another person from an animal attack;

(B) To defend the officer or another person from imminent danger; or

(C) To enforce a valid order(s) to an offender to submit to the application of restraints.

(e) Those affected by a chemical agent shall be permitted to wash their face, eyes and other exposed skin areas, as soon as safely possible after the chemical agent has been used.

(f) Those affected by a chemical agent in a closed area shall be permitted to move to an uncontaminated area as soon as safely possible after the chemical agent has been used.

(g) An offender receiving an application of a chemical agent shall be under continuous staff observation for the first ten minutes and thereafter every ten minutes for the next 20 minutes after receiving the application of a chemical agent.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0170

Firearms

(1) Prior to resorting to the use of firearms against an offender or other persons, time and circumstances permitting, an officer shall first issue an appropriate verbal warning to the offender or other person in a readily understandable fashion.

(2) The discharge of a firearm will be handled in accordance with the department policy on Critical Incident. The State Police or local law enforcement officials shall be notified to investigate any discharge of a firearm for other than training, off duty practice, or accidental discharge where injury or significant property damage has not occurred. This investigation shall be separate from the full review.

(3) Any officer involved in the discharge of a firearm in a situation on duty shall immediately report, by the quickest means possible, the incident to the local state director. The employee shall prepare a report as soon as reasonably possible.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0180

Blood Borne Pathogens

When a person has been exposed to a blood or body fluid resulting from the use of force, standard universal precautions shall be implemented as described in the department's policy on Bloodborne Pathogens (20.6.7).

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0190

Injury, Death, or Hostage

(1) Whenever an officer's use of force results in the serious injury or death of another, he/she shall be placed on administrative leave until an investigation of the matter by the Inspector General and/or State Police can be concluded.

(2) Whenever an officer's use of force results in the serious injury or death of another, the officer involved shall be placed on administrative leave until medical and psychological clearance has been obtained.

(3) Any officer involved in or immediately exposed to a critical incident involving the serious injury, hostage or death of another shall be provided a critical incident stress debriefing.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0200

Notifications

(1) Any time an officer unholsters and/or points his/her weapon at another, the local state director will be notified according to procedure. The local state director will notify the Chief of Community Corrections of the incident.

(2) Any time an officer is required to use physical or deadly force, the officer shall immediately notify his/her supervisor and/or local state director.

(3) All employees witnessing or directly involved in a use of physical or deadly force incident shall individually prepare and submit a written memorandum describing their involvement and observation regarding the incident. The written report will be attached to the Use of Force Report.

(4) The local state director shall make a verbal report to the Chief of Community Corrections as directed.

(5) In cases of serious or life-threatening injury to a person(s) that requires transport to a medical facility:

(a) The appropriate investigatory agency in the jurisdiction shall be immediately contacted.

(b) The investigatory agency can include the Attorney General's office if a conflict of interest exists.

(6) Prior to any administrative action, the local state director shall confer with the Chief of Community Corrections.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

291-022-0210

Reviews

(1) Full Review:

(a) All incidents involving the discharge of a firearm or serious physical injury shall be reviewed by a special review team consisting of a representative from Special Investigations, the local state director, a DOC — Community Corrections use of force instructor, and the Chief of Community Corrections or designee.

(b) The special review team will forward an evaluation report to the Inspector General within 30 working days following the completion of their review.

(c) The Inspector General will review the report for completeness and forward it to the Assistant Director of the Transitional Services Unit.

(2) General Review:

(a) All other incidents involving the use of force shall be reviewed as soon as reasonably possible by a general review team consisting of the local state director, an authorized trainer for the use of force, and further designees at the direction of the local state director.

(b) All incidents involving the pointing of a firearm at another shall be reviewed as soon as reasonably possible by the general review team.

(c) The local state director will forward the findings of fact upon completion of the general review to the Chief of Community Corrections.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 6-2005, f. & cert. ef. 5-24-05

Department of Energy, Energy Facility Siting Council Chapter 345

Adm. Order No.: EFSC 1-2005

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Certified to be Effective: 5-23-05

Notice Publication Date: 1-1-05

ADMINISTRATIVE RULES

Rules Amended: 345-026-0170, 345-026-0330, 345-026-0340, 345-026-0350, 345-026-0370, 345-026-0390

Rules Repealed: 345-026-0310, 345-026-0320, 345-026-0360, 345-026-0380

Subject: The amended rules reflect the completion of Trojan Nuclear Plant decommissioning, and the finding that the site meets regulatory requirements for unrestricted release. Rules governing maintenance, monitoring and surveillance at the Trojan plant during decommissioning no longer apply because decommissioning is complete. The amended rules retain all requirements for maintenance, monitoring, security, safety, emergency planning and eventual decommissioning of the Trojan Independent Spent Fuel Storage Installation.

The repealed rules no longer apply because the decommissioning is complete and the site meets requirements for unrestricted release.

Rules Coordinator: Sisily Fleming—(503) 378-2843

345-026-0170

Notification of Incidents

(1) The certificate holder shall notify the Department of Energy within 72 hours of any occurrence involving the facility if:

- (a) There is an attempt by anyone to interfere with its safe operation;
- (b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-caused event such as a fire or explosion affects or threatens to affect the public health and safety or the environment; or
- (c) There is any fatal injury at the facility.

(2) For the Trojan Independent Spent Fuel Storage Installation:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the certificate holder also shall notify the Department on the same time schedule.

(b) The certificate holder shall notify the Department of all incidents in accordance with the Emergency Plan, Security Plan, and other agreements as established.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430, 469.507 & 469.530

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2005, f. & cert. ef. 5-23-05

345-026-0330

Radiological Environmental Monitoring

(1) The certificate holder shall establish a radiological environmental monitoring program.

(2) The certificate holder shall maintain a written radiological environmental monitoring program that describes applicable quality assurance measures.

(3) The certificate holder shall not make any changes to the radiological environmental monitoring program that involve a reduction in the number of environmental monitoring locations or associated monitoring data collection periodicity as approved in the Department of Energy "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, without Department approval prior to implementation.

(4) Except as required by section (3), the certificate holder may make modifications to the radiological environmental monitoring program without prior Department approval. The certificate holder shall notify the Department of these changes within 60 days after implementation of the change. The Department shall promptly notify the Council of any such changes at a scheduled meeting of the Council.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & 469.507

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2005, f. & cert. ef. 5-23-05

345-026-0340

Security Plans for Nuclear Installations

(1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of special nuclear material.

(2) Upon assurance satisfactory to the Council and the certificate holder that confidentiality can be maintained, the certificate holder shall make the security plan for nuclear installations available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

(3) The certificate holder shall not make modifications to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen the

effectiveness of the physical security plan without written Department approval prior to implementation.

(4) Except as required by section (3), the certificate holder may make modifications to the plan without prior Department approval. The certificate holder shall notify the Department of these modifications within 60 days of their implementation and shall make the revised plan available to authorized Department representatives following implementation of the changes. The Department shall promptly notify the Council of the plan modifications at a scheduled Council meeting, subject to U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & 469.530

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2005, f. & cert. ef. 5-23-05

345-026-0350

Emergency Planning for Nuclear Installations

(1) The operator of a nuclear installation shall prepare, comply with, and maintain in readiness an emergency plan. The plan must ensure adequate measures will be taken in the event of a radiological emergency.

(2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation:

- (a) A change (other than editorial) in the Emergency Action Levels; or
- (b) A decrease in the planned staff augmentation capabilities; or
- (c) A reduction in the plan requirements for notification of off-site agencies.

(3) Except as required by section (2), the certificate holder may make modifications to the plan without prior Council approval. The certificate holder shall submit copies of the revised plan to the Department within 30 days after the implementation date. The Department shall promptly notify the Council of the modifications at a scheduled Council meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501, 469.530 & 469.533

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2005, f. & cert. ef. 5-23-05

345-026-0370

Standards for Council Approval of ISFSI Decommissioning Plan

(1) The operator of the Trojan Independent Spent Fuel Storage Installation (ISFSI) shall submit 15 copies of a plan for decommissioning the ISFSI to the Department for Council approval. The plan shall be submitted to the Council on a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department shall:

(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice shall include:

- (A) The time and place of at least one informational hearing;
- (B) The locations where copies of the proposed plan may be reviewed by the public; and
- (C) A contact name for further information.

(b) Perform a technical review, and produce a staff report containing the Department's technical conclusions and recommendations on specific issues raised in the proposed plan;

(c) To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission;

(d) Issue notice of availability of the Department report to the Council mailing list. The notice shall include:

- (A) A summary of the Department's recommendations;
- (B) Time and place of a hearing on the staff report;
- (C) Places where the Department's staff report may be reviewed by the public; and
- (D) A contact for additional information and copies of the staff report.

(2) The Council shall review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:

(a) The plan contains the radiological criteria for unrestricted release and use of the site as set forth in Title 10 of the Code of Federal Regulations, Part 20, Section 1402 (10 CFR 20.1402) in effect August 20, 1997.

(b) The plan contains provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council.

(c) The plan contains a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be

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incorporated by reference if it has previously been approved by the Department.

(d) The plan contains provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.

(3) The certificate holder shall include in the plan an estimate of funding necessary for implementation. The Council shall determine whether provisions for funding are adequate to implement the plan.

(4) The certificate holder shall not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

(a) The potential to prevent the release of the site for unrestricted use;

(b) A change in the criteria for site release;

(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;

(d) A change in the provisions made for hazardous or radioactive waste material removal;

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

(5) The certificate holder shall evaluate revisions to the decommissioning plan by the criteria listed in section (4) of this rule. The certificate holder shall maintain records of all changes and associated evaluations for audit by the Department. The certificate holder shall notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department shall promptly notify the Council of such revisions at a regularly scheduled meeting.

(6) Changes to the decommissioning plan that are mandated by the federal government may be implemented without prior Council approval.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 4-1994, f. & cert. ef. 11-22-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; Administrative Reformatting 12-11-97; EFSC 4-1998, f. & cert. ef. 10-26-98; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2005, f. & cert. ef. 5-23-05

345-026-0390

Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear installation is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(2) Capacity and Safety Standards: The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste at the site of a nuclear installation by a certificate holder who has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

(a) Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and

(c) The facility is not used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.

(3) The certificate holder shall perform activities related to transfer, storage and handling of fuel and other radioactive waste in accordance with a radiation protection program that complies with 10 CFR 20, including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.

(4) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder shall not transfer spent fuel

from an interim spent fuel storage installation to new casks or shipping containers without approval by the Council prior to the transfer.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, in addition, no later than September 3, 2038, a report containing the actual or expected date when the Federal government will accept the High Level Waste and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted prior to September 3, 2043.

(6) The Council approves the plan, as may be amended under Part (c) below, for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (3) and (4), the plan is subject to the following criteria:

(a) Programs: Portland General Electric (PGE) shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection and Structural Inspection that are consistent with maintaining exposures to ionizing radiation As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.

(b) Contingency Plans: PGE shall establish and maintain a plan for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.

(c) Changes to Commitments: PGE may make changes to the ISFSI as described in the Safety Analysis Report without prior Council approval if such changes do not reduce commitments or change the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. If proposed changes would reduce commitments or change the assumptions or conclusions of the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior approval from the Department. Prior Department approval is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Department approval.

(d) Reporting requirements: Within one year of the first cask loading and biennially thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall include, at a minimum, the results of radiation monitoring programs, a summary of personnel exposure related to ISFSI storage operations, a statement of expenses related to ISFSI storage operations, a statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs, an estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning, and a statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

(e) Frequency of Temperature Monitoring and Air Vent Inspection: The Temperature Monitoring and Air Vent Inspection Program established by PGE pursuant to Section (6)(a) of this rule shall include daily readings of Concrete Cask air outlet and ambient temperatures. The program shall include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Department approval. PGE may apply extensions of up to 25 percent of individual surveillance intervals to accommodate minor variations in work scheduling.

(f) Contractors: PGE shall require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1995, f. & cert. ef. 11-3-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-1999, f. & cert. ef. 4-21-99; EFSC 2-2002, f. & cert. ef. 12-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2005, f. & cert. ef. 5-23-05

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Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 44-2005(Temp)

Filed with Sec. of State: 5-17-2005

Certified to be Effective: 5-22-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: Amend rules to reinstate sport shad and steelhead season on the Columbia River. Fisheries were reinstated consistent with Compact Action.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2005 through May 15, 2005 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2005 through May 15, 2005 from the I-5 Bridge upstream to the Rooster Rock boundary line (defined as a line running north from Rooster Rock to the Washington shoreline perpendicular to the thread of the Columbia River) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River is open from March 16, 2005 through May 15, 2005, on Sundays, Mondays and Tuesdays, from the Rooster Rock boundary line upstream to the Bonneville Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limit of one adult salmon or steelhead and five jacks per day are in effect.

(4) The Columbia River is open from March 16, 2005 through May 15, 2005, from the Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(5) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for salmon, steelhead, and shad effective at 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(6) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for shad in addition to closure described in section (5) above.

(7) The Columbia River from the mouth at Buoy 10 upstream to the I-5 Bridge is closed to angling for steelhead in addition to closure described in section (5) above.

(8) The Columbia River from the Mouth at Buoy 10 upstream to McNary Dam reverts to permanent salmon, steelhead, and shad regulations effective 12:01 a.m. Sunday, May 22, 2005.

(9) Effective February 15, 2005 through May 15, 2005, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(10) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(11) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knappa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are closed to the harvest of salmon, steelhead, and shad effective 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(12) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knappa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are open to the harvest of salmon, steelhead, and shad effective 12:01AM, May 5, 2005.

(13) All other specifications and restrictions as outlined in the current **2005 Oregon Sport Fishing Regulations** apply.

[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; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05

Adm. Order No.: DFW 45-2005(Temp)

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Notice Publication Date:

Rules Amended: 635-042-0110

Rules Suspended: 635-042-0110(T)

Subject: Amend rules to reinstate commercial harvest opportunities in Gary Island to Bonneville Dam Shad Season. Fisheries are reinstated consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:

Monday, May 23–Friday, May 27, 2005;

Tuesday, May 31–Friday, June 3, 2005;

Monday, June 6–Friday, June 10, 2005;

Monday, June 13–Friday, June 17, 2005;

Monday, June 20–Friday, June 24, 2005.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-

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05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05

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Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: Amend rules to modify commercial harvest opportunities in Select Area: Youngs Bay. Fishery is modified consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) In the fishing period of May 5, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Youngs Bay bridge (alternate Highway 101) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(2) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005–12 Noon February 20, 2005;
6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005–12 Noon February 27, 2005;
6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005–12 Noon March 6, 2005;
6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;
6:00 p.m. March 12, 2005–12 Noon March 13, 2005;
6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(b) Spring Season:

4:00 p.m. May 5, 2005–8:00 p.m. May 5, 2005;
8:00 p.m. May 10, 2005–12 Midnight May 10, 2005;
8:00 p.m. May 12, 2005–2:00 a.m. May 13, 2005;
6:00 p.m. May 16, 2005–6:00 a.m. May 17, 2005;
12 Noon May 18, 2005–12 Noon May 20, 2005;
12 Noon May 23, 2005–12 Noon May 27, 2005;
12 Noon May 30, 2005–12 Noon June 3, 2005;
12 Noon June 6, 2005–12 Noon June 10, 2005;
12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;
12 Noon June 29, 2005–12 Noon July 1, 2005;
12 Noon July 6, 2005–6:00 p.m. July 7, 2005;
12 Noon July 13, 2005–6:00 p.m. July 14, 2005;
12 Noon July 20, 2005–6:00 p.m. July 21, 2005;
12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 18-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99

thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05

Adm. Order No.: DFW 47-2005(Temp)

Filed with Sec. of State: 5-19-2005

Certified to be Effective: 5-21-05 thru 6-20-05

Notice Publication Date:

Rules Amended: 635-023-0134

Subject: Adopt rule to open a spring chinook fishery from Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam on the Snake River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0134

Snake River Fishery

Notwithstanding, all other specifications and restrictions as outlined in the current 2005 Oregon Sport Fishing Regulations, the following conditions apply:

(1) The Snake River from Dug Bar boat ramp upstream to Hell's Canyon Dam is open Friday through Monday effective May 21, 2005 thru June 20, 2005.

(2) Daily bag limit is one adipose fin-clipped spring chinook salmon per day including jack salmon.

(3) Barbless hooks are required.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05

Adm. Order No.: DFW 48-2005(Temp)

Filed with Sec. of State: 5-23-2005

Certified to be Effective: 5-24-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-003-0077

Rules Suspended: 635-003-0077(T)

Subject: Amend regulations to add three additional open fishing days while retaining the current landing and possession limit then close the fishery to remain within the harvest quota.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0077

US-Canada Border to Cape Falcon

(1) Vessels must land their fish within 24 hours of any closure. Vessels fishing north of Leadbetter Point, WA must land their fish within the area north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land their fish within the area south Leadbetter Point except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. All vessels landing salmon into Oregon from any fishery between Leadbetter Point, WA and Cape Falcon, Oregon, must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

(2) The commercial troll season, as described above in (1) is extended May 24, 2005 through May 26, 2005. For the seven day period May 20, 2005 through May 26, 2005 there is a 125 chinook landing and possession limit per vessel.

(3) The commercial troll season, as described above in (1) is closed effective 11:59 p.m., May 26, 2005.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.129
Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05

Adm. Order No.: DFW 49-2005(Temp)
Filed with Sec. of State: 6-1-2005
Certified to be Effective: 6-3-05 thru 10-27-05
Notice Publication Date:
Rules Amended: 635-003-0077
Rules Suspended: 635-003-0077(T)
Subject: Amend regulations to add four additional open fishing days while retaining the current landing and possession limit then close the fishery to remain within the harvest quota.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0077

US-Canada Border to Cape Falcon

(1) Vessels must land their fish within 24 hours of any closure. Vessels fishing north of Leadbetter Point, WA must land their fish within the area north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land their fish within the area south Leadbetter Point except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. All vessels landing salmon into Oregon from any fishery between Leadbetter Point, WA and Cape Falcon, Oregon, must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

(2) The commercial troll season, as described above in (1) is extended May 24, 2005 through May 26, 2005. For the seven day period May 20, 2005 through May 26, 2005 there is a 125 chinook landing and possession limit per vessel.

(3) The commercial troll season, as described above in (1) is closed effective 11:59 p.m., May 26, 2005.

(4) The commercial troll season, as described above in (1) is open effective 12:01 a.m., June 3, 2005 through 11:59 p.m., June 6, 2005. For the four day period there is a 60 chinook landing and possession limit per vessel.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.129
Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05

Adm. Order No.: DFW 50-2005(Temp)
Filed with Sec. of State: 6-3-2005
Certified to be Effective: 6-11-05 thru 11-30-05
Notice Publication Date:
Rules Amended: 635-023-0095
Rules Suspended: 635-023-0095(T)
Subject: Amend sturgeon rules to implement closure on the mainstem Columbia River from the Bonneville Dam to The Dalles Dam.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) Except as provided in subsections (3), (4) and (5) of this rule, the Columbia River is open to the retention of sturgeon all year with the following restrictions:

(a) Catch limit is one per day, five per year.

(b) There is a 42" minimum length and a 60" maximum length from the mouth upstream to The Dalles Dam.

(c) There is a 48" minimum length and a 60" maximum length from The Dalles Dam upstream to the Oregon-Washington border.

(d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.

(e) Oversize sturgeon cannot be removed totally or in part from the water.

(f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.

(g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Beacon Rock (River Mile 141) upstream to Bonneville Dam is closed to all sturgeon angling effective 11:59 p.m., April 30, 2005 through July 31, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(5) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Saturday, January 1, 2005 through Saturday, April 30, 2005, and

(b) Saturday, May 14, 2005 through Monday, July 4, 2005.

(c) The retention of sturgeon is prohibited May 1, 2005 through May 13, 2005 and from July 5, 2005 through December 31, 2005.

(6) During the fishing period as identified in section (5)(b) of this rule, only sturgeon between 45- 60" in overall length may be retained.

(7) The Columbia River between Bonneville Dam and The Dalles Dam closes to the retention of sturgeon effective at 12:01 a.m. June 11, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05

Adm. Order No.: DFW 51-2005(Temp)
Filed with Sec. of State: 6-3-2005
Certified to be Effective: 6-4-05 thru 7-31-05
Notice Publication Date:
Rules Amended: 635-023-0125
Rules Suspended: 635-023-0125(T)
Subject: Adoption of this rule will reopen recreational fishing opportunity for hatchery spring and summer chinook from the Tongue Point/Rocky Point line upstream to the OR/WA border above McNary Dam and hatchery steelhead from the I-5 Bridge upstream to the OR/WA border above McNary Dam.
Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2005 through May 15, 2005 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2005 through May 15, 2005 from the I-5 Bridge upstream to the Rooster Rock boundary line (defined as a line running north from Rooster Rock to the Washington shoreline perpendicular to the thread of the Columbia River) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River is open from March 16, 2005 through May 15, 2005, on Sundays, Mondays and Tuesdays, from the Rooster Rock boundary line upstream to the Bonneville Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limit of one adult salmon or steelhead and five jacks per day are in effect.

ADMINISTRATIVE RULES

(4) The Columbia River is open from March 16, 2005 through May 15, 2005, from the Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(5) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for salmon, steelhead, and shad effective at 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(6) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for shad in addition to closure described in section (5) above.

(7) The Columbia River from the mouth at Buoy 10 upstream to the I-5 Bridge is closed to angling for steelhead in addition to closure described in section (5) above.

(8) The Columbia River from the Mouth at Buoy 10 upstream to McNary Dam reverts to permanent salmon, steelhead, and shad regulations effective 12:01 a.m. Sunday, May 22, 2005.

(9) The Columbia River from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam is open from 12:01 a.m. June 4, 2005 through 11:59 p.m. June 15, 2005 with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(10) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(11) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are closed to the harvest of salmon, steelhead, and shad effective 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(12) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are open to the harvest of salmon, steelhead, and shad effective 12:01AM, May 5, 2005.

(13) All other specifications and restrictions as outlined in the current

2005 Oregon Sport Fishing Regulations apply.

[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; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05

Adm. Order No.: DFW 52-2005(Temp)

Filed with Sec. of State: 6-3-2005

Certified to be Effective: 6-16-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-023-0128

Subject: Adoption of this rule will open the recreational fishing opportunity for adipose fin-clipped chinook salmon and adipose fin-clipped steelhead from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0128

Summer Sport Fishery

(1) The 2005 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time,

and, to the extent of any inconsistency, they supersede the 2005 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from 12:01 a.m. June 16, 2005 through 11:59 p.m. July 31, 2005 from the Tongue Point/Rocky Point line upstream to the Oregon/Washington border above McNary Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05

Adm. Order No.: DFW 53-2005

Filed with Sec. of State: 6-14-2005

Certified to be Effective: 6-14-05

Notice Publication Date: 5-1-05

Rules Amended: 635-065-0090, 635-065-0765, 635-067-0000, 635-067-0004, 635-068-0000, 635-069-0000, 635-070-0000, 635-071-0000, 635-073-0000, 635-073-0001, 635-073-0065, 635-073-0070, 635-075-0005, 635-078-0011

Subject: Rules were amended to set the 2005 controlled hunt tag numbers for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer, and elk. Bag limit changes were made in certain units relating to the general archery season and the permanent disabilities permit program. Rules were amended to add New York to the list of states from which the importation of certain cervid parts is banned.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-065-0090

Disabled Hunter Seasons and Bag Limits

(1) A person who possesses a "Permanent Disabilities Permit" issued by the department is qualified for expanded bag limits as follows: [Table not included. See ED. NOTE.]

(2) The "Permanent Disabilities Permit" is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(3) An able-bodied companion may accompany a person with a "Permanent Disabilities Permit" and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

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

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

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

Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

ADMINISTRATIVE RULES

(4) It is unlawful to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or vulva or udder (mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles, scrotum, penis, vulva, udder, mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either:

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male; or

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4)(a)(A)-(D) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the department or by the Oregon State Police.

(8) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) Meat that is cut and wrapped commercially or privately;

(b) Meat that has been boned out;

(c) Quarters or other portions of meat with no part of the spinal column or head attached;

(d) Hides and/or capes with no head attached;

(e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) Antlers with no tissue attached;

(g) Upper canine teeth (buglers, whistlers, ivories);

(h) Finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Kansas, Minnesota, Montana, Nebraska, New Mexico, New York, Oklahoma, South Dakota, Wisconsin, Wyoming, Utah, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2005 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-

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29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-067-0004

Cougar Hunting Regulations

(1) Tag Requirement: Any person hunting cougar shall have on his/her person a general season cougar tag or a Blue Mountain additional cougar tag. General season cougar tags may be purchased through any authorized license agent;

(2) Hunt Area: Hunt zones, and harvest quotas for each hunt zone, are established in OAR 635-067-0015;

(a) Hunters may hunt within all hunt zones;

(b) Hunt zones will be closed to hunting when individual zone harvest quotas are reached.

(3)(a) All hunters are required to check in the hide with skull and proof of sex attached of any cougar killed within 72 hours of harvest at a Department of Fish and Wildlife office;

(b) Hunters are also required to retain the reproductive tract of all female cougars with the carcass until checked in.

(4) No person shall hunt or assist another to hunt a cougar during an authorized cougar season unless in possession of an unused cougar tag or accompanied by the holder of an cougar tag which is valid for that area and time period.

(5) No person shall use dogs to hunt or pursue cougar.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR Chapter 635, Division 068 by reference. [Table not included. See ED. NOTE.]

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference. [Table not included. See ED. NOTE.]

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big

Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference. [Tables not included. See ED. NOTE.]

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference. [Tables not included. See ED. NOTE.]

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

ADMINISTRATIVE RULES

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference. [ED. NOTE: Tables referenced are available from the agency.]

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2005 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2005 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

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

Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-073-0001

Bowhunting Seasons

(1) Portions of the bowhunting areas are open for other hunting during specified periods listed under extended and controlled seasons.

(2) A bowhunter shall have on his person a hunting license and a valid tag while hunting in any of the bowhunting seasons listed in this section.

(3) A bowhunter possessing an elk bow tag is restricted to authorized elk bowhunting areas and seasons, and shall not hunt during the Cascade, Coast, or Rocky Mountain elk rifle seasons.

(4) A bowhunter possessing a deer bow tag is restricted to authorized bowhunting areas and seasons and shall not hunt during any other general western Oregon deer or controlled buck seasons. Exception: bowhunters possessing a "left over" tag obtained through the first-come, first-served process also may hunt during the season for which that tag was issued.

(5) The elk bow tag is the only tag valid in any bowhunting season open to elk hunting. The deer bow tag is the only tag valid in any bowhunting season open to deer hunting. Exception: bowhunters possessing a "left over" tag obtained through the first-come, first-served process also may hunt during the season for which that tag was issued.

(6) White-tailed deer are protected in all units west of the eastern boundaries of the Santiam, McKenzie, Indigo, Dixon, and Rogue units except for the controlled hunts listed in the Oregon Big Game Regulations.

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

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

Hist.: FWC 123, f. & cert. ef. 6-9-77; FWC 12-1979, f. & cert. ef. 3-28-79; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; Renumbered from 635-065-0500; FWC 28-1983, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 44-1988, f. & cert. ef. 6-13-88; FWC 71-1989, f. & cert. ef. 8-15-89; FWC 63-1990, f. & cert. ef. 6-21-90; FWC 26-1991, f. & cert. ef. 3-12-91; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05

635-073-0065

Early Western Oregon Bowhunting Seasons

(1) General Bowhunting Seasons — Western Oregon.

(a) Bag Limit: One buck deer having not less than a forked antler and one elk;

(b) Open Season: August 27–September 25, 2005;

(c) Hunt Area: The Tioga, Dixon, Sixes, Powers, Evans Creek, Rogue, Chetco, and Applegate units.

(2) General Bowhunting Seasons — Western Oregon.

(a) Bag Limit: One deer and one elk;

(b) Open Season: August 27–September 25, 2005;

(c) Hunt Area: The Saddle Mountain, Scappoose, Wilson, Trask, Willamette, Santiam, Stott Mountain, Alsea, McKenzie, Siuslaw, Indigo, and Melrose units.

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

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

Hist.: DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05

635-073-0070

Early Eastern Oregon Bowhunting Seasons

(1) General Bowhunting Seasons — Eastern Oregon.

(a) Bag Limit: One buck deer having a visible antler and one elk;

(b) Open Season: August 27–September 25, 2005;

(c) Hunt Area: The Grizzly, Maupin, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath Falls, Interstate, Warner, Wagonfire, Juniper, Beatys Butte, Steens Mountain, Owyhee, Malheur River, Silvies, Maury, Ochoco, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Innaha, Snake River, and Whitehorse units and that part of the White River Unit within the Mt. Hood National Forest except that: That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag. Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused). The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag. The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused). The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag. In the Walla Walla and Mt. Emily units, the bag limit is one antlerless elk or one spike bull elk having at least one antler that is a spike above the ears; in the Wenaha Unit, the bag limit is one spike bull elk only.

(2) General Bowhunting Seasons — Eastern Oregon.

(a) Bag Limit: One deer and one elk;

(b) Open Season: August 27–September 25, 2005;

(c) Hunt Area: The Hood, Biggs, Silver Lake, and Columbia Basin (in those portions of the unit open for bow hunting) units and that part of the White River Unit outside the Mt. Hood National Forest except that: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner, north and west on State Hwy 74 to Lexington; north and east on State Hwy 207 to Butter Creek Junction; south on Butter Creek Road to Hwy 74 at Vinson; west on Hwy 74 to Heppner, point of beginning.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05

635-075-0005

Registration, Application and Tag Issuance Procedures and Limits for All Controlled Hunts

(1) A landowner shall submit a landowner preference registration form to be eligible for a landowner preference tag. A landowner can have only one registration form on file with the department. The registration form is an affidavit certifying ownership, number of acres owned, the county and Wildlife Management Unit where the property is located. This registration form registers the individual and remains valid until the individual registered no longer qualifies as a landowner as defined under OAR 635-045-0002, writes to the department requesting the registration form be deleted, or the department notifies the landowner that a renewal is required.

(2) In addition to having a landowner preference registration form on file with the department, a landowner shall submit a tag distribution form annually. The tag distribution form shall list the names of the landowner, stockholder(s), partner(s), and their immediate family members to receive tags for pronghorn antelope, and the names of the landowner, stockholder(s), partner(s), their immediate family members, and those persons of the landowners' choosing to receive landowner preference tags for deer and elk.

(3) Landowners shall submit registration forms and tag distribution forms prior to September 15 for all controlled 100 series buck deer and bull

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elk hunts, and through the day prior to the season openings for 600 series antlerless deer, antlerless elk, and doe/fawn pronghorn antelope hunts.

(4) Registration forms and tag distribution forms are available at no charge in any office of the department.

(5) Registration forms, tag distribution forms, and applications shall be received at the Salem headquarters office of the department prior to issuance of any landowner preference tag, except as provided for in OAR 635-075-0007. Landowners are not required to submit proof of ownership with their registration form. Landowners shall be required to submit proof of ownership at the request of the department or the Oregon State Police acting on behalf of the department.

(6) A landowner, stockholder(s), partner(s), and immediate family and those persons of the landowners' choosing wishing to also apply for controlled hunt tags shall apply by the May 15 controlled hunt deadline. Listing a hunt choice other than a landowner preference choice is not required.

(7) Everyone shall follow controlled hunt application procedures and regulations as described in OAR division 060.

(8) The number of landowner preference tags issued is based upon a landowner's acreage. Landowner Preference tags shall be allocated by the following minimum acreage requirements: [Table not included. See ED. NOTE.]

(9) Landowner preference tags for the hunting of deer or elk may be issued to any person of the landowner's choosing, and shall be used for the taking of antlerless animals except as described in OAR 635-075-0005(8). Season dates of the transferred landowner preference tags shall be the same dates as the original tag.

(10) Landowner preference tags for the hunting of antlered deer or elk that are issued to a person of the landowner's choosing who is not a member of the landowner's, partner's, or stockholder's immediate family may be used to take an antlered animal only as follows:

(a) If the landowner is eligible for two, three, or four preference tags, one of those tags may be so used.

(b) If the landowner is eligible for five, six or seven preference tags, two of those tags may be so used.

(c) If the landowner is eligible for eight, nine or 10 preference tags, three of those tags may be so used.

(11) A landowner who is qualified to receive landowner hunting preference tags may request two additional tags for providing public access and/or two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. These tags may not be applied to the options as defined in OAR 635-075-0005(8).

(12) No one shall receive both a controlled hunt tag and a landowner preference tag for the same type of hunt. Landowner hunting preference tags shall not be issued to any person successful in the controlled hunt drawing for the same type of hunt.

(13) Landowner preference tags, except as described in OAR 635-075-0007, 635-075-0010, and 635-075-0015 shall only be issued from the headquarters office of the department following the controlled hunt drawings.

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

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

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

Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 14-1994(Temp), f. & cert. ef. 3-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

635-078-0011

Determining Eligibility

(1) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt: the list is to be effective for one year. Each hunter less than 18 years of age shall have an adult hunting license and be accompanied by a responsible adult (21 years of age or older) when hunting. Applications will be accepted and kept on file at the headquarters office of the Department of Fish and Wildlife, 3406 Cherry Ave, NE, Salem, OR, 97303. Beginning July 1 of each year, the hunter's name will be placed on the eligible list. No fee is required for applicants to be placed on the emergency

hunt list. Applications may be made on a form available at department offices and up to two hunters may apply on the form as a party. Each applicant shall list their name, address and telephone number where they can be contacted and the county for which they are applying.

(b) At such time as the department determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from regional or district office of the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Certified Master Hunters applying during July shall be randomized and moved to the top of the emergency hunt list. Applications received after July 31 each year will be prioritized as received.

(2) It is unlawful to take game mammals or wild turkey in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on one's person.

(3) Upon killing a game mammal or wild turkey pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required.

(4) Eligibility and fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

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

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

Hist.: DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05

Adm. Order No.: DFW 54-2005(Temp)

Filed with Sec. of State: 6-10-2005

Certified to be Effective: 6-12-05 thru 11-30-05

Notice Publication Date:

Rules Amended: 635-039-0080

Rules Suspended: 635-039-0080(T)

Subject: Amend rule in order to adopt annual regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2005 recreational fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2004 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); Federal Regulations, Vol. 70, No. 74, dated April 19, 2005; and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

(c) Notwithstanding Title 50 of the Code of Federal Regulations, Part 300, Subpart E as amended by Federal Regulations Vol. 70, No. 74 dated April 19, 2005, effect 11:59 p.m., Sunday, June 12, 2005 the Columbia River Subarea (Cape Falcon, OR to Leadbetter Pt., WA) will close to the retention of Pacific halibut.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05

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Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 7-2005

Filed with Sec. of State: 6-1-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 5-1-05

Rules Repealed: 413-030-0140, 413-030-0145, 413-030-0150, 413-030-0155, 413-030-0160, 413-030-0165

Subject: Rules were filed to become effective on January 1, 2002 in order to implement ORS 418.017. Upon review by the Legislative Counsel's Office, the Department has determined these rules should be repealed. Rules were not required to implement this legislation.

Rules Coordinator: Annette Tesch—(503) 945-6067

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

Adm. Order No.: OMAP 29-2005

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

Certified to be Effective: 6-6-05

Notice Publication Date: 5-1-05

Rules Amended: 410-121-0300

Rules Repealed: 410-121-0300(T)

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. OMAP permanently amended 410-121-0300 to update Transmittal #37, with Title XIX State Agency Letter Number 05-01, changes to the list, effective for services rendered on or after February 14, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 05-01, with changes to be effective on or after February 14, 2005, and is available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; 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 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR

22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05

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Adm. Order No.: OMAP 30-2005

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

Certified to be Effective: 6-6-05

Notice Publication Date: 5-1-05

Rules Amended: 410-121-0157

Rules Repealed: 410-121-0157(T)

Subject: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. OMAP amended 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Previous Releases and updates are included to ensure a 24-month time period for billing is covered, using the appropriate effective dates in all Releases. The most current changes include information from CMS Release #136, dated February 14, 2005 and the OMAP Master Pharmaceutical Rebate Lists, updated March 30, 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, OMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by OMAP providers to bill for services. OMAP includes in rule by reference, the following CMS Releases and subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release #120, dated November 21, 2002 — Lists updated February 3, 2002; Release #121, dated February 28, 2003 — Lists updated March 5, 2003; Release #122, dated April 22, 2003 — Lists updated May 1, 2003; Release #123, dated June 12, 2003 — Lists updated July 14, 2003; Release #124, dated July 31, 2003 and Release #125, dated September 2, 2003 — Lists updated September 22, 2003; Release #126, dated September 23, 2003; Release #127, dated November 4, 2003 and Release #128, dated January 21, 2004 — Lists updated February 10, 2004; Release #129, dated February 19, 2004 and Release #130, dated April 30, 2004 — Lists updated May 13, 2004; Release #132, dated June 22, 2004 — Lists updated July 19, 2004; Release #133, dated August 13, 2004 — Lists updated August 24, 2004; Release #134, dated November 18, 2004 — Lists updated December 16, 2004; Release #135, dated December 10, 2004 — Lists updated February 14,

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2005; and Release #136, dated February 17, 2005 — Lists updated March 30, 2005. All CMS Releases are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drugmpg.asp, and the subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists, are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html.

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to OMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-01-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05

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

Adm. Order No.: PH 8-2005

Filed with Sec. of State: 6-1-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 5-1-05

Rules Amended: 333-064-0025, 333-064-0035, 333-064-0070

Subject: Amends rules (for accrediting environmental testing laboratories) to:

1. Change the standards for accreditation from NELAC 2002 Standards (Chapters 3, 4, 5 and 7) and NELAC Standards 2003 (Chapters 1, 2 and 6) to NELAC 2003 Standards for all 7 Chapters as required to maintain national recognition of the Oregon Environmental Laboratory Accreditation Program (ORELAP) by the U.S. Environmental Protection Agency's National Environmental Laboratory Accreditation Program.

2. Add clarifying language in regards to the need for an acceptable on-site assessment prior to granting primary accreditation to environmental testing laboratories seeking initial ORELAP accreditation.

3. Remove October 10, 2002 as the effective date for 333-064-0035.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-064-0025

Definitions

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

(1) "Accrediting Authority" means the official accrediting authority for the Oregon Environmental Laboratory Accreditation Program comprised of the Administrator of the Office of Oregon State Public Health Laboratories or designee, the Laboratory Administrator of the Department of Environmental Quality or designee and the Laboratory Administrator of the Department of Agriculture or designee.

(2) "Clean Air Act (CAA)" means the enabling legislation, **42 U.S.C. 7401 et seq. (1974), Public Law 91-604, 84 Stat. 1676 Public Law 95-95, 91 Stat., 685 and Public Law 95-190, 91 Stat., 1399**, that empowers the EPA to promulgate air quality standards, monitor and enforce them.

(3) "Clean Water Act (CWA)" means the enabling legislation under **33 U.S.C. 1251 et seq., Public Law 92-50086, Stat. 816** that empowers the EPA to set discharge limitations, write discharge permits, monitor and bring enforcement action for non-compliance.

(4) "Environmental laboratory" means a fixed location or mobile facility that analyzes environmental samples in a controlled and scientific manner.

(5) "National Environmental Laboratory Accreditation Conference (NELAC)" means the voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish mutually acceptable standards for accrediting environmental laboratories.

(6) "National Environmental Laboratory Accreditation Program (NELAP)" means the program established and administered by the EPA to oversee the implementation of the NELAC Standards.

(7) "NELAC Standards" means the adopted June 2003 NELAC Standards (EPA/600/R-04/003), documents describing the elements of laboratory accreditation that was developed and established by the consensus principles of NELAC and meets with the approval requirements of NELAC procedures and policies.

(8) "NELAP approved accrediting authority" means a state or federal department/agency that has been approved by NELAP as being an entity whose accreditation and assessment program meets all of the requirements of the NELAC Standards.

(9) "On-site assessment" means an on-site visit to the environmental laboratory to verify items addressed in the ORELAP application and to evaluate the facility and analytical performance for conformance with the NELAC Standards.

(10) "ORELAP approved assessor" means an assessor whose qualification has been evaluated by ORELAP and found to meet NELAC Standards for laboratory on-site assessors.

(11) "Primary Accreditation" means accreditation by a NELAP approved accrediting authority based on a laboratory's compliance to NELAC Standards after a review of the laboratory's application, Quality Manual, PT results and on-site inspection results as described in the NELAC Standards.

(12) "Proficiency testing (PT)" means the analysis of samples obtained from providers that meet the NELAC standards for PT providers. The composition of the sample is unknown to the laboratory performing the analysis, and is used in part to evaluate the ability of the laboratory to produce precise and accurate results.

(13) "Public water system" means a water system as defined in OAR 333-061-0010.

(14) "Quality Manual (QM)" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of a laboratory to ensure the quality of its product and the utility of its product to its users.

(15) "Resource Conservation and Recovery Act (RCRA)" means the enabling legislation 42 U.S.C. section 6901 et seq. (1976) that requires the EPA to protect human health and protecting and monitoring the environment by regulating hazardous waste disposal practices.

(16) "Safe Drinking Water Act (SDWA)" means the SDWA enacted in 1974 and the Safe Drinking Water Amendments of 1986, 42 U.S.C. 300f et seq., Public Law 93-523, that is the enabling legislation that requires the EPA to protect the quality of drinking water in the U.S. by setting maximum allowable contaminant levels, monitoring, and enforcing violations.

(17) "Secondary Accreditation" means the recognition by reciprocity for the fields of testing, methods and analytes for which the laboratory holds current primary accreditation by another NELAP recognized accrediting authority.

(18) "These rules" means the Oregon Administrative Rules encompassed by OAR 333-064-0005 through 333-064-0065.

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(19) "Third party assessor" means an ORELAP approved assessor who has a current contract with the Oregon Department of Human Services to perform on-site assessments of laboratories for ORELAP and is not employed by the state agencies comprising ORELAP's accrediting authority.

(20) "United States Environmental Protection Agency (EPA)" means the federal government agency with the responsibility for protecting public health and safeguarding and improving the natural environment (i.e., air, water, and land) upon which human life depends.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 184, 438.605, 438.610, 438.615, 438.620, 448.131, 448.150(1), 448.280(1)(b) & (2)
Stats. Implemented: ORS 438.605, 438.610, 438.615, 438.620, 448.280(1)(b) & (2)
Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 5-2003, f. 5-15-03, cert. ef. 7-1-03; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 23-2004, f. & cert. ef. 7-1-04; PH 8-2005, f. 6-1-05, cert. ef. 7-1-05

333-064-0035

Approval Requirements

(1) This rule and the NELAC Standards describe the procedure for obtaining and maintaining accreditation.

(2) ORELAP accreditation can be granted, denied, suspended, or revoked in total or in part as described in the NELAC Standards.

(3) In no case shall a laboratory be accredited that does not comply with the NELAC Standards as specified in this rule.

(4) The elements for accreditation shall include but are not restricted to:

(a) Application for accreditation:

(A) ORELAP will make applications available to all laboratories requesting an application.

(B) The laboratory must request ORELAP accreditation by completing and submitting to ORELAP an acceptable application that includes all elements as required by the NELAC Standards. For primary accreditation this includes a completed application with all required documents. For secondary accreditation this includes a completed application with all of the required documents plus proof of accreditation from a primary accrediting authority.

(b) Laboratory's participation in a biennial on-site assessment(s) as required by the NELAC Standards. Environmental testing laboratories seeking initial, primary ORELAP accreditation shall not be granted accreditation prior to an acceptable on-site assessment;

(c) Laboratory's participation in Proficiency Testing (PT) and the obtaining of acceptable PT results according to the NELAC Standards;

(d) A Quality Manual (QM) that includes all elements as set forth in the NELAC Standards;

(e) Laboratory staff members that meet the NELAC Standards for training and experience for their responsibilities within the environmental laboratory;

(f) Creation and retention of all records pertaining to samples and analyses, including chain of custody documents, log books, work sheets, raw data, calculations, quality assurance data, and reports according to NELAC Standards;

(g) Laboratory's full payment of all appropriate fees as described in section 333-064-0060 of this rule.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b)(2), 438.605, 438.610, 438.615 & 438.620
Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 620
Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 8-2005, f. 6-1-05, cert. ef. 7-1-05

333-064-0070

Effective Date

The effective date of rules 333-064-0005, 333-064-0010, 333-064-0015, 333-064-0030, 333-064-0040, 333-064-0060 and 333-064-0065 shall be October 10, 2002.

Stat. Auth.: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620
Stats. Implemented: ORS 448.150, 448.131 & 448.280(1)(b) & (2)
Hist.: PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 23-2004, f. & cert. ef. 7-1-04; PH 8-2005, f. 6-1-05, cert. ef. 7-1-05

Adm. Order No.: PH 9-2005

Filed with Sec. of State: 6-15-2005

Certified to be Effective: 6-21-05

Notice Publication Date: 5-1-05

Rules Amended: 333-012-0250

Subject: Clarifies purpose of the AIDS Drug Assistance Program and specifies the Department of Human Services as the Administrator of the federal funds awarded under Title II of the Ryan White Care Act for the State of Oregon. Language is revised to reflect changes in the federal legislation that administers the AIDS Drug Assistance Program.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-012-0250

AIDS Drug Assistance Program

(1) Purpose. The AIDS Drug Assistance Program (ADAP) provides medications for the treatment of HIV disease. The program is primarily funded through Title II of the Ryan White CARE Act, which provides grants to States and Territories. The Department of Human Service shall administer the federal funds awarded under Title II of the Ryan White Care Act for the State of Oregon.

(2) Services. Program funds may be used to provide access to medication, purchase health insurance for eligible clients and services that enhance access, adherence, and monitoring of drug treatments.

(3) Eligibility: Individuals must provide documentation of a HIV diagnosis and meet income and resource guidelines as set by the Department of Human Services and other criteria as defined in the Ryan White Care Act.

(4) This program shall be in effect as long as authorized funds are available.

(5) The Department of Human Services will periodically re-evaluate its experience with the program in order to fully utilize the funds available.

Stat. Auth.: ORS 431, 432, 433 & 434

Stats. Implemented:

Hist.: HD 14-1987(Temp), f. & ef. 9-30-87; HD 9-1988, f. 5-11-88, cert. ef. 5-12-88; HD 1-1990(Temp), f. & cert. ef. 1-8-90; PH 9-2005, f. 6-15-05, cert. ef. 6-21-05

Adm. Order No.: PH 10-2005

Filed with Sec. of State: 6-15-2005

Certified to be Effective: 6-21-05

Notice Publication Date: 5-1-05

Rules Amended: 333-019-0041

Subject: Removes redundant language for tuberculosis screening of certain populations of school children.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-019-0041

Tuberculosis

(1) Each Health Care Facility shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), residents, and patients at least annually and shall follow tuberculosis screening recommendations outlined in "Guidelines for preventing the transmission of Mycobacterium tuberculosis in Health-Care Facilities," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 43, Number RR-13, October 28, 1994) or otherwise approved by DHS.

(2) Each Residential Facility specified below shall formally assess the risk of tuberculosis transmission among staff (professional and volunteer), residents, inmates, and patients at least annually and shall follow appropriate tuberculosis screening recommendations as outlined in the relevant publication or as otherwise approved by DHS:

(a) Correctional Facilities: "Controlling TB in Correctional Facilities," published by the Centers for Disease Control and Prevention (Reprinted February 1999).

(b) Long Term Care Facilities for the Elderly: "Prevention and control of tuberculosis in facilities providing long-term care to the elderly. Recommendations of the Advisory Committee for Elimination of Tuberculosis," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 39, RR-10, pp. 7-20; July 13, 1990).

(c) Homeless Shelters: "Prevention and control of tuberculosis among homeless persons," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, Vol. 41, RR-5, pp. 13-23; April 17, 1992)

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

Stat. Auth.: ORS 431.110, 431.140, 432, 433, 437.030, 616 & 624

Stats. Implemented: ORS 437.030

Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 10-2005, f. 6-15-05, cert. ef. 6-21-05

ADMINISTRATIVE RULES

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

Adm. Order No.: SPD 7-2005

Filed with Sec. of State: 6-1-2005

Certified to be Effective: 6-6-05

Notice Publication Date: 5-1-05

Rules Adopted: 411-002-0155

Subject: This rule change permanently amends Chapter 411, Division 002, Designation of Planning and Service Areas, to address the supervision of Type B1 and B2 Contract AAA state employees, effective 06/06/05.

The adoption of rule 411-002-0155 will clarify the responsibility between the Department of Human Services (Department) and AAA local government entities (Contract) relating to the supervision of Type B1 and B2 Contract state employees (Employees). It defines collaborative requirements between Department and County relating to said Employees; and requires that policy for state employees of Type B1 and B2 AAAs is consistent with other Department employees. Additionally, it provides clarification regarding the role and responsibility of the State Program Manager in a Type B1 or B2 Contract AAA and specifies the Department as the sole negotiator for employment-related settlements of Employees.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-002-0155

State Employee Supervision in a Type B1 or Type B2 Contract AAA

General Requirements:

(1) The Department of Human Services (the Department) and the AAA Contracted local government entities, in the best interest of the affected State employees, must collaborate and cooperate in the administration of state human resource policies. Communication regarding changes in the Department of Administrative Services (DAS) and the Department's human resource policies and procedures relating to State employee supervision as well as communication regarding the day-to-day supervision and management of State employees will be encouraged.

(2) Both parties must comply with externally imposed Employment Relations Board (ERB) decisions, arbitration decisions, Equal Employment Opportunity Commission (EEOC), Workers' Compensation (WC), Americans with Disabilities Act (ADA), and other settlement decisions or agreements.

(3) The Department will be the sole negotiator for employment related settlements for State employees.

(a) Type B1 or Type B2 Contract AAAs, which contract with the Department of Human Services for services of State employers, are required to manage employees in accordance with the Collective Bargaining Agreement between the SEIU, Local 503, Oregon Public Employees Union and Department of Administrative Services, and the Department.

(A) The Collective Bargaining Agreement, State and Federal laws, the Department of Administrative Services, and Department rules and policies relating to supervision of State employees must take precedent over Type B1 and Type B2 Contract AAA rules, policies or procedures.

(B) The Department must review any county or local government policies that will be applied to State employees to ensure compliances with State, Federal, DAS, and DHS policies for regulations.

(b) Type B1 or Type B2 Contract AAAs will be collaborative and must comply with the Department policies and decisions on matters of recruitment and retention of State employees. The Department is responsible for recruitment of all State employees, represented and management, and must jointly participate in the selection of all State supervisory and managerial employees. The Department maintains the final approval of the selection of State supervisory and managerial employees.

(c) With the exception of the State Program Managers (see section (f)), all State employees must be managed, directed, supervised, and evaluated by State managers. The term supervision includes hiring, firing, disciplining, and setting performance expectations. State management employees must supervise only State employees.

(d) State employees working in a Type B1 or Type B2 Contract AAA are not considered employees of the AAA and are not entitled to any benefits from the AAA employee benefit packages. This includes vacation, holiday and sick leave, other leaves with pay, medical and dental coverage, life

and disability insurance, overtime, Social Security, workers' compensation, unemployment compensation, and retirement funding. State employee benefit packages are determined by the Collective Bargaining Agreement, as referred to in (a) of this rule.

(e) State managers and State represented employees in a Type B1 or Type B2 Contract AAA are required to attend applicable Department program and management training and designated curriculum pertinent to the individual position. Such training is available to the local government Contract AAA Director.

(f) The State Program Manager in a Type B1 or Type B2 Contract AAA will report directly to both the AAA Director and the designated Field Services Manager in the Department as follows:

(A) The Department must sign as the reviewer for the performance appraisal of the Program Manager and direct subordinates. The Contract AAA Director must seek input from the designated Field Services Manager in the Department when preparing the State Program Manager's performance evaluation.

(B) The Contract AAA Director will prepare the State Program Manager's evaluation. Prior to discussion with the State Program Manager, the Contract AAA Director will have the Field Services Manager as reviewer. By signing as reviewer, the Field Services Manager concurs with the content of the performance appraisal. A performance appraisal will not be valid without both the Field Services Manager's signature and the Contract AAA Director's signature. If there is disagreement and consensus cannot be reached, the Assistant Director for Seniors and People with Disabilities at the Department will make a final determination on the content of the performance appraisal. The evaluation must reflect both the Contract AAA Director's and the Field Services Manager's assessment of the Program Manager's performance.

(C) The State Program Manager must seek and incorporate input from both the Field Services Manager and the Contract AAA Director when preparing the performance evaluations of subordinate staff managers/supervisors. The Contract AAA Director and the Field Services Manager must both review the evaluation and both sign as reviewer.

(g) The Department has final approval for all personnel actions taken related to State employees.

(A) The Department is the appointing authority and has final approval for all personnel recommendations regarding State employees for the Type B1 or Type B2 Contract AAA. Approval will be granted when the Type B1 or Type B2 Contract AAA personnel recommendations are in compliance with all applicable statutes, rules, agency or department agreements and policies.

(B) The Type B1 or B2 Contract AAA is to use only Department issued forms in conjunction with Department human resource policies for all administrative business with State employees.

(h) All State employees working in a Type B1 or Type B2 Contract AAA are prohibited from participating professionally in a case involving a relative connected by blood relation, marriage, adoption, or part of an extended family. State employees are responsible for notifying the State Program Manager if a relative is receiving Medicaid, OAA, and/or OPI services from the Contract AAA. The State employee's Program Manager in such a situation will assure that the case is assigned to another employee, in another office if possible, who is not a relative and who will not be unduly influenced by the State employee who is a relative. The State Program Manager must provide the Department's Human Resource unit with a written statement that outlines the safeguards put in place to assure no undue influence will be asserted by the affected employee. The Department's Human Resource unit will be the final decision maker as to whether the safeguards are sufficient.

(i) The Contract AAA Director and the Field Services Manager or designee must participate jointly in the selection of the State Program Manager.

(A) The Department maintains the final approval of the selection of the State Program Manager.

(B) The Contract AAA Director will be the State Program Manager's direct-report supervisor.

(C) The State Program Manager is responsible for ensuring the Contract AAA complies with all state program and administrative policy rules and required procedures. It is the responsibility of the State Program Manager to first advise the Contract AAA Director and then the Field Services Manager if the State Program Manager believes he or she is being given work directions that are in violation of such policy or rules and required procedures. If the Field Services Manager and the Contract AAA Director cannot resolve the conflict, it will be referred to the Assistant Director for Seniors and People with Disabilities at the Department for a

ADMINISTRATIVE RULES

final determination as to which specific state policy interpretation will apply to the present situation.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.210 - 410.300

Hist.: SPD 7-2005, f. 6-1-05, cert. ef. 6-6-05

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

Adm. Order No.: OSFM 6-2005

Filed with Sec. of State: 5-24-2005

Certified to be Effective: 5-26-05

Notice Publication Date: 5-1-05

Rules Adopted: 837-020-0120

Rules Amended: 837-020-0035, 837-020-0040, 837-020-0050, 837-020-0055, 837-020-0060, 837-020-0065, 837-020-0070, 837-020-0085, 837-020-0105, 837-020-0115, 837-020-0125

Subject: Changes are being made to the Oregon Administrative Rules 837-020-0035 to 837-020-0125 as a result of a rule review, and for purposes of housekeeping and clarification. In addition, language pertaining to contested cases and hearings have been moved to a new section for ease of access.

Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code, adding a note to the definition of Class 1 Flammable Liquid, renumbering certain sections, and grammatical changes.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-020-0035

Definitions

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 only, the following definitions apply:

(1) "Business Use" shall mean that all Class 1 Flammable Liquids dispensed into Motor Vehicles and Containers shall be used only in the course of business activities.

(2) "Class 1 Flammable Liquid" shall mean any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester.

NOTE: Diesel fuel is not a Class 1 Flammable Liquid.

(3) "Container" shall mean all types of portable containers.

(4) "Conditional Use Customer" shall mean a Person who may dispense Class 1 Flammable Liquids at a licensed Conditional Nonretail Facility, and meets the requirements of OAR 837-020-0045 through 837-020-0125.

(5) "Conditional Nonretail Facility" shall mean a Nonretail Facility licensed by the State Fire Marshal, where Conditional Use Customers may dispense Class 1 Flammable Liquids.

(6) "Dispensing" shall mean the transfer of a Class 1 Flammable Liquid from a Facility to a Motor Vehicle or Container.

(7) "Documentation" shall mean a Federal Employer Identification Number or Documentation that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. Initial documents may be photocopies or facsimiles of the original documents. Subsequent documentation may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.

(8) "Dual Operations" shall mean a Nonretail Facility at which Class 1 Flammable Liquids are dispensed at Retail and Nonretail with either a time separation of the Retail and Nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) "Emergency" shall mean any man-made or natural element or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.

(10) "Emergency Management Agency" shall mean an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and assure the conduct and coordination of functions for comprehensive emergency program management.

(11) "Emergency Service Agency" shall mean an agency defined in ORS 401.025 or an entity authorized by an emergency service agency to provide services during an emergency.

(12) "Emergency Service Worker" shall mean an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the emergency management agency of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the emergency service system.

(13) "Emergency Services" includes those activities provided by state and local government agencies with Emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an Emergency. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).

(14) "Employee" shall mean an Individual who works for an Operator or an Owner.

(15) "Equivalent Documentation" shall mean verifiable documentation that meets or exceeds the requirements of Documentation required under ORS 480.345. The final decision as to what is acceptable as Equivalent Documentation rests with the State Fire Marshal.

(16) "General Public" shall mean someone other than a Nonretail or Conditional Use Customer.

(17) "Individual" shall mean a single human being.

(18) "License" shall mean the official document issued by the Office of State Fire Marshal that authorizes the operation of a Nonretail or Conditional Nonretail Facility when otherwise in compliance with all applicable requirements of OAR 837-020-0040.

(19) "License Application" shall mean the 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 Nonretail or Conditional Nonretail Facility License.

(20) "Motor Vehicle" shall mean a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.

(21) "Nonretail Customer" shall mean an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345.

(22) "Nonretail Facility" shall mean a facility licensed by the State Fire Marshal, where Class 1 Flammable Liquids are dispensed through a fuel dispensing device that limits access to qualified Nonretail Customers.

NOTE: A Dual Operation Facility is also a Nonretail Facility.

(23) "Operator" shall mean a Person that operates a Nonretail or a Conditional Nonretail Facility.

(24) "Oregon Fire Code (OFC)" shall mean the Oregon Fire Code, 2004 Edition.

(25) "Owner" shall mean any Person that is the Owner of a Nonretail or a Conditional Nonretail Facility. An Owner may also be an Operator.

(26) "Person" shall mean one or more Individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of Persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(27) "Retail Facility" shall mean a Facility that sells Class 1 flammable Liquids to the general public in compliance with ORS 480.330.

(28) "Verifiable Documentation" shall mean Documentation that can be verified by the State Fire Marshal as true and accurate.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0040

General

(1) Nonretail and Conditional Nonretail Facility Operators desiring to engage in Nonretail and Conditional Nonretail Facility operations shall comply with all applicable state, federal and local laws, rules and regulations including, but not limited to:

(a) ORS 480.310 through 480.385;

(b) OAR 837-020-0025 through 837-020-0125;

ADMINISTRATIVE RULES

- (c) Oregon Fire Code, 2004 Edition;
- (d) OAR chapter 837, division 85 — Hazardous Materials Reporting;

and

- (e) NFPA 30 and 30A.

(2) In addition to other applicable provisions of law, each Nonretail and Conditional Nonretail Facility shall meet the following requirements as per OAR 837-020-0040:

(a) Proper drainage grades or curbs shall be situated to prevent any spills from flowing towards any building or other pump islands;

(b) Locations for the emergency fuel shutdown devices must be clearly and conspicuously posted;

(c) Instructions for the operation of Nonretail dispensers shall be clearly and conspicuously posted;

(d) Locations for all fire extinguishers shall be clearly and conspicuously posted;

- (e) Be adequately lighted at all times when available for use;

(f) A fire alarm transmitting device or a telephone not requiring a coin or credit card to operate shall be provided at each Nonretail and Conditional Nonretail Facility during all hours of operation. This equipment shall be maintained in good working order in the event emergency assistance is needed; and

- (g) All applicable provisions of the OFC shall be met.

(3) All Nonretail and Conditional Nonretail Facilities shall have the following warning signs posted. These signs shall be readily visible and readable from each Class 1 Flammable Liquid dispensing pump from a distance of ten feet and state:

- (a) Smoking is prohibited;

- (b) Vehicle engines shall be shut off while fueling;

- (c) The Facility address;

- (d) The telephone number of the owner or operator;

- (e) Do not fill unapproved containers;

(f) Portable containers shall not be filled while located inside the truck, passenger compartment, or truck bed of a vehicle;

(g) It is a violation of law, subject to penalty, to dispense Class 1 Flammable Liquids without first receiving the training required by OAR 837-020-0055; and

(h) It is a violation of law, subject to penalty, to dispense Class 1 Flammable Liquids for personal use or into Motor Vehicles or Containers not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4) (not required at Conditional Nonretail Facilities).

(4) In addition to the provisions required by OAR 837-020-0040, Nonretail Dual Operation Facilities Separated by Distance shall:

(a) Have signs visible from each driveway access point directing customers to the "Retail" and/or "Nonretail" pump islands. Signs shall be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background;

(b) Where Retail and Nonretail dispensing of Class 1 Flammable Liquids occurs during the same hours, Nonretail pump islands shall be separated from Retail pump islands by a space of at least 50 feet. Nonretail and Retail pump islands may be separated by a distance of no less than 20 feet, provided prior approval is given by the Office of State Fire Marshal, and that one of the following barriers is present:

(A) an approved solid physical barrier or a solid wall at least four feet high, constructed of fire resistive materials, and which runs the entire length of the pump island; or

(B) a fire resistive building, meeting the requirements of the building code.

(c) Unless pump islands are separated by at least 50 feet (20 feet with an approved barrier), Retail and Nonretail dispensing shall not occur during the same hours at a Facility.

(d) Where Retail and Nonretail dispensing is separated only by time, signs shall be visible from each driveway access point and each Class 1 Flammable Liquid dispensing pump stating the days and hours that separate retail and nonretail operations occur. These signs shall be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background.

(5) At least 45 days prior to the start of intended operations, the Facility Owner or Operator of each new Nonretail and Conditional Nonretail Facility covered by OAR 837-020-0040 shall file the appropriate License Application forms and certifications with the Office of State Fire Marshal.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers

Notwithstanding ORS 480.330 and 480.340 or OAR 837-020-0045, persons, other than owners, may be authorized to dispense Class 1 Flammable Liquids at Nonretail Facilities only under the following conditions: The Nonretail and Conditional Facility Customer satisfies all requirements of OAR 837-020-0045 through 837-020-0095.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0055

Fire Safety Training

(1) Owners or Operators of Nonretail and Conditional Nonretail Facilities shall provide an initial fire safety training course to each Nonretail and Conditional Nonretail Customer authorized to dispense Class 1 Flammable Liquids. The training may be delivered through any suitable method that contains all provisions of 837-020-0055(2) and shall be provided prior to allowing Nonretail and Conditional Nonretail Customers to dispense Class 1 Flammable Liquids. A signed document indicating receipt of safety training shall be maintained by each operator as part of each customer file.

- (2) The fire safety training described in section (1) shall include:

(a) The hazards of all forms of Class 1 Flammable Liquids to be dispensed by the Nonretail and Conditional Nonretail Customer;

(b) The location and operation of emergency fuel shutdown devices required under the OFC;

- (c) The no smoking set-back requirements of the OFC;

(d) Procedures for contacting the local fire department and other emergency service organizations;

- (e) The use of the fire extinguishers required under the OFC; and

(f) The type of portable Containers that may be filled and the safe procedures for filling them.

(3) All Nonretail and Conditional Nonretail Customers who wish to dispense Class 1 Flammable Liquids at Nonretail and Conditional Nonretail Facilities shall successfully complete the fire safety training described in sections (1) and (2) of this rule prior to engaging in dispensing operations.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.345

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0060

Quantity of Purchase Criteria

(1) Except as provided below, each Nonretail Customer must file Documentation with the Owner or Operator to show the Nonretail Customer purchases at least 900 gallons of Class 1 Flammable Liquids and/or diesel fuel every 12 months for business, government, nonprofit, or charitable purposes.

(2) The 900 gallons may have been purchased from any source. The Nonretail Customer shall provide documentation to the Owner or Operator to demonstrate this requirement has been met if the Nonretail Customer does not purchase 900 gallons from the Owner or Operator they have entered into an agreement with. This Documentation shall be readily available for review by the OSFM.

(3) Nonretail Customers that do not meet the requirements of ORS 480.345 and this section shall have their access to Nonretail fuel dispensing revoked by the Nonretail Facility Owner or Operator.

(4) Nonretail Customers who wish to dispense Class 1 Flammable Liquids at a Nonretail Facility are not required to meet the provisions of this section if:

(a) The Nonretail Customer annually provides Documentation that the fuel qualifies as a deductible farming expense on the Nonretail Customer's Schedule F of their federal income tax return; or

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or

(c) The Nonretail Customer was a Customer of the Nonretail Facility on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(5) Nonretail Customer applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 837-020-0060 within 12 months of the date of their first fuel purchase or when their account was established. Failure to meet this requirement shall result in termination as a Nonretail Customer.

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NOTE: This section does not apply to Conditional Use Customers.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.360

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0065

Certification and Record Keeping

(1) Each Owner or Operator of a Nonretail or Conditional Nonretail Facility shall provide the safety training required by OAR 837-020-0055 to all their Nonretail and Conditional Use Customers.

(2) Owners or Operators of Nonretail and Conditional Nonretail Facilities shall maintain electronic or hard copy Documentation that is readily accessible to demonstrate all Nonretail and Conditional Use Customers meet the requirements of OAR 837-020-0050.

(3) Owner or Operators of Nonretail and Conditional Nonretail facilities shall maintain documentation to demonstrate that, at a minimum, weekly site visits of each Nonretail and Conditional Nonretail Facility have been performed. Such documentation shall be noted on forms approved by the State Fire Marshal, and shall be readily accessible to demonstrate this requirement has been met.

(4) Owner or Operators of Nonretail and Conditional Nonretail Facilities shall provide Documentation to the OSFM to certify violations of OAR 837-020-0025 through 837-020-0125 have been corrected.

(5) The documentation of corrections shall be received by the specified time referenced in the Notice and Order of Correction provided by the OSFM.

(6) Failure to provide documentation in accordance with OAR 837-020-0025 through 837-020-0125 constitutes a violation which may result in civil penalty assessment to the Owner or Operator, and may result in the revocation of their license.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.345 - 480.375

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0070

Nonretail and Conditional Use Customer Agreements

(1) The Owner or Operator shall enter into a written agreement with Nonretail and Conditional Use Customers permitted under OAR 837-020-0050 to dispense fuel at the Nonretail and Conditional Nonretail Facility. Except as otherwise provided in ORS 480.355, the agreement shall at a minimum:

(a) Certify that the Nonretail Customer will purchase at least 900 gallons of Class 1 Flammable Liquids and/or diesel fuel from any source during a 12-month period, or if the amount of Class 1 Flammable and/or diesel fuel purchased is less than 900 gallons annually, file documentation that:

(A) The fuel qualifies as a deductible farming expense on the Nonretail Customer's current Schedule F of their federal income tax return; or

(B) The fuel was purchased by a governmental agency providing fire, ambulance or police services;

(C) The Nonretail Customer was a Customer of the Nonretail Facility on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(b) Provide a federal employer identification number or Equivalent Documentation to indicate participation in a business or employment with a government agency or nonprofit or charitable organization;

(c) Certify that the Nonretail Customer is employed by a business, government agency or nonprofit or charitable organization and that the Nonretail Customer shall dispense Class 1 Flammable Liquids only into the fuel tank of a motor vehicle or other Container owned or used by the business, government agency or nonprofit or charitable organization;

(d) That all Class 1 Flammable Liquids dispensed at Nonretail Facilities shall be for business use only, and that the Nonretail Customer is subject to a penalty if fueling a Motor Vehicle or Container for personal use; and

(e) Certify that the Nonretail Customer has satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(f) Require the Nonretail Customer to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct.

(2) The requirements of subsections (1)(a), (b), (c), and (d) of this rule to not apply to Conditional Use Customer agreements.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0085

Nonretail and Conditional Nonretail Facility License Requirements

(1) Nonretail and Conditional Nonretail Facilities shall not operate without a valid License issued by the State Fire Marshal.

(2) A separate License is required for each Nonretail and Conditional Nonretail Facility.

(3) All Licenses shall be valid for one year from the date of issue.

(4) The State Fire Marshal shall issue a License to the Owner or Operator if the Owner or Operator has:

(a) Complied with the requirements established by OAR 837-020-0040;

(b) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(c) Certified that the Owner or Operator will comply with all provisions of ORS 480.345, the OFC, and this Division;

(d) Provided a blank copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(e) Provided a blank copy of the safety training that is provided to their Nonretail and Conditional Nonretail Customers, to ensure the safety training meets all requirements of OAR 837-020-0055.

(f) Paid an application fee of \$250 for each Facility site and \$5 for each Nonretail and Conditional Use Customer as required by OAR 837-020-0115.

(5) Any and all certification required by this section shall be made under ORS 162.075.

(6) The Owner or Operator shall bear the burden of production and proof that the requirements of this Division, and all applicable rules of the State Fire Marshal have been satisfied.

(7) The State Fire Marshal may conduct an on-site inspection to determine compliance with OAR 837-020-0040 and other applicable fire and life safety laws prior to issuing a Nonretail or Conditional Nonretail Facility license to the Owner or Operator under section (4) of this rule.

(8) In addition to the requirements set forth in this section, Owner or Operators who wish to operate a Dual Operations Facility, the Owner or Operator shall provide to the State Fire Marshal, on State Fire Marshal forms, the specific hours and days when the Owner or Operator proposes to conduct only retail dispensing and the specific hours and days when the Owner or Operator proposes to conduct only nonretail dispensing.

(9) In addition to the requirements set forth in this section, Owner or Operators who wish to operate a Conditional Nonretail Facility, shall comply with the following:

(a) A Nonretail Conditional Facility may permit persons who are not otherwise qualified under OAR 837-020-0050 to dispense Class 1 Flammable Liquids if all conditions specified in this section are satisfied.

(b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal may issue a Conditional Nonretail License to an Owner or Operator for local non-commercial use if the State Fire Marshal finds:

(A) There is no Facility where Class 1 Flammable Liquids are dispensed by attendants at Retail, including Dual Operations, within seven miles of the Owner or Operator's Nonretail Facility, and other undue hardship conditions exist. Such undue hardship conditions shall be determined on a case by case basis and may include, but are not limited to, road conditions, and volume and type of traffic in the affected area;

(B) The Owner or Operator has certified that the Owner or Operator will comply with the applicable provisions of ORS 480.345 (1), (5), (6)(d), and (6)(e), and this Division;

(C) The method of access to a Conditional Nonretail Facility shall not allow access to any other Nonretail or Conditional Nonretail Facility.

(10) Within a given geographical area, applications for Conditional Nonretail Licenses issued under this section shall be considered in order of priority of receipt. The date the State Fire Marshal actually receives the application shall determine its priority.

(11) A Conditional Nonretail License may not be renewed if the requirements of this Section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.

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

Stat. Auth.: ORS 480.380 & 480.355

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

ADMINISTRATIVE RULES

837-020-0105

License Denials, Revocations and Suspensions; Civil Penalties and Appeals

(1) The Office of State Fire Marshal may deny, revoke, or suspend a Nonretail or Conditional Nonretail Facility License if the Owner or Operator:

(a) Fails to comply with OAR 837-020-0040, or any other rule, pertaining to nonretail fuel dispensing, adopted by the State Fire Marshal; or
(b) Falsifies any information in the application for the License.

(2) The option of denial, revocation or suspension may be based on the following:

(a) The number of similar or related violations alleged to have been committed in the current license year;

(b) Whether the violation(s) was willful or intentional;

(c) The prior history of violations committed by the Owner or Operator; or

(d) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(3) Suspension or revocation of a License may include suspension or revocation of the current License and the right to apply for a subsequent License.

(4) Where the State Fire Marshal has alleged a self-service violation at a Facility, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.330 through 480.385 and OAR chapter 837, division 20 shall shift from the state to the Owner or Operator once the state establishes and provides the Owner or Operator with the following information:

(a) The date and time of the alleged violation;

(b) The Facility location, including the pump number where the alleged violation occurred;

(c) The vehicle description and license number; and

(d) A description of the Individual dispensing the Class 1 Flammable Liquids.

(5) Any Owner or Operator who applies for a License required by OAR 837-020-0085, and whose application is denied, is entitled to file an appeal. Such appeals shall be conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(6) Before suspending, revoking or terminating a License issued under OAR 837-020-0085, the State Fire Marshal shall give prior notice to the Licensee and offer a hearing. If requested, such hearings shall be conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(7) Where the State Fire Marshal proposes to assess a civil penalty under ORS 480.385 and OAR 837-020-0125, appropriate notice of appeal rights shall be given under ORS 480.385.

(8) Judicial review of a final order made after a hearing requested under section (1) or (2) of this rule shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(9) Nothing in this Section shall prevent the State Fire Marshal from closing a Nonretail or Conditional Nonretail Facility under ORS 479.170, provided that the accelerated appeals process explained in ORS 479.180 is observed.

(10) Where a Nonretail or Conditional Use customer account list has been submitted to the State Fire Marshal during enforcement or appeal proceedings, the State Fire Marshal shall treat the list as confidential to the extent allowed by law.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.355, 480.365 - 480.375 & 480.385

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0115

Application, License Renewals, and Annual Fees

(1) Any Owner or Operator engaged in, or intending to engage in, the operation of a Nonretail or Conditional Nonretail Facility shall apply for and obtain a License issued by the Office of State Fire Marshal.

(2) A separate License shall be applied for and obtained for each Nonretail or Conditional Nonretail Facility.

(3) The License shall be obtained prior to start of the Nonretail or Conditional Nonretail Facility operation, or the Owner or Operator shall be assessed a civil penalty and/or be subject to closure of the Nonretail or Conditional Nonretail Facility.

(4) The Application fee for each Nonretail and Conditional Nonretail Facility License shall be \$250 per Facility. Licenses shall be valid for one year from the date of issue.

(5) License fees shall be paid at, or mailed to, the Office of State Fire Marshal. The License Application shall be delivered to or mailed to the Office of State Fire Marshal.

(6) 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 License Application until the check has cleared the bank.

(7) In addition to the application and renewal fees assessed by this section, Owners or Operators of Nonretail and Conditional Nonretail Facilities shall pay to the State Fire Marshal an annual account fee of \$5 for each Nonretail and Conditional Use Customer who has access to dispense Class 1 Flammable Liquids at any time during the applicable license year.

(8) License renewal Applications, accompanying documentation, and payment shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the License expiration for a License renewal valid for the following license. If the 30 days prior to the License expiration date falls on a day when a postmark cannot be obtained, the applications shall be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(9) License Application renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0120

Hearings and Contested Cases

A person may request a Formal Hearing regarding the suspension, revocation, or denial of a License by the Office of State Fire Marshal.

(1) A Request for Hearing Shall be timely filed.

(2) A Request for Hearing is timely filed when the request is postmarked or received by the Office of State Fire Marshal within 20 days from the date of service of the notice of suspension, revocation, or denial, unless a 60-day deadline applies pursuant to ORS 183.435.

(3) If a Request for Hearing is not timely filed under section (c) of this rule, the Person Shall have waived the right to a contested case under ORS Chapter 183.

(4) A Person may write to or call the Office of State Fire Marshal to informally discuss the notice of suspension, revocation, or denial; however, an informal communication Shall not extend the deadline established in 837-020-0105 subsection (3).

(5) A contested case may include:

(a) An Informal Conference; and/or

(b) A Formal Hearing.

(6) A contested case Shall be conducted pursuant to the provisions of ORS Chapter 183 and the rules adopted thereto.

(7) The Office of State Fire Marshal may provide an opportunity for an Informal Conference. A request for an Informal Conference Shall be in writing; and Shall:

(a) Be addressed to the Office of State Fire Marshal; and

(b) Clearly state the issue(s) to be discussed; and

(c) If the Office of State Fire Marshal and the party(ies) agree, an Informal Conference may be held by telephone.

(8) After an Informal Conference, the Office of State Fire Marshal may amend, withdraw, or reduce the suspension, revocation, or denial. Such action Shall be taken in accordance with ORS Chapter 183 and the rules adopted thereto.

(9) A Person may file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in section (3) of the Contested Cases section of OAR 837-020-0120.

(10) The Office of State Fire Marshal Shall arrange for a hearings officer to conduct the Formal Hearing.

(11) The Office of State Fire Marshal Shall set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 476.030 & 480.310 - 480.385

Stats. Implemented: ORS 480.310 - 480.385

Hist.: OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

837-020-0125

Penalties

The State Fire Marshal may impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, and OAR 837-020-0040. Penalties shall be imposed in accordance with the following penalty matrix

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established by the State Fire Marshal. Penalties may be based on history, violation types, number of instances of violations identified, and severity of violations. Violation Types, Instances, and Penalty Assessments:

(1) The Types of Violations are:

- (a) Least — Type I;
- (b) Minimal — Type II;
- (c) Moderate — Type III;
- (d) Severe — Type IV.

(2) The violation instance is determined based on the number of times a Person, Individual, Owner, or Operator has committed a violation. A violation occurs each time a Person, Individual, Owner, or Operator breaks a rule established by OAR 837-020-0040.

PENALTY MATRIX:

VIOLATION TYPE	PENALTY INSTANCE	1	2	3
I. LEAST			\$25	\$75
II. MINIMAL		\$25	\$75	\$150
III. MODERATE		\$75	\$150	\$250
IV. SEVERE		\$125	\$250	\$500

TYPE I: LEAST

- Eligibility Documentation (excluding safety training)
- Signs —
- Retail Nonretail locations
- Phone # of Operator
- It is a violation of law...
- Days/Hours of Operation of time separation facility not present or correct
- Other _____

TYPE II: MINIMAL

- License Applications not received by deadline
- AST labels for above ground tanks not present
- Dispensing instructions not present
- Other _____

TYPE III: MODERATE

- Unlawful dispensing at Nonretail Facilities
- Signs —
- No Smoking...

Emergency Fuel Shutdown Device location

Fire Extinguisher location

Do Not Fill Unapproved Containers

In Case of Fire...

Certification of correction of deficiencies not provided in accordance with Notice and Order

Other _____

TYPE IV: SEVERE

- Falsified License Application
- Required facility equipment not present or not in good working order
- Safety training not provided prior to allowing customer to dispense fuel
- Unlawful dispensing at retail facilities
- Operating a Nonretail Facility or Conditional Nonretail Facility without a license
- Other _____

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.380 & 480.385

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05

Adm. Order No.: OSFM 7-2005

Filed with Sec. of State: 5-24-2005

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Rules Amended: 837-012-0310, 837-012-0315, 837-012-0320, 837-012-0330

Subject: Changes are being made to the Oregon Administrative Rules 837-012-0310 to 837-012-0330 for purposes of housekeeping and clarification. Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0310

Agricultural Permit Applications

(1) Any Person engaged in, or intending to engage in, the use of Agricultural Fireworks shall apply for and obtain an Agricultural Permit issued by the Office of State Fire Marshal.

(2) Upon receipt of a properly completed and approved application, the Office of State Fire Marshal shall issue a nontransferable permit to the applicant or Persons designated to discharge the Fireworks. The State Fire Marshal may deny any application for a permit to discharge Agriculture Fireworks upon showing just cause for such denial. A separate Agricultural Permit shall be applied for an obtained for each Person who desires to use Agricultural Fireworks.

(3) The Permit Application for an Agricultural Fireworks Permit shall be made on a form provided by the Office of State Fire Marshal.

(4) All information provided by the applicant on the Permit Application shall be true and correct to the Agricultural Permit applicant's knowledge.

(5) As part of the Permit Application process, the applicant shall obtain the signature of either the state game management or federal game management agent on the Permit Application.

(6) The required signature shall be obtained prior to submitting the Permit Application to the Office of State Fire Marshal.

(7) The Office of State Fire Marshal shall not grant approval of Permit Applications without the applicant first obtaining the signature required in OAR 837-012-0360(5).

(8) The Office of State Fire Marshal shall either grant or deny Permit Applications within 10 days following receipt of a properly completed and submitted Permit Application.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0010; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0315

Definitions

(1) "Agent" shall mean an Individual designated by the Permit Holder to pick up the Agricultural Fireworks authorized by the Agricultural Permit from an Oregon licensed Wholesaler when the Permit Holder is unable to pick up the Agricultural Fireworks. The Agent shall have the Agricultural Permit (or a copy) issued by the State Fire Marshal in their possession at the time the Agricultural Fireworks are picked up from the Wholesaler.

(2) "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. Agricultural Fireworks do not include Retail Fireworks, Public Display Fireworks, or Exempt Fireworks.

(3) "Agricultural Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.122 and 480.124 and OAR 837-012-0300 through 837-012-0400 granting permission to a Person to use Agricultural Fireworks.

(4) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(5) "Fire Protection District" shall mean any district created under the laws of Oregon or the United States, including rural Fire Protection Districts and any federal, state or private forest patrol areas. Reference ORS 480.110(2).

(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) "Illegal Fireworks" shall mean any Fireworks other than those described in ORS 480.127(4) including but not limited to, any Firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(8) "Individual" shall mean a single human being.

(9) "Individual Member of the General Public" shall mean 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.

(10) "Local Fire Authority" shall mean the Local Fire Authority having jurisdiction over the Agricultural Fireworks use and storage sites.

(11) "Novelties and Trick Noisemakers" shall mean those Items described in ORS 480.110(1)(a) through 480.110(1)(b) and NFPA 1124, Section 1.4, 2003 Edition. It also means Exempt Fireworks.

(12) "Permit Application" shall mean the 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 an Agricultural Permit.

(13) "Permit Holder" shall mean the Person referred to in ORS 480.122 who:

- (a) Desires to purchase, maintain, use, and explode Agricultural Fireworks for the purpose of scaring away or repelling birds or animals which are or may be injurious or destructive to forest or agricultural products or crops;
- (b) Has applied to the State Fire Marshal for an Agricultural Permit;
- (c) The State Fire Marshal has issued an Agricultural Permit referred to in ORS 480.122;
- (d) Is responsible for any activities conducted under the Agricultural Permit.

(14) "Person" shall mean one or more Individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or

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not organized for profit), business trusts, or any organized group of Persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(15) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permits issued pursuant to ORS 480.130, 480.140 and 480.150.

(16) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(17) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(18) "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 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0320

Storage of Agriculture Fireworks

Agricultural Fireworks shall be stored in accordance with the requirements of these rules, the Oregon Fire Code and the Oregon Structural Specialty Code.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0020; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0330

General

(1) Agricultural Permit Holders desiring to engage in other types of Fireworks activities, including wholesale sales, public displays or retail sales, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12.

(2) Agricultural Permit Holders shall notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The Agricultural Permit Holder's mailing address, telephone number;

(b) The storage address of the Agricultural Fireworks.

(3) Change of the storage location of the Agricultural Fireworks is subject to prior written approval by the Local Fire Authority and the Office of State Fire Marshal.

(4) Agricultural Permit Holders shall comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) Oregon Fire Code, 2004 Edition; and

(d) Oregon Structural Specialty Code, 2004 Edition.

(5) Agricultural Permit Holders shall purchase Agricultural Fireworks only from Wholesalers having the necessary and current Permits required by ORS 480.110 to 480.160 and OAR 837-012-0500 through 837-012-0570.

(6) Agricultural Permit Holders may request a duplicate copy of their Agricultural Permit by certifying to the Office of State Fire Marshal, in writing, that their Agricultural Permit has been lost, stolen, or destroyed. Written requests shall be signed and dated by the Agricultural Permit Holder.

(7) The issuance of an Agricultural Permit does not in any way constitute approval by the Office of State Fire Marshal of any Agricultural Fireworks purchased, sold, or provided pursuant to the Agricultural Permit.

(8) An Agricultural Permit allows the Permit Holder to engage in the purchase, transportation, possession, storage and use of Agricultural Fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12 and any other federal, state or local laws, rules or regulations.

(9) An Agricultural Permit does not authorize the:

(a) Purchase, possession or sale of Illegal Fireworks by or to any Person; or

(b) Sale or provision of Agricultural Fireworks to any Person.

(10) Any Agricultural Permit Holder, other than an Individual, shall list the name, age, address, and phone number of one Individual in a management position within their company or organization, on the Permit Application as required by the State Fire Marshal.

(11) Individuals firing the Agricultural Fireworks shall be a minimum of 18 years of age.

(12) Only the Agricultural Permit Holder, and any employees of the Agricultural Permit Holder may engage in activities authorized by the Agricultural Permit.

(13) Agricultural Permits, and the rights conveyed by the Agricultural Permit, are not transferable.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05

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Rules Amended: 837-012-0510, 837-012-0515, 837-012-0520, 837-012-0525, 837-012-0530, 837-012-0540, 837-012-0545, 837-012-0555

Subject: Changes are being made to OAR 837-012-0510 to 837-012-0555 for the purposes of housekeeping and clarification. Other changes have been made to update the name of BATF to the new name of BATFE and to update NFPA 1124 from edition 1998 to 2003. In addition, we are changing the application deadline date from December 15 to December 1.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0510

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-012-0500 through 837-012-0570, 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.

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(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, 2003 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.

(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; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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 chapter 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 chapter 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 chapter 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 837-012-0780.

[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. & cert. ef. 3-5-82; FM 3-1982(Temp), f. & cert. ef. 4-16-82; FM 3-1985, f. & cert. ef. 4-17-85; FM 1-1986, f. & cert. ef. 1-9-86; FM 6-1986(Temp), f. & cert. ef. 6-10-86; FM 9-1986, f. & cert. 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; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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 837-012-0520(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.

ADMINISTRATIVE RULES

(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 1 of the year preceding the year for which the Wholesale Permit is sought. If December 1 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 1 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. & cf. 3-5-82; FM 3-1982(Temp), f. & cf. 4-16-82; FM 3-1985, f. & cf. 4-17-85, FM 1-1986, f. & cf. 1-9-86; FM 6-1986(Temp), f. & cf. 6-10-86; FM 9-1986, f. & cf. 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; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0525

Wholesale Permits

(1) Within 30 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 837-012-0520(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 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. & cf. 3-5-82; FM 3-1982(Temp), f. & cf. 4-16-82; FM 3-1985, f. & cf. 4-17-85, FM 1-1986, f. & cf. 1-9-86; FM 6-1986(Temp), f. & cf. 6-10-86; FM 9-1986, f. & cf. 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. 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; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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.

(4) Permit fees are non-refundable. Exception: The State Fire Marshal may refund all or part of the permit fee if it is determined the application is not appropriate or the permit is denied.

(5) Permit fees are non-transferable to any other individual or business.

Stat. Auth.: ORS 476, 478 & 480

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; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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, 2003 Edition (The separation distances shall be met as required by NFPA 1124, 2003 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;

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(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. 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; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

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), di-

ver'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, 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; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0555

Prohibited Acts and Limitations

(1) Wholesale Permit holders shall not create, maintain, or allow the existence of a fire hazard at any location under their control where Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are stored, transported, sold, or used.

(2) No Wholesale Permit holder shall Sell or provide by any other means, including donation:

(a) Fireworks or Public Display Fireworks to any Individual under 21 years of age;

(b) Retail Fireworks or Agricultural Fireworks to any Individual under 18 years of age if the sale or provision of Retail Fireworks or Agricultural Fireworks is to an Individual in Oregon;

(c) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to any Person who does not possess a valid permit for such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks issued by the Office of State Fire Marshal, or if required, a valid license and/or permit issued by the equivalent agency in the Person's state of Residence or the state of destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(d) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks which have been altered in any manner.

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, shall participate in any manner in Wholesale Operations, for a period not to exceed three years.

(4) A Wholesale Permit holder shall not employ, or have direct business ties with, any Person whose Fireworks permit or operator certificate is revoked, denied or suspended.

(5) No Individual under 18 years of age shall participate in any manner in Wholesale Operations involving Fireworks, Retail Fireworks, or Agricultural Fireworks.

(6) No Individual under 21 years of age shall participate in any manner in Wholesale Operations involving Public Display Fireworks.

(7) A Wholesale Permit holder shall not fill out, complete or submit a general, limited, or special effects public display permit, retail permit, or agricultural use permit previously filled out or completed by a different Wholesaler unless the Wholesale Permit holder has applied for and received approval from the Office of State Fire Marshal to do so.

(8) Wholesale Permit holders shall not sell, provide, ship, transport, keep, offer for sale, expose for sale, possess, use, explode or have exploded any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks that have not been approved, certified or listed for transport by the United States Department of Transportation and/or the United States Consumer Product Safety Commission, or if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks do not have a United States Bureau of Explosives Temporary Transfer Permit.

(9) A Wholesale Permit or permit number that has expired or has not been issued, shall not authorize the purchase, use, discharge, transportation, storage, possession, sale or provision by any other means, including donation, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(10) Every Person who knows of, engages in, allows, or is otherwise a party to, Wholesale Operations not in conformance with ORS 480.110 through 480.165 and OAR chapter 837, division 12, may be subject to denial, revocation, or suspension of the Person's Fireworks permit or operator certificate issued by the Office of State Fire Marshal, and/or a civil penalty.

(11) No Person shall purchase or otherwise obtain, possess, use, discharge, transport, offer for sale, sell, transfer or otherwise provide Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural

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Fireworks without first applying for and obtaining the appropriate permit issued by the Office of State Fire Marshal pursuant to ORS 480.110 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 1-2005(Temp), f. & cert. ef. 1-13-05 thru 7-11-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05

Adm. Order No.: OSFM 9-2005

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Rules Amended: 837-012-0610, 837-012-0620, 837-012-0635, 837-012-0640, 837-012-0650, 837-012-0655, 837-012-0670

Subject: Changes are being made to OAR 837-012-0610 to 837-012-0670 for the purposes of housekeeping and clarification. Other changes have been made to update NFPA 1124 from edition 2003 to 2004 and to correct the name and edition of the Oregon Electrical Code 1999 edition to the Oregon Electrical Specialty Code, 2005 edition.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0610

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-012-0600 through 837-012-0675, 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) "Building" shall have the meaning provided in the Oregon Structural Specialty Code, 2004 Edition. The term does not include a Tent, Canopy, Stand or trailer.

(4) "Canopy" shall mean a temporary structure, enclosure or shelter; constructed of fabric or pliable materials; supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(5) "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.

(6) "Combination Item" shall mean a device that contains combinations of two or more of the effects described in ORS 480.127(4)(b) to (g). See ORS 480.127(4)(a).

(7) "Cone Fountain" shall mean a cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect upon ignition is the same as that of a cylindrical fountain. See ORS 480.127(4)(b).

(8) "Cylindrical Fountain" shall mean a cylindrical tube not more than three-fourths inch (19mm) inside diameter and containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(c).

(9) "Employee" shall mean an Individual hired by a Retail Permit holder to Sell Retail Fireworks from a Retail Sales Outlet, or to otherwise engage in Retail Operations.

(10) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(11) "Exit" shall mean an opening or passageway that:

(a) Provides a means of leaving an enclosed space or area; and

(b) Is required to be constructed and/or maintained by the Oregon Structural Specialty Code, 2004 Edition. The term may include a check stand Exit.

(12) "Fire Protection District" shall mean any district created under the laws of Oregon or the United States, including rural fire protection dis-

tricts and any federal, state or private forest patrol areas. See ORS 480.110(2).

(13) "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.

(14) "Flitter Sparkler" shall mean a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function. See ORS 480.127(4)(d).

(15) "Ground Spinner" shall mean a small device similar to a Wheel in design and effect and containing not more than 60 grams of pyrotechnic composition. When placed on the ground and ignited, a shower of colored sparks is produced by the rapidly spinning device. See ORS 480.127(4)(e). The term does not include "Crazy Jacks," "Jumping Jacks" and similar spinning devices that do not have a means to prevent uncontrolled and unpredictable behavior during discharge, and due to uncontrolled and unpredictable behavior, present a severe hazard of fire and injury. The sale of such devices is therefore prohibited.

(16) "Illegal Fireworks" shall mean any Fireworks other than those described in ORS 480.127(4) including but not limited to, any Firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(17) "Illuminating Torch" shall mean a cylindrical tube containing not more than 100 grams of pyrotechnic composition. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(f).

(18) "Individual" shall mean a single human being.

(19) "Individual Member of the General Public" shall mean 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.

(20) "Individual Responsible for Sales" shall mean the Individual identified on the Permit Application who is responsible for the operation of the Retail Sales Outlet listed on the Permit Application.

(21) "Indoor Sales" shall mean sales of Retail Fireworks from inside a Building or Tent.

(22) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Retail Site and/or the Retail Fireworks storage location.

(23) "NFPA" shall mean the National Fire Protection Association.

(24) "Novelties and Trick Noisemakers" shall mean those items described in NFPA 1124, Section 1.4, 2003 Edition. It also means Exempt Fireworks.

(25) "Outdoor Sales" shall mean sales of Retail Fireworks from a Tent, Canopy, Stand or trailer.

(26) "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 Retail Permit.

(27) "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.

(28) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(29) "Retail Operations" shall mean the sale of Retail Fireworks from a Retail Sales Outlet to Individual Members of the General Public and related activities, including the purchase, possession, storage and transportation of Retail Fireworks.

(30) "Retail Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storage and sale of Retail Fireworks, at retail, when otherwise in conformance 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 pertaining to fireworks.

(31) "Retail Sales Outlet" shall mean a permanently or temporarily erected structure or enclosure located at the Retail Site and from which Retail Fireworks are sold to Individual Members of the General Public. The term includes Stands, Tents, Canopies, Buildings, and trailers.

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(32) "Retail Site" shall mean the physical location or address of the Retail Sales Outlet listed on the Retail Permit where Retail Fireworks are sold.

(33) "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.

(34) "Sales Display" shall mean the placement at a Retail Sales Outlet of Retail Fireworks to allow Individual Members of the General Public to view, handle and/or purchase the Retail Fireworks.

(35) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(36) "Stand" shall mean a booth temporarily erected and used for the sale of Retail Fireworks to Individual Members of the General Public.

(37) "Tent" shall mean a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects and is in compliance with Uniform Fire Code requirements for tents.

(38) "Volunteer" shall mean a member of a non-profit organization that has applied for and obtained a Retail Permit.

(39) "Wheel" shall mean a pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain not more than six driver units or tubes not exceeding one-half inch (12.5mm) inside diameter and containing not more than 60 grams of pyrotechnic composition. Upon ignition, the wheel revolves and produces a shower of colored sparks, and sometimes a whistling effect. See ORS 480.127(4)(g).

(40) "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 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0620

Retail Permit Applications

(1) Any Person engaged in, or intending to engage in, the sale or provision by any other means of Retail Fireworks to Individual Members of the General Public shall apply for and obtain a Retail Permit issued by the Office of State Fire Marshal.

(2) A separate Retail Permit shall be applied for and obtained for each Retail Sales Outlet that may conduct sales of Retail Fireworks in Oregon.

(3) Only one application for a Retail Permit may be made for each Retail Site except pursuant to OAR 837-012-0630(3).

(4) The application for a Retail 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 application form, applicants shall submit copies of a sketch of the Retail Site in accordance with subsection (7) of this rule.

(7) The sketch of the Retail Site, required pursuant to subsection (6) of this rule, shall include without limitation, the following:

(a) A diagram of the Retail Sales Outlet and its relationship to adjacent areas located at the Retail Site;

(b) For all Outdoor Sales, the location and distances of all structures, Buildings, highways, streets, trees, and other vegetation within 50 feet of the Retail Sales Outlet;

(c) For all Indoor Sales, the location of the Sales Display and the location and distances of all highly combustible materials within a 20-foot radius of the Sales Display;

(A) For Retail Sales Outlets located within structures or Buildings of less than 1,000 square feet, all Exits from the Building or structure;

(B) For Retail Sales Outlets located in structures or Buildings of greater than 1,000 square feet, all Exits from the Building or structure located within 75 feet of the Sales Display;

(C) For tents, all exits from the tent.

(D) A list of the general types of merchandise located within 20 feet of the Sales Display. This requirement does not apply to Tents.

(d) The location of any open flames, exposed heating elements or other direct sources of ignition, including, but not limited to, coffee mak-

ers, food warmers, cookers and broilers located inside the Retail Sales Outlet or, for Indoor Sales, within 20 feet of the Sales Display.

(8) Any applicant for a Retail Permit, other than an Individual, shall list on the application form the name, address, and phone number of one Individual holding a management position within the permit holder's company or organization. See definition of "Person" in ORS 174.100(4) and "Individual" in OAR 837-012-0610(18).

(9) As part of the Permit Application process, the applicant shall apply for and obtain, in writing when available:

(a) All required local and state building code, fire code and business licensing inspections, approvals, permits and/or licenses; and

(b) All required state and local land use and zoning permits, licenses and/or approvals for the Retail Site.

(10) Applicants shall submit their completed Permit Application to the Local Fire Authority for review and signature approving the Retail Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(11) The required Local Fire Authority signatures are:

(a) For retail sales conducted inside city limits, the Permit Application must be signed by the city Fire Chief or his authorized representative;

(b) For retail sales conducted outside city limits, but inside a rural Fire Protection District, the Permit Application must be signed by the district Fire Chief or his authorized representative;

(c) For retail sales conducted outside both city limits and a rural Fire Protection District, the Permit Application must be signed by the District Deputy State Fire Marshal.

(d) Applicants must also obtain the signature of the Local Fire Authority with jurisdiction over the Retail Fireworks storage location, regardless of whether the storage location is the same as the Retail Site.

(12) Proof of identification of the Individual Responsible for Sales shall be provided to the Local Fire Authority at the time the Permit Application is submitted to the Local Fire Authority for review and signature. The proof of identification shall be a current and recognizable photographic identification.

(13) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to January 1 of the year for which the permit is sought.

(14) To guarantee permits are processed, it is recommended that Permit Applications be postmarked or received at the Office of State Fire Marshal, no later than April 15th of the year for which the permit is sought.

(15) Permit Applications postmarked or received at the Office of State Fire Marshal after the recommended date set forth under subsection (14) of this rule are not guaranteed to be processed.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; Administrative correction 6-14-01; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0635

Purchase of Retail Fireworks by Retail Permit Holder

(1) Retail Permit holders shall purchase or otherwise obtain Retail Fireworks only from Wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal.

(2) A Retail Permit holder shall purchase or otherwise obtain Retail Fireworks only from the Wholesaler listed on the Retail Permit.

(3) If the Wholesaler who supplies the Retail Fireworks to the Retail Permit holder is different from the Wholesaler listed on the Retail Permit, the Retail Permit holder shall notify, in writing, the Office of State Fire Marshal and Local Fire Authority of the change at least 24 hours prior to purchasing the Retail Fireworks from the Wholesaler.

(4) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks, and any accompanying documentation are imprinted and/or affixed with the wholesale permit number pursuant to OAR 837-012-0525(13).

(5) Prior to acceptance of Retail Fireworks from a Wholesaler, the Retail Permit holder shall confirm that the outside of all Cartons, Containers, or Cases of Retail Fireworks and any accompanying documentation are imprinted and/or affixed with the full name and Retail Permit number of the Retail Permit holder.

(6) Retail Permit holders shall not accept any Cartons, Containers, or Cases of Retail Fireworks or accompanying documentation that does not show the information required pursuant to subsections (4) and (5) of this rule.

Stat. Auth.: ORS 476 & 480

ADMINISTRATIVE RULES

Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0640

Permits — Denial, Suspension and/or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a Retail Permit if a Retail Permit holder, or an applicant, fails to comply with ORS 480.110 through 480.165 or OAR chapter 837, division 12.

(2) The period of denial, suspension or revocation shall not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety, particularly whether the circumstances of the violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Retail Permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(3) Suspension or revocation of a Retail Permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

(4) The Office of State Fire Marshal may deny, suspend, or revoke all Retail Permits issued to a Retail Permit holder for each of the permit holder's or applicant's Retail Sales Outlets pursuant to OAR 837-012-0620(2).

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0650

Outdoor Sales

(1) The location of an outdoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, and any surrounding property.

(2) Every outdoor Retail Sales Outlet shall maintain at least one Exit opening, or outward swinging Exit door, for each 1,000 square feet of area covered or each 20 feet of structure length. The Exit opening shall be at least two feet wide and five feet high or as required by the Local Fire Authority.

(3) Trailers shall have their wheels blocked or removed, or the tongue locked. Trailers shall be disconnected from any power source which can potentially move the trailer any distance. Any fuel tanks or other ignition sources, including those for propane, shall be removed and placed a minimum of 20 feet from the trailer. Individual Members of the General Public shall not have access to the interior of the trailer.

(4) Tent and Canopy fabrics and any materials used on the floor of the Tent or Canopy, such as sawdust, shall be treated to be fire retardant.

(5) Tents having three or more enclosing sides shall comply with the requirements for both Indoor Sales and Outdoor Sales.

(6) Fire extinguishers shall be provided at each outdoor Retail Sales Outlet. At a minimum, at least one 2A rated water type extinguisher, or an equivalent water type extinguishing system as approved by the Local Fire Authority shall be placed at each Retail Sales Outlet.

(7) All electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the Oregon Electrical Specialty Code, 2005 Edition and any other applicable state or local requirements.

(8) Outdoor Retail Sales Outlets that operate at night shall erect and maintain sufficient light fixtures to enable customers and those Individuals selling Retail Fireworks to see all areas of the outlet. Standard electrical installations, battery powered lanterns, street or parking lot lighting or nearby Building interior and exterior lighting may be used for this purpose.

(9) Outdoor Retail Sales Outlets shall be located:

(a) At least 50 feet from any dispensary of flammable liquids or gases;

(b) At least 15 feet, or as otherwise specified by the Local Fire Authority, from any street or public right-of-way;

(c) At least 10 feet from any combustible structures;

(d) At least 10 feet from any entrances to, or Exits and openings from, any surrounding Buildings or structures; and

(e) At least 20 feet from exposed heating elements or any other such sources of ignition including fuel-powered electrical generators.

(10) A Stand including any vertical extensions shall not be more than one story in height unless it has sufficient size, weight or tie-downs to prevent toppling in the wind.

(11) "No Smoking" signs shall be posted on the outside of all enclosing sides of an outdoor Retail Sales Outlet. The signs shall be visible to all Individuals located at the Retail Sales Outlet. Sign lettering shall be red and at least 2-1/2 inches high on a white background.

(12) Smoking, open flames, and other such ignition sources or the use of Fireworks are prohibited within 100 feet of the Retail Sales Outlet.

(13) All fuel used to power electrical generators shall be stored in containers listed and approved by Underwriter's Laboratories.

(14) Heaters having exposed electrical elements or open flames shall not be used at any Outdoor Retail Sales Outlet.

(15) Outdoor Retail Sales Outlets, and parking for customers of the Retail Sales Outlet, shall not impede or endanger the normal flow of traffic on public streets or highways, or parking lots.

(16) The Retail Permit holder, Individual Responsible for Sales and/or any Employees or Volunteers of the Retail Permit holder shall be responsible for maintaining the grounds within 20 feet of the Retail Sales Outlet in a clean and orderly manner.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0655

Indoor Sales

(1) The location of an indoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, and any surrounding property.

(2) A specific area inside the Building shall be designated and maintained as the Sales Display area.

(3) The location of the Sales Display area shall not hinder or block any Exit, including, if applicable, a required checkstand Exit.

(4) The Individual Responsible for Sales shall regularly monitor and oversee Retail Operations at the Retail Sales Outlet to ensure the Sales Display and/or storage area(s) are orderly and maintained in accordance with these rules.

(5) Retail Fireworks, in excess of those needed for the Sales Display, may be stored inside the Retail Sales Outlet only if they are separated from all Sales Display areas, Exits, flammable and highly combustible materials and public access areas to the Building, in accordance with Local Fire Authority requirements and these rules. This subsection does not apply to Tents or canopies.

(6) Fire extinguishers shall be placed throughout the indoor Retail Sales Outlet in the quantities and locations required by NFPA 10, 1998 Edition and any applicable local ordinances and rules. At a minimum, at least one 2A rated water type fire extinguisher, or an equivalent water type fire extinguishing system, as approved by the Local Fire Authority shall be placed at the outlet.

(7) Smoking at an indoor Retail Sales Outlet by the Retail Permit holder, Individual Responsible for Sales or an Employee or Volunteer of the Retail Permit Holder may be the basis for suspension and/or revocation of the Retail Permit.

(8) All trash, rubbish, empty boxes and discarded Retail Fireworks wrapping or packaging shall be removed daily or more often as needed, to maintain the Sales Display and storage areas in a neat and clean manner.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-0670

Prohibited Acts and Limitations

(1) Retail Permit holders shall not create, maintain or allow the existence of a fire hazard at any location under their control where Retail Fireworks are stored, transported, sold, or used.

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(2) No Retail Permit holder shall Sell or provide by any other means including donation:

(a) Retail Fireworks to any Individual Member of the General Public under 16 years of age;

(b) Illegal Fireworks to any Individual Member of the General Public;

(c) Any Retail Fireworks that have been altered;

(d) Any Retail Fireworks not supplied and/or distributed to the Retail Permit holder by a Wholesaler who possesses a valid and current wholesale permit issued by the Office of State Fire Marshal pursuant to OAR 837-012-0635(1) through (3).

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, shall participate in any manner in the storage, distribution, transportation or sale of Retail Fireworks for a period not to exceed three years.

(4) Retail Permit holders shall not Sell, provide, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any Retail Firework that has not been approved, certified or listed for transport by the United States Department of Transportation and/or the United States Consumer Product Safety Commission, or does not have a United States Bureau of Explosives Temporary Transfer Permit.

(5) No Retail Sales Outlet shall be erected prior to the issuance of a Retail Permit for that Retail Sales Outlet location.

(6) No Person shall Sell, transfer or otherwise provide Retail Fireworks to Individual Members of the General Public without first obtaining a Retail Permit.

(7) A Retail Permit holder shall not employ or have direct business ties with any Person whose Wholesale or Retail Fireworks Permit or operator certificate is revoked or suspended.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05

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Rules Amended: 837-012-1210, 837-012-1220, 837-012-1240, 837-012-1260, 837-012-1290, 837-012-1300, 837-012-1310, 837-012-1320, 837-012-1390, 837-012-1420

Subject: Changes are being made to the Oregon Administrative Rules 837-012-1210 to 837-012-1420 for purposes of housekeeping and clarification. Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-1210

Definitions

For purposes of OAR 837-012-1200 through 837-012-1420 the following definitions apply:

(1) "Authorized Agent" as referenced in ORS 480.210 means an employee or representative of a Manufacturer of Explosives or Dealer in Explosives licensed by BATFE who possesses Explosives for purposes of manufacturing or dealing. The term does not include an employee or representative who uses or possesses Explosives for other purposes.

(2) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Certificate of Possession" has the meaning provided in ORS 480.200(1).

(4) "Certificate of Registration" has the meaning provided in ORS 480.200(2).

(5) "Day Box" means:

(a) A structure or container used for the temporary transport or temporary keeping of explosives for present use;

(b) That is always attended and in the line of sight vision of a holder of a Certificate of Possession; and

(c) That complies with the construction requirements of NFPA 495, Explosive Materials Code, 2001 Edition, 8-6.3 (a) and (b).

(6) "Dealer" as referenced in ORS 480.210 means any Person engaged in the business of distributing Explosives at wholesale or retail.

(7) "Detonator" means any device containing an initiating or primary Explosive that is used for initiating detonation, and not containing more than 10g of total Explosive material per unit, excluding ignition or delay charges. The term includes, but is not limited to, electric Detonators of the instantaneous and delay types, Detonators for use with safety fuses, detonating cord delay connectors, and nonelectric Detonators of the instantaneous and delay types that consist of a detonating cord, a shock tube, or any other replacement for electric leg wires according to NFPA 495, Explosive Materials Code, 2001 Edition.

(8) "Expire" as referenced in ORS 480.239 and 480.244 means a renewal Certificate of Possession or renewal of Certificate of Registration has not been issued by the Office of State Fire Marshal on or before the expiration date of the current certificate.

(9) "Explosive" or "Explosives" has the meaning provided in ORS 480.200(3).

(10) "Facility" means a single building, structure, or container used or intended to be used for the storage of Explosives. A Day Box is not a Facility.

(11) "Fertilizer" means any substance, or any combination or mixture of substances, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical or chemical change in the soil and Shall contain five percent or more of available nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), singly, collectively or in combination, except hays, straws, peat and leaf mold, and unfortified animal manures according to ORS 633.310(5).

(12) "Formal Hearing" means a proceeding before a hearings officer conducted pursuant to the Administrative Procedures Act (APA), ORS Chapter 183.

(13) "Individual" means a single human being.

(14) "Informal Conference" means a meeting between the party(ies) and the Office of State Fire Marshal, prior to a Formal Hearing, that may include a discussion about whether a basis exists for informal disposition of a contested case by stipulation, agreed settlement, consent order or other means.

(15) "Lapse" as referenced in ORS 480.239 and 480.244, has the meaning provided in subsection (8) of this rule.

(16) "Magazine" has the meaning provided in ORS 480.200(5) (Refer to OAR 837-012-1210(10) for a definition of Facility).

(17) "Manufacturer" as referenced in ORS 480.210 means any Person engaged in the business of manufacturing Explosives for purposes of sale or distribution or for the Person's own use.

(18) "NFPA" means the National Fire Protection Association.

(19) "Owner" means a Person with a vested ownership interest in the Magazine. The term does not mean a renter, lessor, or sub-lessor of the Magazine.

(20) "Person" means one or more Individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of Persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(21) "Possession" means to own, to have physical Possession of, or otherwise to exercise dominion or control over Explosives.

(22) "Re-location" for purposes of ORS 480.244 and OAR 837-012-1360 means moving a Magazine any distance.

(23) "Request for Hearing" means a written request for a Formal Hearing.

(24) "Shall" means that the rule establishes a mandatory requirement.

(25) "Small arms ammunition" has the meaning provided in ORS 480.200(6).

(26) "Small arms ammunition primers" has the meaning provided in ORS 480.200(7).

(27) "Store" means to deposit and place Explosives in a Magazine for safekeeping and future use.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1220

General

(1) A Certificate of Possession allows the holder of the certificate to engage in those activities including the purchase, Possession, storage and

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transportation of Explosives when those activities are otherwise in conformance with the requirements of these rules and any other applicable federal, state and local laws, rules and regulations.

(2) Holders of a Certificate of Possession Shall comply with the following:

- (a) ORS 480.200 through 480.290;
- (b) OAR 837-012-1200 through 837-012-1420;
- (c) All applicable regulations in the Oregon Fire Code, 2004 Edition, and Oregon Structural Specialty Code, 2004 Edition;
- (d) NFPA 495, Explosive Materials Code, 2001 Edition, as adopted in OAR 837-012-1340; and
- (e) All applicable federal, state and local laws, rules, and regulations governing Explosives.

(3) Holders of a Certificate of Possession Shall purchase Explosives only from those Persons who have a BATFE license to sell Explosives.

(4) Pursuant to ORS 480.210(1)(b), a BATFE Dealer or Manufacturer license authorizes the holder of such a license to possess Explosives only when the Possession is for purposes of a use or activity expressly authorized by the license, namely the business of manufacturing or dealing in Explosives.

(5) Proof pursuant to ORS 480.210(3)(b) Shall be:

(a) A certified copy of a Manufacturer or Dealer license issued by the BATFE; or

(b) A written certification signed by a Person that holds the license referred to in subsection (a) that certifies under penalty of perjury that the Person charged under ORS 480.210(1) is an employee or representative of the licensed Person and is engaged in the business of manufacturing or dealing in Explosives.

(6) Holders of a Certificate of Possession or a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in their address within two weeks of the date of the change.

(7) Holders of a Certificate of Registration Shall notify the Office of State Fire Marshal in writing of a change in ownership of a Magazine within two weeks of the date of the change.

(8) Holders of an unexpired Certificate of Possession or Certificate of Registration may request a duplicate copy of their certificate by certifying in writing to the Office of State Fire Marshal that their certificate has been lost, stolen or destroyed. Written requests shall be signed and dated by the holder of the certificate.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1240

Applications

(1) Applications for the examination required under ORS 480.225(1)(j), a Certificate of Possession, and a Certificate of Registration Shall be on forms provided by the Office of State Fire Marshal.

(2) Applicants Shall complete the applications in full and pay the applicable fees before the Office of State Fire Marshal will process the applications.

(3) The Office of State Fire Marshal Shall request disclosure of the applicant's social security number on the applications. Any social security number disclosed on an application may be used for identification purposes only and Shall be kept confidential unless otherwise provided by law.

(4) Application for the examination required under ORS 480.225(1)(j):

(a) The application Shall be completed by the Individual who will be taking the required examination.

(b) The application and fee Shall be received by the Office of State Fire Marshal a minimum of fourteen days before the applicant intends to complete the examination to:

- (A) Allow time for the fee payment to clear the bank; and
- (B) Allow time for the Office of State Fire Marshal to notify the applicant of the acceptance of the application and fee payment.

(5) Application for a Certificate of Possession under ORS 480.210:

(a) The Individual who intends to possess Explosives Shall complete the application.

(b) A separate application and fee Shall be submitted for each Certificate of Possession to be issued.

(c) Applicants Shall submit with their application a fingerprint card compatible with the processing requirements of the Oregon State Police Identification Services Division.

(6) Application for a Certificate of Registration of Magazine under ORS 480.244:

(a) The Owner of the Magazine Shall complete the application.

(b) A separate application and fee Shall be submitted for each Magazine to be registered.

(c) Applicants Shall specify on their applications whether:

(A) They request the Office of State Fire Marshal to inspect the Magazine to be registered; or

(B) They request the Office of State Fire Marshal to accept a BATFE inspection of the Magazine to be registered in lieu of the Office of State Fire Marshal inspection.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1260

Certificate of Possession — Examination

(1) Upon receipt and processing of a completed application, the Office of State Fire Marshal Shall notify the applicant of the date, time and place for the examination.

(2) Applicants Shall provide photo identification at the time they appear to take the examination. The Office of State Fire Marshal Shall only accept photo identification issued by the Department of Motor Vehicles in the applicant's state of residency.

(3) The examination is based upon, and Shall examine the applicant's knowledge of:

(a) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340; and

(b) ORS 480.200 through 480.290.

(4) The examination Shall be open book.

(a) Applicants are responsible for providing their own copy of NFPA 495, Explosive Materials Code, 2001 Edition, to use during the examination.

(b) The Office of State Fire Marshal Shall provide a copy of ORS 480.200 through 480.290 for use during the examination.

(5) To pass the examination, the applicant must answer correctly 80% or more of the examination questions.

(6) The Office of State Fire Marshal Shall notify applicants of the results of their examination at the address listed on their examination application.

(7) If an applicant fails to arrive at the scheduled examination appointment, fails to complete the examination, or fails to pass the examination, to reschedule the examination or to take the examination again, the applicant Shall submit to the Office of State Fire Marshal a new application and fee pursuant to OAR 837-012-1230 and 837-012-1240.

(8) Passing examination scores Shall remain valid for two years from the date the examination was completed. If the examinee has not applied for and been issued a Certificate of Possession within two years from the date of completion of the examination in which the passing score was received, the examination score Shall be invalid and the applicant Shall re-take and pass the examination.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1290

Explosives Storage

(1) Explosives Shall be Stored only in a Magazine that has been issued a Certificate of Registration by the Office of State Fire Marshal.

(2) The storage of Explosives Shall be in compliance with all applicable requirements of:

(a) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340;

(b) Oregon Fire Code, 2004 Edition;

(c) Oregon Structural Specialty Code, 2004 Edition; and

(d) All applicable federal, state and local laws, rules and regulations.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1300

Magazine Registration and Inspection

(1) Magazines not issued a Certificate of Registration Shall not be used for the storage of Explosives.

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(2) To be eligible for a Certificate of Registration, a Magazine Shall comply with the requirements of:

- (a) ORS 480.200 through 480.290;
- (b) OAR 837-012-1200 through 837-012-1240;
- (c) Oregon Fire Code, 2004 Edition;
- (d) Oregon Structural Specialty Code, 2004 Edition;
- (e) NFPA 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340; and
- (f) All applicable federal, state and local laws, rules and regulations.

(3) Prior to the issuance of a Certificate of Registration, the Magazine Shall be inspected for compliance with these rules.

- (4) The inspection Shall:
 - (a) Be completed by the Office of State Fire Marshal; or
 - (b) Be completed by the BATFE pursuant to OAR 837-012-1320.
- (5) A Certificate of Registration allows the holder of the certificate to Store Explosives in the registered Magazine when otherwise in conformance with the requirements of these rules.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1310

State Fire Marshal Inspection of Magazines

(1) The State Fire Marshal may complete an inspection of a Magazine prior to the issuance of a Certificate of Registration pursuant to OAR 837-012-1300(3) and (4).

(2) Upon receipt of information that a Magazine is not in compliance with the requirements of these rules, the Office of State Fire Marshal may conduct an inspection of the Magazine.

(3) If, upon its inspection, the Office of State Fire Marshal determines that the Magazine is not in compliance, the Office of State Fire Marshal may issue a Notice of Correction to the Owner of the Magazine.

(4) The Notice of Correction Shall be on a form provided by the Office of State Fire Marshal.

(5) The Notice of Correction Shall specify the deficiencies required to be corrected prior to the Magazine being issued a Certificate of Registration.

(6) The Notice of Correction Shall specify the date by which the deficiencies are to be corrected.

(7) The Office of State Fire Marshal Shall present a copy of the Notice of Correction to the Owner of the Magazine by:

- (a) Personal service;
- (b) Service by certified mail; or
- (c) Service by regular mail.

(8) After presenting a copy of the Notice of Correction to the Owner of the Magazine, the Office of State Fire Marshal Shall retain all remaining copies of the notice until the reinspection of the Magazine is completed.

(9) At the end of the time allowed for correction of the deficiencies, as stated in the Notice of Correction, the Office of State Fire Marshal Shall:

- (a) Reinspect the Magazine to determine if the deficiencies specified in the Notice of Correction have been corrected; and
- (b) Complete the reinspection section of the Notice of Correction.

(10) Upon reinspection of the Magazine, the Office of State Fire Marshal shall provide a copy of the completed Notice of Correction to the Owner of the Magazine pursuant to subsection (7) of this rule.

(11) Failure to correct the deficiencies noted in the Notice of Correction will result in the following, until such time as the deficiencies are corrected:

- (a) The Magazine Shall not be issued a Certificate of Registration;
- (b) The Magazine Shall not be issued a renewal Certificate of Registration; or
- (c) The Certificate of Registration for the Magazine Shall be suspended or revoked.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1320

Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco, Firearms and Explosives Inspection

(1) The Office of State Fire Marshal may accept an inspection completed by BATFE in lieu of the Office of State Fire Marshal inspection.

(2) The decision to accept or not accept the BATFE inspection rests solely with the Office of State Fire Marshal.

(3) The Office of State Fire Marshal Shall consider, but is not limited to, the following criteria in deciding whether to accept a BATFE inspection:

(a) The inspection Shall be completed not more than 180 days prior to the date of the application for a Certificate of Registration;

(b) United States Post Office postmark date shall be used to determine the date of application.

(c) The inspection Shall show the Magazine is in compliance with these rules.

(d) If deficiencies are noted on the BATFE inspection, the Office of State Fire Marshal may decide to conduct its own inspection. Should the Office State Fire Marshal decide to complete its own inspection, the applicant Shall submit payment of the additional fee amount of \$100 required for a Certificate of Registration with a State Fire Marshal inspection prior to the Office of State Fire Marshal conducting its inspection.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1390

Denial, Suspension or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a Certificate of Possession if:

(a) An Individual who has applied for, or who has been issued, a Certificate of Possession is ineligible for the certificate under ORS 480.225 or 480.230; or

(b) The Individual who has been issued a Certificate of Possession has been convicted of a violation under ORS 480.990(6).

(2) If an Individual to whom a Certificate of Possession was issued is found to be ineligible for the certificate under ORS 480.225 or 480.230, the Office of State Fire Marshal Shall revoke the certificate.

(a) An Individual is ineligible for a Certificate of Possession if, before or after being issued a certificate, the Individual fails to comply with ORS 480.225 or 480.230.

(b) An Individual is ineligible for a Certificate of Possession under ORS 480.225(1)(L) if the Individual fails to possess, use, Store or transport Explosives in accordance with these rules and all other applicable federal, state or local laws, rules or regulations.

(3) If an Individual to whom a Certificate of Possession was issued has been convicted of a violation under ORS 480.990(6), the Office of State Fire Marshal Shall consider the following guidelines:

(a) If the Individual has been convicted of one violation, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to one year;

(b) If the Individual has been convicted of two violations, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to two years;

(c) If the Individual has been convicted of three or more violations, the Office of State Fire Marshal may deny, suspend or revoke the Certificate of Possession for up to three years.

(4) The Office of State Fire Marshal may deny, suspend or revoke a Certificate of Registration:

(a) If the Magazine registered, or to be registered, is ineligible for registration under ORS 480.200 to 480.290 or these rules;

(b) For failure to comply with any provision of ORS 480.200 to 480.290 or these rules.

(5) If a Magazine that has been issued a Certificate of Registration is found to be ineligible, the Office of State Fire Marshal Shall revoke the certificate.

(6) A Magazine is ineligible for a Certificate of Registration if, before or after the Magazine is registered, the Magazine does not comply with ORS 480.244 or these rules.

(7) Suspension or revocation of a Certificate of Possession or a Certificate of Registration may include suspension or revocation of the current certificate and the right to apply for a renewal certificate.

(8) The period for denial, suspension or revocation of a Certificate of Possession or Certificate of Registration Shall not exceed three years, unless otherwise provided by law. In determining the appropriate sanction, the Office of State Fire Marshal Shall consider the following criteria:

(a) The severity of the violation(s) and/or its impact on public safety;

(b) The number of similar or related violations;

(c) Whether the violation(s) was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Individual or Person; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation(s).

(9) Any notice of denial, suspension or revocation issued by the Office of State Fire Marshal Shall be mailed by certified mail to the most

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recent address on file with the Office of State Fire Marshal pursuant to OAR 837-012-1220(6).

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

837-012-1420

Formal Hearing

(1) A Person may file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in OAR 837-012-1400(3).

(2) The Office of State Fire Marshal Shall arrange for a hearings officer to conduct the Formal Hearing.

(3) The Office of State Fire Marshal Shall set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 183, 476, 478 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05

Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 4-2005

Filed with Sec. of State: 5-24-2005

Certified to be Effective: 5-24-05

Notice Publication Date: 6-1-04

Rules Amended: 259-009-0080, 259-009-0085

Subject: Changes the requirements and time period for fire service course and instructor certification.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0080

Certification of Instructors

(1) The Department shall certify instructors deemed qualified to teach in any of the certified training courses.

(2) Instructors will be certified on the basis of minimum qualifications as established by the Department in areas of education, training, and experience. It shall be the continuing responsibility of the Department to see that instructors are qualified to teach.

(3) Instructors for subjects shall:

- (a) Be certified or trained in the subject area they are teaching;
- (b) Be certified as an NFPA Instructor I; and
- (c) Complete an instructor development course, or an equivalent course.

(4) Review and approval of instructors shall be the responsibility of the Department.

(5) Applications for instructor certification shall be submitted on an Instructor Certification Application (DPSST Form F-9F) and shall be accompanied by a detailed resume of individual qualifications.

(6) If certification is denied, the applicant shall be notified in writing and advised of the reasons for denial.

(7) Instructor certification is not required for teaching assignments in non-Department certified courses.

(8) Review of instructor certification may be initiated upon the request of an agency head, staff, or other reliable source.

(9) Instructor certification must be renewed every five (5) years or when there is a change to the standard.

(10) Instructors will be responsible for ensuring that student rosters shall be completed, indicating the actual number of hours attended by each student. Rosters shall also indicate whether each student passed or failed. Rosters shall be returned to the Department within thirty (30) calendar days of course completion; otherwise, the Department may decertify the course.

Stat. Auth.: ORS 181.640 & 181.650
Stats. Implemented: ORS 181.640 & 181.650
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 4-2005, f. & cert. ef. 5-24-05

259-009-0085

Certification of Courses and Classes

(1) The Department shall certify courses, and classes deemed adequate to effectively teach one or more approved fire subject(s) to fire service personnel.

(2) Certification shall be based on the evaluation of course curriculum or subjects for instruction.

(3) Facilities and equipment used for certified training shall be accessible to all interested and qualified individuals.

(4) The Department shall certify courses at the Content level. Courses certified at the content level require a student demonstration of acquired

knowledge, skill, or ability. Agencies, organizations, or individuals requesting course certification at the content level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by clearly-defined NFPA standards for job performance requirements, curriculum, test questions or evaluation criteria, and evidence of instructor certification as provided in OAR 259-009-0080. Curriculum submitted to DPSST becomes the property of DPSST.

(5) The Department shall notify the requesting agency, organization or individual, in writing, of the denial or the granted level of course certification. If certification is granted, that notification shall be accompanied by Student Rosters.

(6) It is the responsibility of the requesting agency, organization, or individual, to:

(a) Oversee the preparation of curriculum and to insure its compliance with the requirements of the Department;

(b) Obtain a facility and instructor(s) to be used for the course, and insure their compliance with the requirement of the Department;

(c) Develop rules and regulations governing the operation of the facility and the conduct of the trainees;

(d) Administer the course;

(e) Maintain an accurate record of attendance; and

(f) Maintain all forms required by the Department, forwarding them within the stipulated time period.

(7) Once a course is certified, it remains certified for unlimited delivery for five years, unless there is a significant change in course content, number of hours or instructor(s); or unless it is decertified by the Department as provided in section (9) of this rule. The Department shall be notified of significant changes.

(8) All course certification shall expire on December 31st of the fifth year after the initial certification. Agencies, organizations or individuals shall request recertification to continue a course for each additional five (5) years.

(9) The Department may decertify a course whenever that course is deemed inadequate. The course may be recertified by the Department when satisfactory proof has been presented to the Department that the deficiencies have been corrected.

(10) Fire service agencies may accredit their training programs as provided in OAR 259-009-0087.

Stat. Auth.: ORS 181.640 & 181.650
Stats. Implemented: ORS 181.640 & 181.650
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 4-2005, f. & cert. ef. 5-24-05

Department of State Lands Chapter 141

Adm. Order No.: DSL 3-2005(Temp)

Filed with Sec. of State: 5-18-2005

Certified to be Effective: 5-19-05 thru 11-15-05

Notice Publication Date:

Rules Adopted: 141-001-0020

Rules Amended: 141-001-0000, 141-001-0005

Subject: Adoption of this rule is necessary to allow for the confidential mediation of pending litigation in which the Oregon Department of State Lands is a party. Without such a rule the agency would have limited ability to conduct candid, confidential settlement negotiations in mediation. Mediation has the potential for resolving lawsuits less expensively than a jury trial and for achieving more satisfactory outcomes. 141-001-0020 contains the text of the Attorney General's model "Combined Rule - Confidentiality and Inadmissibility of Mediation Communications."

SB 311 (Chapter 253 Oregon Laws), enacted during the session, changed the name of the Division of State Lands to the Department of State Lands (DSL).

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805, ext. 239

141-001-0000

Notice of Proposed Rule

The purpose of this rule is to provide a reasonable opportunity for interested persons to be notified of the proposed actions of the State Land Board and/or the Department of State Lands. Prior to the adoption, amendment, or repeal of any rule, the State Land Board and/or the Department of State Lands shall give notice of the proposed adoption, amendment, or repeal:

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(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the State Land Board's and/or Department of State Lands' mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the notice to the United Press International and Associated Press.

(4) When the rule relates to abandoned property:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Department of Commerce, Banking Division; Department of Commerce, Insurance Division; and Executive Council, Oregon Bankers Association.

(5) When the rule relates to waterway users:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees of waterways.

(6) When the rule relates to sand and gravel:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees or companies who remove sand and gravel from state lands.

(7) When the rule relates to mining and explorations:

(a) Notice as provided in sections (1), (2), and (3) of this rule;

(b) Lessees who mine or explore for hard minerals, oil and gas, or geothermal resources on state lands; and

(c) Department of Geology.

(8) When the rule relates to the removal and/or filling of material:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, U.S. Corps of Engineers, and environmental groups requesting notification of removal and/or fill applications.

(9) When the rule relates to grazing lands:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees of grazing or agricultural lands.

(10) When the rule relates to natural area preserves:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, and environmental groups requesting notification of proposed natural areas.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341 & 273.045

Hist.: LB 32, f. & ef. 11-18-75; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05

141-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Department of State Lands and the State Land Board adopt the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended October 3, 2001.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Department of State Lands.]

Stat. Auth.: ORS 183.413 - 183.470

Stats. Implemented: ORS 273

Hist.: LB 10, f. 11-15-71, ef. 12-1-71; LB 13, f. 1-21-74, ef. 2-11-74; LB 35, f. & ef. 1-6-76; LB 2-1978, f. & ef. 4-20-78; LB 1-1980, f. & ef. 2-20-80; LB 1-1982, f. & ef. 2-25-82; LB 4-1983, f. & ef. 12-23-83; LB 4-1989, f. & cert. ef. 7-25-89; LB 2-1992, f. & cert. ef. 6-15-92; LB 1-1994, f. & cert. ef. 4-13-94; DSL 7-1998, f. & cert. ef. 7-15-98; DSL 3-2002, f. & cert. ef. 4-24-02; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05

141-001-0020

Confidentiality and Inadmissibility of Mediation Communications

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

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

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or

employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

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

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

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

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

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

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

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

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

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

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 141-001-0020(7) and this agreement. This agreement relates to the following mediation:

a) _____

(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 141-001-0020(7), mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____

Name of Agency

Signature of Agency's authorized representative _____ Date _____
(when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____

Name of party to the mediation

Signature of party's authorized representative _____ Date _____

e) _____

Name of party to the mediation

Signature of party's authorized representative _____ Date _____

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifical-

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ly for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) a request for mediation; or

(B) a communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) a final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) a strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration

proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) attorney work product prepared in anticipation of litigation or for trial; or

(C) prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

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

Hist.: DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05

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

Adm. Order No.: DMV 12-2005

Filed with Sec. of State: 5-19-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 3-1-05

Rules Adopted: 735-024-0075

Rules Amended: 735-024-0110

Subject: These rule changes were made to clarify the forms of notice that must be provided to DMV for: (1) abandoned vehicles appraised at a value of \$500 or less and disposed of under the provisions of ORS 819.215; and (2) totaled vehicles reported by insurers under ORS 819.014 and 819.016. OAR 735-024-0075 describes the notice required when an authority or tower disposes of an abandoned vehicle appraised at a value of \$500 or less that is, or will be, disposed of under the provisions of ORS 819.215. The rule requires the use of the Abandoned Vehicle Certificate (DMV form 735-271). OAR 735-024-0110 describes the notice requirements for an insurer who declares that a vehicle is "totaled" pursuant to ORS 819.014 and 819.016. The amendment to OAR 735-024-0110 adds a requirement that the state of registration, the date the vehicle was declared a total loss by the insurer and the name of the insurance company covering the loss to be included in the notice to DMV. Other amendments have been made for clarity.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-024-0075

Notification of Disposal of Abandoned Vehicle Appraised at \$500 or Less

(1) This rule designates the form of notice that must be submitted to the Driver and Motor Vehicle Services Division of the Department of

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Transportation for the disposal of an abandoned vehicle appraised at a value of \$500 or less under the provisions of ORS 819.215.

(2) For purposes of this rule the following definitions apply:

(a) "An authority" means a law enforcement or government agency authorized to remove an abandoned vehicle as described in ORS 819.140;

(b) "Tower" means the towing business that tows a vehicle at the request of an authority; and

(c) "Wrecker" means a person who is the holder of a valid wrecker certificate issued under ORS 822.110.

(3) A completed signed Abandoned Vehicle Certificate (DMV Form 271) must be submitted to DMV when an appropriate authority (i.e., a law enforcement agency or government entity), or tower determines to dispose of an abandoned vehicle.

(4) DMV will not accept an Abandoned Vehicle Certification form:

(a) That does not contain the make, plate number, registration state, vehicle identification number, appraised value, name of the wrecker to whom the vehicle will be disposed, and the certification, including the name, address and authorized signature of the authority or tower disposing of the vehicle;

(b) Shows an appraised value of more than \$500; or

(c) That has a form revision date before December 1998.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.215

Stat. Implemented: ORS 819.215

Hist.: DMV 12-2005, f. 5-19-05, cert. ef. 6-1-05

735-024-0110

Totaled Vehicles — Insurer's Notification to DMV

(1) This rule applies to vehicles that meet the definition of "totaled vehicle" or "totaled" under OAR 801.527(1) because the vehicle was declared a total loss by an insurer that is obligated to cover the loss, or because the insurer took possession of, or title to the vehicle.

(2) The insurer must notify the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) as required by ORS 819.014 and 819.016. An insurer who obtains and surrenders a title on a totaled vehicle must notify DMV by making application for salvage title under OAR 735-024-0140. This section does not apply to an insurer who does not intend to rebuild or repair the vehicle, transfer the vehicle or use the vehicle frame or unibody to repair or construct another vehicle.

(3) If the insurer does not obtain the title, the insurer must notify DMV in writing and provide at least the following information:

(a) The year model, make and vehicle identification number of the vehicle;

(b) The vehicle registration plate number and state of registration, if known;

(c) The name, address and phone number of the insurer submitting the notice; and

(d) The insurer's claim number and the date the vehicle was declared a total loss by the insurer.

(4) DMV may accept a copy of the insurer's notice to the registered owner as notice to DMV if the notice contains the information required in section (3) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.014 & 819.016

Stats. Implemented: ORS 819.014, 819.016

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 12-2005, f. 5-19-05, cert. ef. 6-1-05

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Adm. Order No.: DMV 13-2005

Filed with Sec. of State: 5-19-2005

Certified to be Effective: 5-31-05

Notice Publication Date: 4-1-05

Rules Amended: 735-062-0190

Subject: This rule was established to comply with federal law, specifically 49 USC 5103a (Section 1012 of the USA Patriot Act of 2003) and the Federal Motor Carrier Safety Administration (FMCSA) and the Transportation Security Administration (TSA) regulations implementing this law. The federal law specifies that a hazardous materials endorsement for a commercial driver license (CDL) cannot be issued unless the driver obtains a security clearance from the TSA. People renewing or transferring a CDL with a hazardous materials endorsement are subject to the requirements beginning on May 31, 2005. After gaining clarification on the federal requirements, DMV has amended the requirements for applying for an Oregon hazardous materials endorsement if the applicant has a CDL with hazardous materials endorsement issued by another state. DMV will not transfer a hazardous materials endorsement from another state but

will require an applicant for an Oregon endorsement to pass all required tests, including a TSA security check, at the time of issuance. Consistent with the requirements for all other applicants, the person must then obtain a TSA security check every four years. All references to specific dates have been removed. The rule amendments become effective May 31, 2005.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0190

Requirements for Issuance and Retention of a Hazardous Materials Endorsement

(1) To obtain, retain or renew a hazardous materials endorsement on an Oregon commercial driver license (CDL), a person must be qualified. To qualify for a hazardous materials endorsement a person must:

(a) Qualify for commercial driving privileges and be issued or have a valid Oregon CDL;

(b) Pass a hazardous materials endorsement knowledge test for an original endorsement or a renewal;

(c) Complete and pass a security threat assessment (security check) from the Transportation Security Administration (TSA) in accordance with 49 CFR Part 1572, including receipt by DMV of a notice from TSA which shows the person does not pose a security threat. A person must pass a TSA security check at the following times:

(A) Before DMV will issue an original hazardous materials endorsement;

(B) Four years prior to the date the CDL with a hazardous materials endorsement expires. Four years and six months prior to the expiration of a hazmat endorsement, DMV will notify the person that he or she must complete and pass a TSA security check within six months in order to retain commercial driving privileges with a hazardous materials endorsement;

(C) At the time of renewal of the CDL with a hazardous materials endorsement. Six months prior to expiration, DMV will notify the person that he or she must complete and pass a TSA security threat assessment before expiration of the CDL in order to retain commercial driving privileges with a hazardous materials endorsement; and

(D) Any other time required by DMV.

(d) Pay all required fees, which include, but may not be limited to, any applicable issuance fee and a hazardous materials knowledge test fee.

(2) To complete a TSA security check, a person must complete a security check application, submit fingerprints, provide proof of citizenship or lawful immigration status, and payment of fees as specified by TSA. To pass a TSA security check, DMV must receive a notice from TSA which shows the person does not pose a security threat.

(3) While waiting to receive the results of the security check from TSA, DMV may issue a CDL without a hazardous materials endorsement to a person required to obtain a TSA security check. A person issued a CDL without a hazardous materials endorsement is not authorized to transport hazardous materials. Upon receipt of a notice from TSA showing the person poses no security threat, DMV will issue, at no charge, a replacement CDL with a hazardous materials endorsement when the person surrenders the CDL that was issued pending the security check.

(4) A person is no longer qualified for a hazardous materials endorsement if:

(a) DMV receives a notice of threat assessment from TSA requiring immediate cancellation of the hazardous materials endorsement; or

(b) DMV receives notice from TSA indicating the person did not pass the security threat assessment.

(5) If DMV determines a person is no longer qualified for a hazardous materials endorsement, DMV must immediately cancel the person's hazardous materials endorsement. Upon cancellation of the hazardous materials endorsement, the person must:

(a) Immediately surrender to DMV the CDL showing the hazardous materials endorsement; and

(b) Pay the required fee for issuance of a replacement driver license. DMV will issue a commercial driver license without a hazardous materials endorsement if the person qualifies for commercial driving privileges.

(6) A person is no longer qualified for commercial driving privileges with a hazardous materials endorsement if when required, the person fails to complete and pass a TSA security check as described in section (2) of this rule. DMV will cancel the person's commercial driving privileges as set forth in OAR 735-070-0020.

(7) If the person does not surrender his or her CDL showing the hazardous materials endorsement within 60 days of the date of the notice of immediate or final cancellation, DMV will cancel the person's commercial driver license pursuant to ORS 809.310(2).

ADMINISTRATIVE RULES

(8) The person may request a contested case hearing on the immediate cancellation of his or her hazardous materials endorsement. The hearing request must be in writing and must be postmarked or received by DMV within 20 days of the date of notice or the person waives the right to a hearing except as provided in OAR 137-003-0528. The issues at the hearing are limited to whether:

(a) When required, the person completed and passed a TSA security check as described in section (3) of this rule;

(b) DMV received a notice from TSA showing the person does not qualify for a hazardous materials endorsement; and

(c) Whether the person is the same person named on the notice.

(9) When the results of the TSA security check are received, DMV will update the person's driving record to indicate the results of the security check and whether a hazardous materials endorsement was issued or denied. DMV will also notify the Commercial Drivers License Information System (CDLIS) of the results of the security check.

(10) An applicant for an Oregon CDL with a hazardous materials endorsement who presents a valid CDL with a hazardous materials endorsement issued by another state must still qualify for an original hazardous materials endorsement as set forth in this rule, including but not limited to a TSA security check.

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

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

Hist.: DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 13-2005, f. 5-19-05, cert. ef. 5-31-05

Adm. Order No.: DMV 14-2005

Filed with Sec. of State: 5-19-2005

Certified to be Effective: 5-19-05

Notice Publication Date: 4-1-05

Rules Amended: 735-062-0073, 735-064-0040, 735-074-0080, 735-074-0160, 735-074-0170, 735-074-0180

Subject: The rules in OAR Chapter 735 Division 74 outline when DMV may require a person to provide additional medical information regarding the person's eligibility for driving privileges, the ways DMV may respond to reports of medical concerns and when a person may need to be cleared medically by the State Health Officer. The references to the "Certificate of Medical Eligibility" form have been changed to "medical report" form when DMV is requesting that a person submit medical information and to "Certificate of Eligibility" when the State Health Officer issues a recommendation. This is consistent with ORS 807.090. A definition for "medical report" form has been added to OAR 735-074-0080. The reference to the "Certificate of Medical Eligibility" form has also been amended to "medical report" form in OAR 735-062-0073 and 735-064-0040. Consistent with a legislative amendment to ORS 807.090, OAR 735-064-0040 is amended to change the term "Assistant Director for Health" to "State Health Officer" and to clarify the responsibility of the State Health Officer. OAR 735-062-0073 has been amended for clarity.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0073

Denial of Further Testing

DMV may refuse to continue a test or conduct further testing if the department determines that the person does not meet the qualifications for the class of license or endorsement for which the person is being tested. To show qualification for a license or endorsement, a person must demonstrate knowledge and understanding of the traffic laws of this state and must demonstrate the person's ability to operate a motor vehicle without endangering the safety of persons or property:

(1) A DMV employee may refuse to conduct or to continue a behind the wheel drive test if the employee reasonably believes that the person is likely to endanger persons or property while being tested.

(2) DMV may deny a drive test, and deny further testing, prior to the start of the test if there are observable reasons to believe the person may endanger the safety of persons or property during a drive test. Observable reasons to deny a drive test before starting the test may include but are not limited to the following:

(a) The person is visibly confused;

(b) The person is unable to follow simple directions needed to prepare for the drive test; or

(c) The person is unable to perform the safety check on the person's vehicle before beginning the drive test.

(3) DMV may immediately stop a drive test if the drive test examiner reasonably believes the person is likely to endanger persons or property. Reasons to immediately stop a drive test include, but are not limited to:

(a) An accident during the drive test which could have been avoided by the driver being tested;

(b) Dangerous driving behaviors including but not limited to the following:

(A) Failure to obey traffic control devices;

(B) Is prevented from causing an accident by the actions of other drivers or the examiner;

(C) Turns from the wrong lane or into the wrong lane in a way that impedes the right of way of others;

(D) Fails to stop for a school bus that has its red lights flashing;

(E) Fails to yield to a pedestrian or fails to stop when another vehicle is stopped at a crosswalk because a person is occupying the crosswalk;

(F) Drives over a curb, sidewalk or median;

(G) Depends on the action of other drivers for his or her own safety; or

(H) Changes lanes or merges into traffic without checking for other vehicles.

(I) Is an experienced driver who is unable to perform basic driving tasks;

(d) Is unable to follow instructions to the point the drive examiner is not certain he or she can verbally guide the driver back to the DMV field office; or

(e) Seems unaware of driving mistakes made, takes no responsibility as mistakes are pointed out and shows a pattern of denial of any error.

(4) A DMV employee may use the guidelines in sections (2) and (3) of this rule, or other actions that occurred during a drive test, to refuse to conduct or continue testing and to recommend denial of further testing.

(5) Upon review of the DMV employee's recommendation and if DMV determines the person is likely to endanger persons or property during subsequent testing, DMV will deny further testing and will:

(a) Send to a person who has not been issued Oregon driving privileges a notice denying further testing. The person is not entitled to a contested case hearing; or

(b) Cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010 and 735-070-0020 if the person has been issued Oregon driving privileges.

(6) Someone who has been denied further testing under this rule must provide adequate proof to DMV that the person has taken steps to improve driving skills and as such can take a drive test without endangering the safety of persons or property. A person may provide proof, which may alone or in conjunction with other information constitute adequate proof, such as the following:

(a) Successfully complete a driver training course conducted by an ODOT certified commercial driver training school and submits proof of completion to DMV.

(b) Successfully complete a driver rehabilitation program conducted by a rehabilitation specialist and submits proof of completion to DMV.

(c) Submit a medical report form showing that a licensed physician, physician's assistant or nurse practitioner has conducted a diagnostic examination, showing to the satisfaction of the State Health Officer that the person's physical or mental disease or disability has improved or is controlled, so that it does not impair the person's ability to safely operate a motor vehicle.

(d) Show proof that an adaptive device, such as hand controls, has been added to the vehicle and show some documentation that the person knows how to use and has practiced with the adaptive device(s).

(7) To satisfy the requirements of subsections (6)(a) or (b) of this rule, the proof submitted to DMV must include the following:

(a) The applicant's name and either a date of birth or Oregon driver license number;

(b) A certificate or statement from the driver training instructor or school, or the rehabilitation specialist that the person successfully completed a driver training course or a driver rehabilitation program; and

(c) The ODOT certification number of the commercial driver training school, or the rehabilitation program name, address, phone number and the name of the specialist who worked with the person.

(8) To obtain a driver license or endorsement, an applicant who has been denied further testing, or a person whose driving privileges have been cancelled under subsection (5)(b) of this rule, must meet the requirements of section (6) of this rule and must submit an application, pay all required fees, and establish all qualifications for the class of license or endorsement sought.

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

ADMINISTRATIVE RULES

Stat. Auth.: ORS 184.616, 184.619, 802.010
Stats. Implemented: ORS 807.070, 807.340 & 807.350
Hist.: DMV 3-2002, f. & cert. ef. 3-14-02; DMV 14-2005, f. & cert. ef. 5-19-05

735-064-0040

Application Requirements for a Hardship or Probationary Permit

(1) Documents required to obtain a hardship permit depend upon the reason(s) for the suspension. Documents required to obtain a probationary permit depend upon whether the applicant's driving privileges are also suspended and the reason for the suspension. An applicant must comply with any sections of this rule that apply to their suspension and/or revocation. All applicants shall:

(a) Complete a Hardship/Probationary Application, Form 735-6044. This form is available at any DMV office; and

(b) Pay the hardship or probationary permit fee and the reinstatement fee.

(2) An applicant whose driving privileges are suspended based upon a conviction for DUII, reckless driving, fleeing or attempting to elude a police officer or misrepresentation of age by a minor to purchase or consume alcohol shall obtain the recommendation and signature of the convicting judge on the Hardship/Probationary Application form.

(3) An applicant who is suspended for two or more DUII convictions where the commission of the later offense and the conviction for a separate offense occurred within a five-year period shall submit a recommendation for issuance of a hardship or probationary permit from a program approved by OADAP.

(4) Unless driving privileges are suspended for a DUII conviction, an applicant for a hardship permit shall submit an SR22 insurance certificate or other proof of financial responsibility as described in ORS 806.240. An applicant whose driving privileges are suspended for a DUII conviction, shall submit only an SR22 certificate. An applicant for a probationary permit shall submit an SR22 insurance certificate if the applicant's driving privileges are suspended in addition to the habitual traffic offender revocation.

(5) An applicant for a probationary permit shall have a licensed physician submit a completed medical report form to the Driver Medical Certification Program, DMV. DMV will submit the form to the State Health Officer for a recommendation whether the person should be issued driving privileges.

(6) An applicant for a probationary permit shall submit verification of the successful completion of a driver improvement course approved by DMV. (Names of approved courses can be obtained by calling DMV.)

(7) An applicant shall provide the following information, depending upon the driving privileges sought:

(a) An applicant who is required to drive for employment purposes shall provide the routes, counties, days and times the applicant is required to drive. In addition, this information shall be supported by any of the following that apply:

(A) The applicant shall submit a letter from the applicant's employer in order to verify the hours of work and the need for on the job driving;

(B) The applicant shall submit proof of self-employment. Acceptable proof includes a copy of a business license, business tax statement, newspaper advertisement or business receipts; and

(C) The applicant shall provide the days, hours and counties for seeking employment.

(b) An applicant who needs to drive to attend an alcohol or drug treatment or rehabilitation program shall provide the name and address of the program, routes, days and times the applicant is required to drive to and from the program;

(c) An applicant for a hardship permit who needs to drive to receive medical treatment on a regular basis for himself or herself or a member of the person's immediate family, shall provide the name and address of the medical treatment facility, routes, days and times the applicant is required to drive to receive medical treatment on a regular basis for the person or a member of the person's immediate family. The applicant shall submit a signed statement from the physician treating the person or the person's immediate family member, advising of the need for medical treatment on a regular basis. The statement must include how often the treatment is required and hours of the day and days of the week treatment is available. Actual appointment times are subject to verification by DMV and law enforcement;

(d) An applicant for a hardship permit whose driving privileges are suspended for violation of ORS 165.805, 471.430, or 806.010, is eligible to request driving privileges for family necessities. The applicant shall provide the name and address of the person to whom or facility to which the applicant is driving for the family necessity, routes, days and times the

applicant is required to drive for family necessities, as defined in OAR 735-064-0005.

(8) Applicants may submit documents to DMV as they meet requirements. DMV, however, shall not issue the hardship or probationary permit until all required documents are received and processed by DMV, Driver Suspensions Unit.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240 & 807.270

Stats. Implemented: ORS 807.240, 807.250, 807.270, 807.370, 813.500, 813.510

Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0095; MV 29-1989, f. & cert. ef. 10-3-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 14-2005, f. & cert. ef. 5-19-05

735-074-0080

Definitions

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) A "health care provider" is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, naturopathic physician, nurse practitioner, occupational therapist, physical therapist, optometrist, physician assistant and podiatric physician or surgeon.

(3) "Immediate suspension or cancellation" means the suspension or cancellation of driving privileges or the right to apply for driving privileges before the person is given an opportunity for a hearing to contest the suspension or cancellation.

(4) A "medical report form" is the form provided to a person or designated by DMV to be used to obtain medical information for determining if the person is eligible or qualified for driving privileges.

(5) A "physician" is a doctor of medicine or osteopathy licensed to practice medicine in the state of Oregon by the Board of Medical Examiners.

(6) A "primary care provider" is a physician or health care provider who is responsible for supervising, coordinating and providing a person's initial and ongoing health care. A primary care provider initiates referrals for health care outside of his or her scope of practice, consultations and specialist care to assure continuity of a person's medically appropriate health care.

(7) "Primary and secondary driving controls" mean the steering wheel, gas pedal, brake, clutch (if applicable), turn signal controls, headlight controls, windshield wiper controls, defrost control and horn of a motor vehicle.

(8) "Severe" means that the impairment substantially limits a person's ability to perform activities of daily living, including driving, because it is not controlled or compensated for by medication, therapy, surgery or adaptive devices. Severe does not include a temporary impairment for which the person is being treated by a physician or health care provider and which is not expected to last more than six months.

(9) The "State Health Office" is the Public Health Office of the Oregon Department of Human Services.

(10) The "State Health Officer" is a physician appointed as the Public Health Officer who is responsible for the health programs of the Oregon Department of Human Services or his/her designee.

(11) "Uncontrollable" means the impairment cannot be controlled or compensated for by medication, therapy, surgery, or adaptive devices.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.710

Stat. Implemented: ORS 807.710

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 14-2005, f. & cert. ef. 5-19-05

735-074-0160

DMV Response to Voluntary Report of Mental or Physical Conditions or Impairments

DMV will review a voluntary report received to determine the appropriate action to take, which may include the following:

(1) DMV may require the person reported to obtain a Certificate of Eligibility in order to determine if the person is ineligible for driving privileges because of a mental or physical condition affecting the ability to safely operate a motor vehicle.

(2) DMV may require the person reported to re-establish eligibility by taking an examination under ORS 807.070 in order to determine if the person remains qualified for driving privileges.

(3) DMV may suspend driving privileges or the right to apply for driving privileges if DMV determines from the report that the reported person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle. Driving privileges may be immediately suspended if DMV has reason to believe the person may endanger people or property if not immediately suspended.

ADMINISTRATIVE RULES

(4) DMV may require the person to provide periodic medical information based on the recommendation of the State Health Officer. If periodic medical information is required, DMV will send the person a medical report form and require the person to obtain information from his or her physician, nurse practitioner or physician assistant. The form must be returned to DMV within 30 days of the date on the requirement letter.

(5) DMV may require the person to obtain periodic vision exams based on the recommendation of the person's vision specialist or of the State Health Officer. If periodic vision exams are required, DMV will send the person a Certificate of Vision form which must be completed by the person's vision specialist and returned to DMV within 30 days of the date on the requirement letter.

(6) A person may be required to successfully complete DMV testing or may have driving privileges suspended based on information in the medical report form or Certificate of Vision form submitted under section (4) or section (5) of this rule.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340 & 809.419
Stat. Implemented: ORS 807.340
Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 14-2005, f. & cert. ef. 5-19-05

735-074-0170

When a Certificate of Medical Eligibility may be Required

(1) A person may be required to obtain a Certificate of Eligibility under ORS 807.090(1)(b) if:

(a) DMV receives a voluntary report as described in OAR 735-074-0150 that indicates a person has, or may have, a mental or physical condition that makes it unsafe for the person to drive a motor vehicle;

(b) The Health Services or Senior and People with Disabilities Services of the Department of Human Services, a court or a licensed physician, nurse practitioner or physician assistant, who is not required to file a report under 735-074-0110, recommends a medical examination to determine the person's ability to safely operate a motor vehicle;

(c) A person reports on an application for a driver license, driver permit or endorsement that the person has a mental or physical condition that may make it unsafe for the person to drive a motor vehicle; or

(d) DMV determines a medical clearance is required.

(2) When DMV determines a Certificate of Eligibility is required, DMV will send the person a medical report form and a letter explaining that the form must be completed and returned to DMV.

(3) In determining whether to issue a Certificate of Eligibility the State Health Officer may request additional information from the person and/or a physician, nurse practitioner, or physician assistant. In this case, DMV may send another letter to the person requesting the additional information that is required.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.090
Stat. Implemented: ORS 807.090
Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0405; MV 37-1989, f. & cert. ef. 10-3-89; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0010; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 14-2005, f. & cert. ef. 5-19-05

735-074-0180

When a Suspension or Cancellation of Driving Privilege Occurs

(1) DMV may issue an immediate suspension of driving privileges in the following situations:

(a) As set forth in OAR 735-074-0140, if DMV has reason to believe from the information provided in a mandatory report submitted under 735-074-0120 that the person may endanger people or property if not immediately suspended;

(b) If DMV determines from a report as described in OAR 735-074-0150 that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended;

(c) If based upon information included in a police accident report or other law enforcement report, DMV has reason to believe that a person may endanger people or property due to the possibility of a sudden loss of consciousness or control;

(d) The State Health Officer, upon review of medical information on a driver, recommends an immediate suspension;

(e) Information contained in a required Medical Impairment Recertification form submitted as required under OAR 735-074-0140 indicates that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended; or

(f) Information contained in a required Certificate of Vision form submitted as required under OAR 735-074-0140 indicates the person's vision does not meet minimum vision standards under OAR 735-062-0050 and DMV has reason to believe the person may endanger people or property if not immediately suspended.

(2) DMV will suspend driving privileges in the following situations:

(a) DMV will suspend the person's driving privilege under ORS 809.419(2) for failure to obtain a medical clearance if the medical report form is not completed by the person and the person's physician, nurse practitioner, or physician assistant, submitted to and received by DMV within 30-days of the date on the letter sent from DMV. In applicable cases, an additional questionnaire regarding alcohol, drug and/or inhalant use must be completed and received by DMV for the medical report form to be considered complete. DMV may grant an extension if the person can show that an appointment with their physician, nurse practitioner or physician assistant was requested in a timely manner, but the earliest appointment available exceeded the 30 days. DMV may grant an extension (not to exceed four months) if the person is seriously ill or injured and the person's physician, nurse practitioner or physician assistant must recommend an extension in writing. DMV may grant a 30-day extension to a person who is out of state if a written request is received from the person;

(b) If the State Health Officer has requested additional information for determining whether to issue a Certificate of Eligibility and the required additional information is not mailed or faxed to DMV within 30 days from the date of the letter requesting additional information. DMV may grant an extension if the required additional information is from a physician, nurse practitioner, or physician assistant, and the person can show that an appointment was requested in a timely manner, but the earliest appointment available exceeded the 30 days;

(c) If the State Health Officer does not issue a Certificate of Eligibility to a person required to obtain the certificate under ORS 807.090;

(d) If the person fails to submit a Medical Impairment Recertification form as required under OAR 735-074-0140, unless an extension, as described in subsection (a) of this section, is granted by DMV; or

(e) If the person fails to submit a Certificate of Vision form when the person is required to obtain a periodic vision exam under OAR 735-074-0140, unless an extension, as described in subsection (a) of this section, is granted by DMV.

(3) DMV will immediately cancel a person's driving privileges if DMV has reason to believe that the person may endanger people or property if not immediately canceled. If DMV has reason to believe a person is unable to safely operate a motor vehicle and may endanger people or property, DMV may immediately cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person does not meet minimum vision standards set forth in OAR 735-062-0050;

(b) DMV determines the person no longer meets the qualifications for a driver license, permit or endorsement because of a physical or mental disability or disease; a condition which brings about loss of consciousness or control that is chronic or may become chronic; or a problem condition involving alcohol, inhalants or controlled substances; or

(c) The person is denied a drive test by DMV or the State Health Officer because of a physical or mental condition that affects the person's ability to safely operate a motor vehicle.

(4) DMV may cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person's vision does not meet the minimum vision standards set forth in OAR 735-062-0050;

(b) DMV determines the person no longer meets the qualifications for a driver license, driver permit or endorsement because of a physical or mental disability or disease; a condition which brings about loss of consciousness or control that is chronic or may become chronic; or a problem condition involving alcohol, inhalants or controlled substances; or

(c) The person is denied a drive test by DMV or the State Health Officer because of a physical or mental condition that affects the person's ability to safely operate a motor vehicle.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.340, 807.350 & 809.419
Stat. Implemented: ORS 807.350 & 809.419
Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0410; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0020; DMV 1-2005, f. & cert. ef. 1-20-05; DMV 14-2005, f. & cert. ef. 5-19-05

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ADMINISTRATIVE RULES

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Rules Adopted: 735-160-0011, 735-160-0012, 735-160-0013, 735-160-0075, 735-160-0093, 735-160-0115, 735-160-0125

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

Rules Repealed: 735-160-0000, 735-160-0055, 735-160-0090, 735-160-0120

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

Rules Coordinator: Brenda Trump—(503) 945-5278

735-160-0005

Definitions

The following definitions apply to terms in chapter 735, division 160 rules.

(1) "Behind-the-wheel" instruction means the portion of the training that requires the student to be located in the automobile.

(2) "Cancellation" in regards to a School Certificate or Instructor Certificate means to declare a School Certificate or Instructor Certificate void with a new certificate obtainable only as defined in OAR 735-160-0115(12).

(3) "Code of Ethics and Rules of Conduct Violation" means any violation of the standards established by OAR 735-160-0130.

(4) "Commercial Driver Training School" or "School" means a privately or publicly owned driver training facility in Oregon that has been issued a School Certificate by DMV to provide student drivers behind-the-wheel instruction, classroom instruction or both, for a fee.

(5) "Commercial Driver Training School Operator" or "Operator" means the person designated on the School Certificate as the representative responsible for the operation of a Commercial Driver Training School certified by DMV.

(6) "Commercial Driver Training School Instructor" or "Instructor" means a person issued an Instructor Certificate by DMV who is an employee of a Commercial Driver Training School, and who teaches, conducts classes, gives demonstrations or supervises the practice of student drivers.

(7) "Corrected School Certificate" or "Corrected School" means a certificate issued based on an application submitted by an Operator to:

- (a) Correct or change a school name or address; or
- (b) Correct or change the person designated as the school's Operator.

(8) "Corrected Instructor Certificate" means a certificate issued based on an application submitted by an Instructor to:

- (a) Correct or change the name or address of the school employing the Instructor; or
- (b) Correct or change the Instructor's name.

(9) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(10) "Employee" means an individual who may or may not provide services for the school for compensation. For purposes of these rules, this definition includes an independent contractor.

(11) "Instructor Certificate" means a certificate issued by DMV as provided in ORS 822.530 to a Commercial Driver Training School Instructor to provide, for a fee, student drivers behind-the-wheel instruction, classroom instruction, or both.

(12) "Instructor Card" means a Card issued to an Instructor certified by DMV as evidence of Instructor certification.

(13) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a territory or province of Canada, any state of the Republic of Mexico or the Federal District of Mexico or foreign government that has legal authority to issue driver licenses.

(14) "Permanent classroom facility" means a classroom used on a continuing, ongoing basis.

(15) "Revocation" means the termination of the authority granted under a School Certificate or an Instructor Certificate for a specified period, with a new certificate obtainable only as defined under 735-160-0115(11).

(16) "School Certificate" means a certificate issued by DMV as provided in ORS 822.515 to a Commercial Driver Training School Operator.

(17) "Student driver" means a person who is receiving classroom or behind-the-wheel instruction, or both, at a Commercial Driver Training School.

(18) "Supplemental School Certificate" means a certificate issued by DMV that authorizes a school to operate, under the same business name, at an additional business location that is 500 or more feet beyond any other authorized business location of the school. An additional business location includes a location where business records are kept and business activities are conducted but does not include a location where only instruction is provided.

(19) "Suspension" means the temporary withdrawal for a specified period of time of the authority to conduct business or perform instructional activities granted under a School Certificate or an Instructor Certificate.

(20) "Traffic crime" means a conviction under Oregon statute or city ordinance, or a comparable statute or city ordinance of any other jurisdiction, for any misdemeanor or felony involving the use of a motor vehicle that may result in a jail sentence.

(21) "Warning" means a written correction notice issued by DMV to the Operator or an Instructor of a Commercial Driver Training School that requires corrective action be taken as specified by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515, 822.530

Stats. Implemented: ORS 822.515

Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0010

Commercial Driver Training School Operator Qualifications

(1) No Operator shall be issued a School Certificate, Supplemental School Certificate, or a Corrected School Certificate or be allowed to renew or maintain a School Certificate unless the Operator of the school is at least 21 years of age and meets the qualification requirements of sections (2) through (6) of this rule.

(2) An Operator must not have a conviction for any of the following crimes:

(a) A traffic crime as defined by ORS 801.545 and OAR 735-160-0005(20). This subsection does not apply if the conviction occurred more than five years preceding the date an application for a School Certificate or Corrected School Certificate is submitted to DMV;

(b) Kidnapping or custodial interference as defined in ORS 163.225 through 163.257;

(c) Any sexual offense, with or without force, any offense related to child pornography or any offense compelling or promoting prostitution;

(d) Any crime involving injury or threat of injury to another person;

(e) Any crime involving theft, forgery, fraud, falsifying or tampering with records, or racketeering; or

(f) Any crime relating to the unlawful possession, use, sale, manufacture or distribution of controlled substances or alcoholic beverages.

(3) An applicant who has been convicted of one of the crimes listed in section (2) of this rule may include an explanation or evidence of intervening circumstances since the conviction. DMV will determine if the intervening circumstances of the conviction are such that the conviction does not affect the person's fitness to operate a Commercial Driver Training School.

(4) An Operator must not engage in conduct that is substantially related to the person's fitness to be an Operator or that demonstrates unfitness and inability to perform the responsibilities of an Operator. DMV will determine if the person is fit to perform the responsibilities of an Operator or if the person poses a risk to the safety of others while performing those responsibilities from the facts of the conduct, and the intervening circumstances known to DMV.

(5) An Operator must not be the operator of any school in Oregon whose School Certificate is currently suspended for an offense described in OAR 735-160-0010(2). An Operator must not be the operator of any school in Oregon whose School Certificate is currently revoked, canceled, or withdrawn unless the operator has completed the terms of their sanction according to OAR 735-160-0125 and meets all eligibility requirements of OAR 735-160-0010.

(6) An Operator must not have been the operator of any school in another jurisdiction that has been suspended, revoked, canceled, or with-

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drawn for the same or a similar offense as described in OAR 735-160-0010(2) within five years preceding the date of application for a School Certificate or Corrected School Certificate. DMV will review the results of an operator's criminal history to determine whether the offense is applicable.

(7) A School Certificate may be subject to suspension, revocation, or cancellation as described in OAR 735-160-0115 if an Operator fails to remain qualified as prescribed under this rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.500, 822.515, 822.530
Stats. Implemented: ORS 822.500, 822.515
Hist.: MV 43, f. & ef. 12-8-69; MV 6-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-051-0010; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0011

Issuance of Original Commercial Driver Training School Certificate

DMV will not issue a School Certificate until the following requirements are met:

(1) An Operator must apply for an original School Certificate pursuant to ORS 822.515 and must:

(a) Submit a written application on a form or in a format provided or established by DMV;

(b) Meet the qualifications listed in OAR 735-160-0010;

(c) Submit a release authorizing DMV to obtain the Operator's computer criminal history (CCH) from the Oregon State Police:

(A) If the Operator wishes to challenge the accuracy or completeness of information on the CCH provided by the Oregon State Police, the Operator must follow the procedures set forth in OAR 257-010-0035. DMV does not have authority to change any information on a CCH.

(B) If the Operator successfully contests the accuracy or completeness of information on the CCH provided by the Oregon State Police, DMV will re-evaluate the application if the Operator submits a release authorizing DMV to obtain a new CCH.

(C) Criminal history records will only be used to determine Operator qualifications and will be kept confidential and not released to any person unless DMV determines a record, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General or a court orders disclosure in accordance with the Public Records Law.

(d) Submit a School bond that complies with the requirements of ORS 822.505, on a form prescribed by DMV, and certify that a bond will remain in effect as long as the School Certificate is valid;

(e) Submit proof of insurance that complies with the requirements of ORS 822.510, on a form provided or established by DMV. The Operator shall certify that insurance will remain in effect as long as the School Certificate is valid;

(f) Submit the fee required under ORS 822.700; and

(g) Register the business name with the Secretary of State, Corporation Division.

(2) The business location of the School must comply with the requirements of OAR 735-160-0020.

(3) Once issued, a School Certificate is not transferable to any other commercial driver training school.

(4) Failure to maintain any of the requirements as prescribed under this rule will result in suspension, revocation, or cancellation of the School Certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.505, 822.510, 822.515.
Stat. Imp.: ORS 822.500, 822.510, 822.515
Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0012

Renewal Commercial Driver Training School Certificate and Application

(1) An Operator must apply for renewal of a School Certificate pursuant to ORS 822.515 and must:

(a) Submit a written application on a form or in a format provided or established by DMV;

(b) Submit a release authorizing DMV to obtain the Operator's computer criminal history (CCH) from the Oregon State Police. The provisions of OAR 735-160-0011(1)(c) apply to a CCH obtained for renewal of a School Certificate;

(c) Submit a School bond that complies with the requirements of ORS 822.505 on a form prescribed by DMV, unless the school's current bond remains valid for the full renewal period. The Operator shall certify that a bond will remain in effect as long as the school certificate is valid;

(d) Submit proof of insurance that complies with the requirements of ORS 822.510 on a form prescribed by DMV. The Operator shall certify that insurance will remain in effect as long as the School Certificate is valid;

(e) Submit the fee required under ORS 822.700; and

(f) Meet the qualifications listed in OAR 735-160-0010.

(2) Failure to maintain any of the requirements for a School Certificate will result in suspension, revocation or cancellation of the School Certificate according to OAR 735-160-0115.

(3) An Operator must submit to DMV a renewal application, supporting documents and payment for a School Certificate no later than the expiration date stated in ORS 822.515(4)(a). DMV will provide a grace period of 45 days for the application to be processed and for the Operator to display the new School Certificate. A renewal application that is received after the expiration date of the existing School Certificate will be treated as an application for an original School Certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.505, 822.510, 822.515.

Stat. Imp.: ORS 822.500, 822.510, 822.515

Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0013

Refusal to Issue or Renew Commercial Driver Training School Certificate

(1) DMV will not issue or renew a School Certificate if:

(a) The application is incomplete or information contained in the application is determined by DMV to be false;

(b) The Operator does not meet the qualification requirements as set forth in OAR 735-160-0010;

(c) The School Certificate and right to apply for a School Certificate is suspended or revoked in Oregon; or

(d) The School does not meet the qualifications or requirements set forth in Chapter ORS 822 and OAR chapter 735, division 160 rules.

(2) If DMV refuses to issue or renew a School Certificate, DMV will notify the Operator in writing. The Operator may request a contested case hearing. The hearing shall be conducted in accordance with the applicable provisions of the Administrative Procedures Act, ORS 183.310 to 183.540 and is subject to the following:

(a) A request for hearing must be submitted in writing to and received by DMV within 20 days of the date the refusal notification is mailed to the Operator. DMV will not issue a School Certificate pending the outcome of the contested case hearing. If DMV refuses to renew a School Certificate, the expired School Certificate shall remain valid pending the outcome of the contested case hearing, unless the basis for the refusal is failure to provide or maintain a School bond or provide proof of insurance, as required, or DMV determines continued operation of the School would constitute a serious danger to the public health or safety.

(b) Failure to timely request a hearing constitutes waiver of the right to a hearing and no School Certificate will be issued or renewed until the requirements of ORS 822.500 to 822.515 and the Division 160 rules are satisfied.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515.

Stat. Imp.: ORS 822.515

Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0015

Commercial Driver Training School Operator Responsibilities

(1) An Operator shall:

(a) Notify DMV by mail or facsimile within 10 days (excluding weekends and state holidays) of any of the following:

(A) The location of any permanent classroom facility changes;

(B) The School goes out of business and ceases operations;

(C) The Operator no longer meets or maintains the qualifications set forth in OAR 735-160-0010;

(D) The School does not maintain the requirements set forth in OAR 735-160-0011;

(E) An Instructor whose employment with the school has terminated;

or

(F) An Instructor employed by the school who no longer meets or maintains the qualifications, responsibilities or requirements set forth in OAR 735-160-0075, 735-160-0080, and 735-160-0095, including an explanation of why the Instructor no longer meets the qualifications, responsibilities, or requirements.

(b) File an application with DMV for a Corrected School Certificate within 10 calendar days if the name or address of the School changes or the School Operator's name changes. If the name of the School changes, the Operator must submit bond and insurance documents in the new business name within thirty (30) days;

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(c) Make any and all business records, vehicles and facilities related to the operation of the school available for inspection by a DMV inspector in accordance with OAR 735-160-0030. DMV may conduct an inspection with or without prior notice to the school Operator;

(d) Establish procedures that reasonably insure no Instructor or student is under the influence of any intoxicant during classroom or behind-the-wheel instruction;

(e) Provide student with a copy of, or prominently display in a publicly accessible and conspicuous manner, a complaint procedure that includes DMV contact information;

(f) Comply with all statutes, administrative rules, and regulations related to the operation of a Commercial Driver Training School;

(g) Adhere to the Code of Ethics and Rules of Conduct set forth in OAR 735-160-0130;

(h) Authorize only a person that has been issued an Instructor Certificate, who is employed by the school, to provide classroom or behind-the-wheel instruction to a student driver;

(i) Notify DMV by facsimile or mail within 24 hours (excluding weekends and state holidays) of any:

(A) Notice of a civil legal action filed against the school, Operator or an Instructor which is related to school operations; or

(B) Criminal investigation, arrest or conviction for an offense described in OAR 735-0160-0010(2) and;

(j) If requested, respond to DMV by mail or facsimile within 10 calendar days (excluding weekends and state holidays) to any complaint received by DMV.

(2) An Operator shall not:

(a) Falsify or tamper with any records;

(b) Act as a Commercial Driver Training Instructor unless the Operator has been issued an Instructor Certificate by DMV;

(c) Transfer a School Certificate to any other school or operator;

(d) Knowingly assist a person to fraudulently obtain driving privileges from DMV; or

(e) Permit an Instructor who works for the school to:

(A) Provide classroom or behind-the-wheel instruction to any student driver who is not enrolled in the school. This subsection does not apply to instruction given by an Instructor to his or her immediate family members;

(B) Conduct any behind-the-wheel instruction with any student driver not in possession of a valid driver license or instruction permit;

(C) Provide behind-the-wheel instruction to any student driver on a driving route specifically used by DMV to test applicants for Oregon driving privileges;

(D) Provide questions and answers that are identical to a DMV knowledge test during classroom training; or

(E) Allow any instructor who does not have current, valid driving privileges to conduct behind-the-wheel instruction.

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

Stats. Implemented: ORS 822.505, 822.510, 822.515

Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0020

Location and Advertising

(1) No School shall have a business location closer than 1,500 feet to any DMV office, unless it has continuously operated in that location prior to the opening of the DMV office.

(2) No school shall provide classroom or behind-the-wheel instruction, and be operated from a liquor store, bar, tent, temporary stand, temporary address, mailing service, or through a telephone answering service.

(3) Every school shall have a business location in Oregon having at least one structure where records required to be maintained are kept and made available for DMV inspection. The business location must be listed on the School Certificate.

(4) A Commercial Driver Training School with more than one business location must apply, on a form supplied by DMV, and be issued a Supplemental School Certificate for each additional business location not listed on the School Certificate. A supplemental business location must be 500 or more feet from any other business location of the school and must operate under the same business name as that listed on the School Certificate.

(5) If the business location changes, the School must be issued a Corrected School Certificate before business may be conducted at the new location. If the name of the school changes, the school must obtain a Corrected School Certificate and Corrected Supplemental School Certificate for each business location before business may be conducted under the new name.

(6) A copy of the Oregon Vehicle Code and the Oregon Administrative Rules relating to driver licensing must be maintained at each business location and supplemental business location of the school and must be made available for view by the public upon request.

(7) The following advertising practices must be followed:

(a) No advertisement, publication, employee or other person affiliated with the school shall indicate or imply that enrollment in the school guarantees issuance of driving privileges;

(b) No employee or other person affiliated with the school shall solicit business or cause business to be solicited on its behalf or display or distribute any advertising material within 1,500 feet of any DMV office, unless the business location of the school is within 1,500 feet as authorized under section (1) of this rule;

(c) School forms, agreements, advertising and business premises signs may say: "This school is certified by the State of Oregon." There shall be no suggestion, either express or implied, in any form, agreement, advertisement, publication, business solicitation, or business sign that the school is endorsed or recommended by the State of Oregon or any agency of the State;

(d) Only the business location or supplemental business location address as it appears on the School Certificate or Supplemental School Certificate may be included in any advertisement or business solicitation;

(e) No advertisement, publication, or business solicitation shall be false, deceptive, or misleading and no employee or other person affiliated with the school shall disseminate false, deceptive, or misleading information about the school or authorize others to do the same;

(f) Only the school name as it appears on the current School Certificate may be used in any publication, form, advertisement, business solicitation, or sign; and

(g) No advertisement, publication, employee, or other person affiliated with the school shall knowingly encourage persons who are not domiciled in or residents of Oregon to apply for Oregon driving privileges.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515

Stats. Implemented: ORS 822.515

Hist.: MV 43, f. & ef. 12-8-69; MV 6-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-051-0015; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0030

Commercial Driver Training School Records

(1) The records of all student drivers enrolled in any class or course offered by the school must be retained as set forth in this rule, including the records of those student drivers who withdrew or were terminated from the school.

(2) A student driver record must contain, but is not limited to the following:

(a) The complete name of the student driver;

(b) The driver license or instruction permit number of the student driver and the name of the state that issued the license or permit if available;

(c) The name and Instructor Certificate number of each Instructor who provided training;

(d) Number of hour(s), date(s) of service, and type of training (behind-the-wheel or classroom) participated in by the student driver;

(e) All written contracts or agreements, signed by the student driver; and

(f) A copy of the school grievance procedure for handling student or parent complaints, unless grievance procedure is posted in accordance with 735-160-0015(1).

(3) The records of all school instructors, including current and past instructors must be retained as set forth in this rule. An instructor record must contain:

(a) The instructor's driver license number, date(s) of employment with the school, job application or resume; and

(b) A copy of the Instructor Certificate issued by DMV to the instructor.

(4) Maintain a monthly listing containing information from OAR 735-160-0030(2)(a), (b), (c) and (d) (above) for students that participated in driver training. This list must be made available to DMV upon request.

(5) The original student driver records, instructor records and any records documenting compliance with any statutes or administrative rules must be maintained as originals in paper format or electronically for a period of three years at the business location, or may be kept at a supplemental business location certified by DMV if the records relate to student drivers or instructors at the supplemental location. For good cause shown or upon a showing of a business necessity, DMV, in its sole discretion, may author-

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ize an operator to maintain the school records at another location within the State of Oregon.

(6) Instructor records must be maintained permanently for current employees. After employee separation, instructor records must be kept for an additional three years after the separation date.

(7) All records must be made available to DMV within 5 (five) business days of request, excluding weekends and state holidays.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515
Stats. Implemented: ORS 822.515

Hist.: MV 43, f. & ef. 12-8-69; MV 6-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-051-0020; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0035

Inspection and Investigation

(1) DMV will periodically inspect a school to determine it is complying with all laws and administrative rules pertaining to Commercial Driver Training Schools, including Instructor certification and operation requirements.

(2) All records subject to this rule must be available for inspection by an authorized representative(s) of DMV. DMV may conduct a random inspection of the business premises, records, or equipment of a School to review compliance with Oregon statutes and administrative rules. Although DMV will normally arrange an appointment prior to inspection, no notice may be given to the Operator prior to the random inspection. The Operator must consent to and fully cooperate with the inspection.

(3) Inspections may include examination of:

(a) All student driver records regardless of whether the student driver completed or failed to complete the school's driver training program;

(b) The records of current or former Instructors employed by the school;

(c) Any motor vehicles used for training student drivers, to ensure that the vehicles meet the equipment standards of OAR 735-160-0040;

(d) Any curriculum and instructional materials used to teach or demonstrate how to drive; and

(e) Those facilities, records, or equipment DMV deems necessary to inspect, in its discretion, to ensure that the School is complying with all applicable provisions of law.

(4) Refusal to permit DMV to conduct an inspection shall result in a sanction imposed pursuant to OAR 735-160-0125.

(5) DMV may investigate any complaint it receives about an Operator or Instructor. The Operator and school employees must cooperate with DMV during the investigation. If requested by DMV, the Operator must provide a written response to the complaint within 10 calendar days (excluding weekends and state holidays) to DMV by either mail or facsimile from the date DMV notifies the operator of the complaint.

(6) DMV shall prepare a written report of each inspection and investigation. A copy of the DMV report, including any sanction or corrective action, will be sent to the Operator.

(7) Correct any deficiency identified by a DMV inspector during an on-site inspection, within 30 calendar days of the date the inspection report requiring corrective action is issued by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515, 822.530

Stats. Implemented: ORS 822.515

Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0040

Vehicle Equipment

(1) Any motor vehicles owned or leased by a School for behind-the-wheel instruction must:

(a) Be equipped with dual controls. Dual controls consist of:

(A) A foot brake control for both the student driver and the instructor, connected either by mechanical or hydraulic means; and

(B) A clutch control connected either by mechanical or hydraulic means if the vehicle is equipped with a manual transmission.

(b) Be maintained in safe mechanical and physical condition;

(c) Meet the safety equipment standards of the Oregon Vehicle Code, as provided in ORS Chapter 815;

(d) Be equipped with safety belts that meet the standards required under ORS 815.055 and OAR 735-102-0000, for each person in the vehicle;

(e) Have all equipment functioning properly;

(f) Be properly registered in compliance with the laws of Oregon;

(g) Be covered by at least the minimum insurance requirements established under ORS 822.510; and

(h) Be equipped with the following emergency equipment:

(A) Fire extinguisher;

(B) First aid kit; and

(C) Three flares or three red emergency triangles.

(2) Motorcycles or mopeds are not required to comply with subsections (1)(a),(d) and (h) of this rule.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515

Stats. Implemented: ORS 822.515

Hist.: MV 43, f. & ef. 12-8-69; MV 6-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-051-0025; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0050

Curriculum Standards for Commercial Driver Training School Program

(1) The curriculum standards established in sections (2) and (3) of this rule will have the goal of proper training of student drivers to provide maximum safety for all persons who travel or otherwise use the public highways, and to reduce traffic violations and traffic crashes.

(2) Classroom training may include, but need not be limited to, instruction on:

(a) Knowledge of Oregon motor vehicle statutes and administrative rules related to the operation of a motor vehicle on public highways and premises open to the public;

(b) Safe driving practices;

(c) Driving techniques for different types of roads and road surfaces, and for safe driving near pedestrians, trains, and other vehicles including, but not limited to, cars, trucks, bicycles, and motorcycles;

(d) Driver responsibility including, but not limited to, automobile maintenance, insurance, use of safety belts and child restraints, passenger safety, and the implied consent laws;

(e) Defensive driving practices and techniques;

(f) How the laws of physics affect driving;

(g) How a driver's physical, emotional, and psychological condition affects driving ability;

(h) How driver use of alcohol, drugs, inhalants, or other substances affect driving ability; and,

(i) Dealing with emergency situations and vehicle malfunctions while driving.

(3) Behind-the-wheel instruction may include, but need not be limited to, instruction on:

(a) Operation of vehicle controls;

(b) Performing vehicle maneuvers such as starting, stopping, lane changes, backing, braking, parking, steering, and turning a vehicle under a variety of traffic conditions;

(c) Managing space around the vehicle by adjusting speed and position to avoid conflicts and reduce risk;

(d) Processing traffic and vehicle information into speed and position changes based on visual skills, space management, vehicle speed control, and control of road; and

(e) Precision movements for maintaining vehicle control and balance in expected and unexpected situations based on vehicle speed control, vehicle balance, collision avoidance, traction control, response to mechanical failures, and traction loss.

(4) During any behind-the-wheel instruction session, the following safety requirements must be met:

(a) Only the student driver operating the vehicle and the instructor shall be seated in the front seats of the vehicle; and

(b) All vehicle occupants shall use safety belts at all times while in the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515

Stats. Implemented: ORS 822.515

Hist.: MV 43, f. & ef. 12-8-69; Administrative Renumbering 3-1988, Renumbered from 735-051-0030; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0075

Commercial Driver Training School Instructor Qualifications

(1) No person shall teach, conduct classes, give demonstrations to, or supervise the practice of student drivers for compensation unless he or she is issued an Instructor Certificate by DMV.

(2) To be eligible for an Instructor Certificate, or to renew or maintain an Instructor Certificate, a person must meet the following requirements:

(a) Be at least 21 years of age to conduct behind-the-wheel training and age 19 to conduct classroom training;

(b) Be an employee of a School that holds a valid and current School Certificate issued by DMV;

(c) Have valid Oregon driving privileges and have had valid driving privileges for at least three years preceding the date an application is submitted to DMV for an Instructor Certificate. To be valid, driving privileges

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must not be suspended, revoked, canceled, or otherwise withdrawn for a violation of a traffic crime described in OAR 735-160-0005(20) and ORS 801.545. For purposes of these OAR 735 Division 160 rules, a hardship or probationary permit does not constitute valid driving privileges. An Instructor who has not held Oregon driving privileges for the three year period may be required to submit a certified driving record from any jurisdiction or foreign government that issued driving privileges during that period;

(d) Shall not have a conviction for any of the following crimes:

(A) A traffic crime as defined by ORS 801.545 and OAR 735-160-0005(20). This subsection does not apply if the conviction occurred more than five years preceding the date an application for an Instructor Certificate is submitted to DMV;

(B) Kidnapping or custodial interference as defined in ORS 163.225 through 163.257;

(C) Any sexual offense, with or without force, any offense related to child pornography, or compelling or promoting prostitution;

(D) Any crime involving injury or threat of injury to another person;

(E) Any crime involving theft, forgery, fraud, falsifying or tampering with records, or racketeering; or,

(F) Any crime relating to the unlawful possession, use, sale, manufacture, or distribution of controlled substances or alcoholic beverages;

(e) Must not engage in conduct that is substantially related to the person's fitness to be an Instructor or that demonstrates unfitness and inability to perform the responsibilities of an instructor. DMV will determine from the facts and intervening circumstances of the conduct if the person is fit to perform the responsibilities of an instructor or poses a risk to the safety of persons while performing those responsibilities; and

(f) Has received a passing score on both the written knowledge test and drive test described in OAR 735-160-0100.

(3) A person is not eligible for an Instructor Certificate, and will not be allowed to renew or maintain an Instructor Certificate if:

(a) The person has a physical or mental condition or impairment affecting the person's ability to teach, give demonstrations, or supervise the practice of student drivers in a motor vehicle;

(b) The person's vision in both eyes, with or without corrective lenses, does not meet a minimum acuity of 20/40. Corrective lenses do not include bioptic telescopic lenses;

(c) The person's driving privileges are revoked as a habitual offender under ORS 809.600 or any equivalent action in another jurisdiction. This section shall apply if the instructor's driving privileges were revoked as a habitual offender and have not been restored under ORS 809.660 or its equivalent in another jurisdiction at least five years prior to the date an application for an Instructor Certificate or Corrected Instructor Certificate is submitted to DMV;

(d) The person is enrolled or participating in a DUII diversion program, or has restricted or suspended driving privileges under a driver improvement program, including an equivalent diversion or driver improvement program in another jurisdiction. This section shall apply if the person was enrolled or participated in a diversion program or was issued restricted or suspended driving privileges under a driver improvement program anytime within the five years preceding the date an application for an Instructor Certificate is submitted to DMV;

(e) The person refuses to take a breath or blood test in accordance with ORS 813.100 or any equivalent violation in another jurisdiction anytime within five years preceding the date an application for an Instructor Certificate is submitted to DMV;

(f) The person fails to pass a breath or blood test in accordance with ORS 813.100 or any equivalent violation in another jurisdiction anytime within five years preceding the date an application for an Instructor Certificate is submitted to DMV;

(g) An Instructor must not be an instructor at any school in Oregon whose School Certificate is currently revoked, canceled, or withdrawn unless the Operator has completed the terms of their sanction according to OAR 735-160-0125 and meets all eligibility requirements of OAR 735-160-0075; or

(h) An Instructor must not have an Instructor Certificate that is suspended, revoked, canceled, or withdrawn or a similar sanction in another jurisdiction on the date the application for an Instructor Certificate is submitted to DMV.

(4) An applicant who has been convicted of one of the crimes listed in section (2) of this rule may include an explanation or evidence of intervening circumstances since the conviction. DMV will determine if the intervening circumstances of the conviction are such that the conviction does not affect the person's fitness to be an Instructor.

(5) DMV may request additional information from an applicant who has been convicted of one of the crimes listed in section (2) of this rule. Additional information may include, but is not limited to, documentation regarding the intervening circumstances of the conviction. DMV will determine if the intervening circumstances of the conviction are such that the conviction does not affect the person's fitness to be an Instructor.

(6) An Instructor Certificate may be subject to suspension, revocation, or cancellation as described in OAR 735-160-0115 and 735-160-0125 if an Instructor fails to remain qualified as prescribed under this rule.

Stat. Auth.: ORS 184.616, 814.619, 802.010, 822.530.

Stat. Imp.: ORS 822.530

Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0080

Original Commercial Driver Training School Instructor Certificate Application and Requirements

Each applicant for an original Instructor Certificate pursuant to ORS 822.530 and these rules must:

(1) Submit an application on a form or in a format provided or established by DMV;

(2) Meet the Instructor qualifications listed in OAR 735-160-0075;

(3) Pass the knowledge and drive test requirement in accordance with OAR 735-160-0100;

(4) Submit a release authorizing DMV to obtain the applicant's computer criminal history (CCH) from the Oregon State Police:

(a) If the applicant wishes to challenge the accuracy or completeness of information on the CCH provided by the Oregon State Police the applicant must follow the procedures set forth in OAR 257-010-0035 DMV does not have authority to change any information on a CCH.

(b) If the applicant successfully contests the accuracy or completeness of information on the CCH provided by the Oregon State Police, DMV will obtain a new criminal history check and re-evaluate the criminal history if the applicant submits a release authorizing DMV to obtain a new CCH.

(c) Criminal history records will only be used to determine instructor qualification and will be kept confidential and not released to any person unless DMV determines a record, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General or a court orders disclosure in accordance with the Public Records Law.

(5) Submit the fee required under ORS 822.700; and

(6) Possess and maintain a current and valid Oregon driver license.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.530

Stats. Implemented: ORS 822.530

Hist.: MV 43, f. & ef. 12-8-69; MV 7-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-051-0005; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0085

Commercial Driver Training School Instructor Certificate Renewal Application

(1) Each Instructor must apply for renewal of an Instructor Certificate pursuant to ORS 822.530 and must:

(a) Submit a written application on a form or in a format provided or established by DMV;

(b) Submit a release authorizing DMV to obtain the Instructor's computer criminal history (CCH) from the Oregon State Police. The provisions of OAR 735-160-0080(1)(d) apply to a CCH obtained for renewal of an Instructor Certificate;

(c) Submit the fee required under ORS 822.700; and

(d) Meet and maintain the qualifications listed in OAR 735-160-0075.

(2) Failure to maintain any of the requirements under OAR 735-160-0080 for an Instructor Certificate may result in suspension or revocation of the Instructor Certificate according to OAR 735-160-0115.

(3) An Instructor must submit to DMV a renewal application, supporting documents and payment for an Instructor Certificate no later than the expiration date stated in ORS 822.530(4)(a). DMV will provide a grace period of 45 days for the application to be processed and for the instructor to display the new Instructor Certificate. A renewal application that is received after the expiration date of the existing Instructor Certificate will be treated as an application for an original Instructor Certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.530

Stats. Implemented: ORS 822.530

Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 8-1996, f. & cert. ef. 8-15-96; DMV 15-2005, f. & cert. ef. 5-19-05

ADMINISTRATIVE RULES

735-160-0093

Refusal to Issue or Renew Commercial Driver Training School Instructor Certificate

- (1) DMV will not issue or renew an Instructor Certificate if:
- (a) The application is incomplete or information contained in the application is determined by DMV to be false;
 - (b) The instructor does not meet and maintain the qualifications as set forth in OAR 735-160-0075;
 - (c) The instructor does not meet and maintain the requirements as set forth in OAR 735-160-0080;
 - (d) The employing School's Certificate is suspended or revoked.
- (2) If DMV refuses to issue or renew an Instructor Certificate, DMV will notify the Instructor in writing. The Instructor may request a contested case hearing. The hearing shall be conducted in accordance with the applicable provisions of the Administrative Procedures Act, ORS 183.310 to 183.540 and is subject to the following:
- (a) A request for hearing must be submitted in writing and received by DMV within 20 days of the date the refusal notification is mailed to the Instructor. DMV will not issue an Instructor Certificate pending the outcome of the contested case hearing. If DMV refuses to renew an Instructor Certificate, the expired Instructor Certificate shall remain valid pending the outcome of the contested case hearing; and
 - (b) Failure to timely request a hearing constitutes waiver of the right to a hearing and no Instructor Certificate will be issued or renewed until the requirements of ORS 822.500 to 822.515 and Division 160 rules are satisfied.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.530.
Stat. Imp.: ORS 822.530
Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0095

Commercial Driver Training School Instructor Responsibilities

- (1) An Instructor shall:
- (a) Meet and remain in compliance with the Instructor qualifications set forth in OAR 735-160-0075;
 - (b) Provide student driver training that meets the curriculum requirements set forth in OAR 735-160-0050;
 - (c) Accurately complete all applicable student driver records required under OAR 735-160-0030;
 - (d) Adhere to the Code of Ethics and Rules of Conduct set forth in OAR 735-160-0130;
 - (e) Comply with all statutes, administrative rules and regulations relating to acting as an Instructor;
 - (f) Keep a copy of the Instructor Certificate at the school in the Instructor's record and make available for view upon request by the public;
 - (g) Carry the Instructor's card at all times while providing instruction;
 - (h) Notify DMV by mail or facsimile within 24 hours, excluding state holidays or weekends of any:
 - (A) Notice of civil legal action filed against the instructor related to acting as an instructor; or
 - (B) A criminal investigation, arrest or conviction for an offense described in OAR 735-160-0075(2)(d); and
 - (C) If requested, respond to DMV in writing or by facsimile or mail within 10 calendar days (excluding weekends and state holidays) to any complaint received by DMV.
 - (2) An Instructor shall not:
 - (a) Falsify or tamper with any records;
 - (b) Transfer his or her Instructor Certificate or card to any other person;
 - (c) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;
 - (d) Provide classroom or behind-the-wheel instruction to any student driver who is not enrolled in the school. This subsection does not apply to the Instructor's immediate family members;
 - (e) Allow any student driver to operate a motor vehicle without a valid driver license or instruction permit;
 - (f) Provide behind-the-wheel instruction to any student driver on a driving route specifically used by DMV to test applicants for Oregon driving privileges;
 - (g) Provide questions and answers that are identical to a DMV knowledge test during classroom training;
 - (h) Allow any student driver to participate in classroom instruction or behind-the-wheel instruction if the Instructor has reason to believe the student driver is under the influence of an intoxicant;
 - (i) Provide classroom instruction or behind-the-wheel instruction if the Instructor is under the influence of an intoxicant; or

(j) Act as an Instructor without a valid Oregon driver license.
Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.525, 822.530
Stats. Implemented: ORS 822.530
Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0100

Commercial Driver Training School Instructor Testing

- (1) The written examination required by OAR 735-160-0080 for an Instructor shall consist of questions about:
- (a) The Oregon Vehicle Code;
 - (b) Safe driving practices;
 - (c) The operation of motor vehicles; and
 - (d) The methods and requirements for instructing student drivers under OAR 735-160-0050.
- (2) The driving test required by OAR 735-160-0080 shall examine the applicant's ability to drive consistent with the standards established by ORS 807.070(3) and OAR 735-160-0050.
- (3) Each applicant shall be given a maximum of three opportunities in one year to pass the knowledge test or the drive test in accordance with OAR 735-160-0100(4) and (5).
- (4) Applicants who fail the drive test on the first attempt must wait at least seven calendar days before taking a second drive test. Individuals who fail the drive test on the second attempt must wait 14 calendar days before taking a third drive test. Applicants who fail the third drive test must wait one year from the date of taking the third drive test.
- (5) Applicants who fail the knowledge test on the first attempt must wait at least seven calendar days before taking a second knowledge test. Individuals who fail the knowledge test on the second attempt must wait 14 calendar days before taking a third knowledge test. Individuals who fail the third knowledge test must wait one year from the date of taking the third knowledge test.

- (6) Applicants must receive a passing score of 85 percent or higher on the written knowledge test described in OAR 735-160-0100(1) and a passing score of 90 percent or higher on the drive test described in OAR 735-160-0100(2).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515, 822.530
Stats. Implemented: ORS 822.530
Hist.: MV 43, f. & ef. 12-8-69; MV 7-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-052-0015; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0110

Instructor Certificate Issuance, Correction, Surrender, and Replacement

- (1) DMV will issue an Instructor Certificate and Instructor's card to an applicant who has met all the requirements of OAR 735-160-0075 through 735-160-0100. The name of the school employing the applicant shall be included on the Instructor Certificate and Instructor's card.
- (2) An Instructor Certificate and Instructor's card are not transferable.
- (3) An instructor must obtain a corrected Instructor Certificate and Instructor card when:
- (a) The name or address of the school currently employing the instructor changes or is incorrect; or
 - (b) The instructor's name changes or is incorrect.
- (4) At the time employment with the school ends, the instructor's original Instructor Certificate and Instructor card must be surrendered to the school. Within 10 calendar days of surrender, the school must return the original Instructor Certificate and Instructor card to DMV.
- (5) DMV will issue a replacement Instructor Certificate if the Instructor Certificate or Instructor's card has been lost, mutilated or destroyed.

- (6) To apply for replacement or correction of an Instructor Certificate or Instructor's card, the instructor must:

- (a) Submit a written request to DMV; and
- (b) Clearly explain the reason for the request.

Stat. Auth.: ORS 802.010, 822.515 & 822.530
Stats. Implemented: ORS 822.530
Hist.: MV 43, f. & ef. 12-8-69; MV 7-1981, f. & ef. 7-1-81; Administrative Renumbering 3-1988, Renumbered from 735-052-0110; MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0115

Commercial Driver Training School and Instructor Sanctions

- (1) DMV will impose sanctions when it determines a School or an Instructor has violated provisions of the Motor Vehicle Code, or administrative rules promulgated by DMV.
- (2) DMV will impose a sanction appropriate for the particular violation. In determining an appropriate sanction, DMV may use the matrix out-

ADMINISTRATIVE RULES

lined in OAR 735-160-0125 as a guideline and may consider the following criteria:

- (a) The severity of the violation or its impact on the safety of the public;
 - (b) The number of similar or related violations;
 - (c) Whether the violations were willful or intentional; and
 - (d) The history of prior sanctions imposed by DMV.
- (3) DMV will impose sanctions when it determines violations have occurred or are occurring. These may include one or more of the following:
- (a) A written warning, including correction notices;
 - (b) Suspension of the School Certificate and the right to apply for a School Certificate for up to one year;
 - (c) Suspension of the Instructor Certificate and the right to apply for an Instructor Certificate or renewal of an Instructor Certificate for up to one year;
 - (d) Revocation of the School Certificate and the right to apply for a School Certificate or renewal of a School Certificate for up to five years;
 - (e) Revocation of the Instructor Certificate and the right to apply for an Instructor Certificate or renewal of an Instructor Certificate for up to five years.
- (4) DMV may cancel, suspend or revoke a School Certificate or an Instructor Certificate if the school, the operator or the instructor fail to maintain the eligibility requirements under ORS 822.500 to 822.535 and these OAR Division 160 rules.
- (5) An Operator or Instructor whose certificate has been suspended, revoked, or cancelled is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.
- (6) When DMV takes action to suspend, revoke or cancel a School Certificate DMV will send notice to the Operator listed on the School Certificate. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with DMV.
- (7) When DMV takes action to suspend, revoke or cancel an Instructor Certificate DMV will send notice to the Instructor listed on the Instructor Certificate. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (for an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with DMV.
- (8) Except as provided in section (9) of this rule, a request for a hearing must be submitted in writing to, and received by, the Office of Administrative Hearings within 20 days of the date of the notice. If a hearing request is received in a timely manner the suspension, revocation or cancellation will not go into effect pending the outcome of the hearing, unless the certificate is immediately suspended or cancelled.
- (9) If the certificate is immediately suspended or cancelled as set forth in OAR 735-160-0125, the request for hearing shall be submitted in writing to, and received by, DMV within 90 days of the date of notice of suspension. The suspension or cancellation shall remain in effect pending the outcome of the hearing.
- (10) Except as provided in OAR 137-003-0003, when no request for a hearing is received by the deadline, the Operator or Instructor has waived the right to a hearing, DMV's file shall constitute the record of the case, and a default order shall be issued by DMV.
- (11) If a School Certificate or Instructor Certificate has been revoked, the Operator or Instructor may reapply for an original certificate after a period of revocation of five years and must meet all the requirements for the certificate.
- (12) If the School Certificate or Instructor Certificate is cancelled, the Operator or Instructor may reapply for an original certificate when they have met all of the requirements for a certificate and fees are paid in accordance with ORS 822.700.
- (13) At the end of a suspension period, DMV will reinstate the School Certificate or Instructor Certificate unless the certificate has expired or the Operator or Instructor does not meet the qualification requirements for the certificate. If the certificate has expired, the operator or instructor must reapply for an original certificate, must meet all the requirements for new certification, and pay fees in accordance with ORS 822.700.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515, 822.530
Stat. Implemented: ORS 822.515
Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0125

Sanctions

DMV adopts the following matrix of sanctions for School Operator and Instructor violations. As used in this rule, an offense will be considered a second or subsequent offense if it occurred within three years from the date the operator or instructor was notified in writing of the occurrence of the same or a substantially similar offense in another jurisdiction. DMV will not sanction as a second or third/subsequent offense if more than three years have passed from the date of the previous violation for the same or similar offense. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 814.619, 802.010, 822.515, 822.530.
Stat. Imp.: ORS 822.515 – 822.530
Hist.: DMV 15-2005, f. & cert. ef. 5-19-05

735-160-0130

Code of Ethics and Rules of Conduct

(1) Each Operator and each Instructor accepts the responsibilities and requirements of the driver training profession. Each Operator and Instructor must adhere to the highest ethical standards of professional conduct.

(2) To fulfill their obligations to the public and to DMV, the Operator and Instructor shall:

(a) Recognize that the instruction and training of student drivers is a position of trust;

(b) Exhibit competence and wisdom in conducting professional responsibilities;

(c) Uphold and obey the law, including but not limited to the provisions of the Motor Vehicle Code; and

(d) Maintain and uphold the highest educational standards possible for instructing and training student drivers.

(3) Rules of Conduct. An Operator and Instructor will not engage in or knowingly allow any owner, officer, agent, director, manager, or employee of a School to engage in any of the following:

(a) Assist or knowingly allow a student driver to fraudulently obtain driving privileges for which the student driver is ineligible or has not qualified;

(b) Discriminate against a student driver because of race, religion, national origin, disability, age, sex, or sexual orientation;

(c) Have sexual contact with, or request sexual contact from, a student driver. For purposes of this section, "sexual contact" means:

(A) Sexual intercourse; or

(B) Any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either party;

(d) Make sexual advances either verbally or physically or request sexual contact from any student driver, whether directly, indirectly or by innuendo;

(e) Use physical force or a threat of physical force against a student driver, unless such force or threat is necessary to avoid immediate danger to the safety of the student driver, the Operator or Instructor, employees of the school, passengers in a vehicle being used for behind-the-wheel instruction, or the general public;

(f) Possess any unlawful controlled substance or intoxicating beverage or be under the influence of any intoxicating beverages, drugs or controlled substances while training or instruction is being provided to student drivers;

(g) Falsify any document or make a misrepresentation on the application for a school or Instructor Certificate;

(h) Refer any student driver to a particular DMV certified third-party tester or examiner for DMV testing purposes; and

(i) If also certified as a DMV third party tester or examiner, test an applicant for driving privileges if the applicant was enrolled as a student driver at the School.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.515, 822.530
Stats. Implemented: ORS 822.530
Hist.: MV 2-1993, f. & cert. ef. 2-16-93; DMV 15-2005, f. & cert. ef. 5-19-05

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

Adm. Order No.: HWD 4-2005(Temp)

Filed with Sec. of State: 5-20-2005

Certified to be Effective: 6-1-05 thru 11-27-05

Notice Publication Date:

Rules Amended: 734-082-0030

ADMINISTRATIVE RULES

Subject: OAR 734-082-0030 addresses allowable rear overhang for loads on combinations of vehicles in operation with a variance permit. The proposed rule is necessary to allow the Administrator of the Motor Carrier Transportation Division to determine when a load with rear overhang that exceeds the current limits in OAR 734-082-0030 may be approved to operate over Oregon highways. Approval will be granted if the Administrator determines the movement is in the public interest and can be done safely. The rule balances the safety of the traveling public on the Interstate highway system with legitimate Oregon economic interests.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-082-0030 Overhang

(1) Permits are required for excessive front and/or rear overhang as follows:

(a) Front overhang: When any load, including crane booms, log grapples, conveyors, cement chutes, loading buckets, etc., extends more than four feet beyond the front bumper or foremost part of the vehicle or combination of vehicles;

(b) Rear overhang — Solo vehicle: Single trip or continuous trip — If the rear overhang exceeds 3/4 of the wheelbase of the vehicle. A permit may be issued allowing a maximum rear overhang equal to the wheelbase of the vehicle provided front overhang does not exceed four feet;

(c) Rear overhang — Combination of vehicles. If rear overhang exceeds 1/3 of the wheelbase of the combination of vehicles, a single trip permit may be issued for a rear overhang not to exceed 1/2 of the wheelbase of the combination of vehicles, except that:

(A) Continuous trip permits for truck-tractor with semitrailer combinations may be issued for rear overhang not to exceed 1/2 of the wheelbase of the combination of vehicles for designated routes when a permit is issued for load length not in excess of 70 feet and overall length is not in excess of 80 feet, and when movement is on routes approved for these permits by the Chief Engineer; or

(B) Continuous trip permits may be issued for rear overhang that exceeds the limits imposed in this subsection if the Administrator of MCTD determines that the public interest is benefited by the impending movement, and the movement can be performed safely.

(2) Wheelbase measurement will be from the center of the first axle to the center of the last axle of the vehicle or combination of vehicles.

(3) Rear overhang will be measured from the center of the last axle of the vehicle or combination of vehicles to the end of the load.

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

Stats. Implemented: ORS 818.100, 818.200 & 818.220

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 4-2005(Temp), f. 5-20-05, cert. ef. 6-1-05 thru 11-27-05

Department of Veterans' Affairs Chapter 274

Adm. Order No.: DVA 4-2005(Temp)

Filed with Sec. of State: 6-3-2005

Certified to be Effective: 6-3-05 thru 11-30-05

Notice Publication Date:

Rules Amended: 274-020-0345, 274-045-0080

Subject: This Temporary rule amends the requirement that, in order to obtain a home loan through the Department, the veteran borrower must have equity in the property at the time of purchase. This amendment will also help the loan program provide loans to a larger number of veterans and remain solvent.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-020-0345

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the minimum Federal National Mortgage Association (FNMA) credit underwriting requirements as set forth in **FNMA Selling Guide**, a copy of which is on file with the Department of Veterans' Affairs.

(2) The veteran applicant may be required to have an equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state and local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary, and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407.115, 407.125 & 407.225

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 7-1982, f. & ef. 3-15-82; DVA 3-1991, f. 5-30-91, cert. ef. 6-3-91; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05

274-045-0080

Approval of the Loan

The approval of any loan shall be dependent upon the following:

(1) The veteran applicant must meet the minimum Federal National Mortgage Association (FNMA) credit underwriting requirements as set forth in **FNMA Selling Guide** (Guide), where not inconsistent Oregon Revised Statutes. A copy of the Guide is on file with the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon 97301-1285, and may be viewed during normal business hours.

(2) The veteran applicant may be required to have equity in the property.

(3) Secondary financing may be permitted.

(4) Construction shall meet the minimum standards set by federal, state or local laws.

(5) A performance bond may be required for new construction.

(6) Inspections to prove the premises safe, sanitary and structurally sound may be required, and the loan may be refused if the construction is inferior.

(7) The security shall be served by adequate means of legal and physical access and shall have an acceptable potable water supply.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 406.030, 407.115, 407.135, 407.145, 407.275, 407.305 & 407.375

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 4-2005(Temp), f. & cert. ef. 6-3-05 thru 11-30-05

Landscape Architect Board Chapter 804

Adm. Order No.: LAB 2-2005

Filed with Sec. of State: 5-18-2005

Certified to be Effective: 5-18-05

Notice Publication Date: 4-1-05

Rules Amended: 804-001-0002, 804-040-0000

Subject: The Board sets the budget amount for the 2005-07 biennium at \$281,500 in OAR 804-001-0002. The Board increases the annual renewal fee for registration of a Landscape Architect by \$25.00 from \$225 annually to \$250 annually in OAR 804-040-0000.

Rules Coordinator: Susanna R. Knight—(503) 589-0093

804-001-0002

Biennial Budget

Pursuant to the provisions of ORS 182.462, following a public hearing held May 13, 2005, the Board adopts by reference the Oregon Landscape Architects Board 2005-2007 biennial budget of \$281,500 covering the period July 1, 2005, through June 30, 2007. The Board Administrator, with the approval of the Board, will amend budgeted accounts as necessary, within the approved budget of \$281,500, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying all registrants, and holding a public hearing. Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 671.415, 182.462 & 670.310

Stats. Implemented: ORS 671.415, See 1999 OL, Ch. 1084

Hist.: LAB 1-1997(Temp), f. & cert. ef. 9-3-97; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05

804-040-0000

Fees

The following are fees established by the board:

(1) Landscape Architect Registration Examination: an amount equal to the cost of purchasing the exam, or portions of the exam, from CLARB,

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plus the cost of postage, handling, examination site facilities and staff time for administration of the exam.

- (2) Initial Landscape Architect registration: \$225.00.
 - (3) Initial Landscape Architect in Training registration: \$50.00.
 - (4) Registration renewal for Landscape Architect: \$250.00.
 - (5) Registration renewal for Landscape Architect in Training: \$50.00.
 - (6) Exam application fee (required to review qualifications to sit for each exam): \$50.00.
 - (7) Reciprocity application fee: \$100.00.
 - (8) Duplicate certificate: \$50.00.
 - (9) Late renewal fee: \$100.00: Lapsed Registration Fee to equal the full renewal fee plus late fee for each year the license has lapsed.
 - (10) Initial certification as an Authorized Business Entity in Landscape Architecture: \$225.00.
 - (11) Renewal fee for an Authorized Business Entity in Landscape Architecture: \$225.00.
 - (12) Emeritus Annual fee: \$25.00.
- Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.365
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05

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Landscape Contractors Board
Chapter 808

Adm. Order No.: LCB 3-2005

Filed with Sec. of State: 6-1-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 5-1-05

Rules Amended: 808-001-0008

Subject: 808-001-0008 - Adopt 2005-2007 Biennium Budget.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-001-0008

Operating Budget

Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2005, and ending June 30, 2007, as approved at the Regular Board Meeting held May 20, 2005. The Board Administrator will amend budgeted accounts as necessary, within the approved budget for the effective operation of the Board. Copies of the budget are available at the Board's office.

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

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 182.462

Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 3-2005, f. & cert. ef. 6-1-05

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Oregon Department of Aviation
Chapter 738

Adm. Order No.: AVIA 1-2005

Filed with Sec. of State: 5-23-2005

Certified to be Effective: 5-23-05

Notice Publication Date: 4-1-05

Rules Amended: 738-020-0025

Subject: A rule amendment is proposed to delete subsection (5) of OAR 738-020-0025. Oregon Law (ORS 836.085) allows the Department to charge up to \$300.00 (in addition to a nonrefundable fee of \$75) to pay for the cost of inspecting and approving an airport site. Subsection (5) requires calculation of partial costs for airport site investigations to allow for refunds from the \$300 charge. It requires the inspector to calculate certain actual "allowable costs" for per diem, lodging, and motor pool charges. If the total was less than \$300, the remainder would be refunded to the applicant. The Department did not include staff labor cost, or travel by other than state motor pool vehicles, as part of the allowable costs. The staff has studied past airport site inspections and finds that if labor and other travel costs were included (as is permitted by law but not by the rule), the costs would generally exceed \$300. Rather than require individual calculations, the staff proposes to charge the full \$300 for each

inspection. The result would be a standard \$300 fee for all site investigations.

Rules Coordinator: John Wilson—(503) 378-4880, ext. 228

738-020-0025

Application for Site Approval

(1) Except as provided in ORS 836.080, OAR 738-020-0030 or as approved by the FAA after a site selection study, no municipality or officer or employee thereof, nor any person, shall construct or establish an airport or heliport without first having obtained an approval from the Department for the proposed site.

(2) The provisions of this rule apply equally to establishment of new airports or heliports or substantial modification of existing facilities. Substantial modification is construed to mean any significant change of physical dimensions, as determined by the Director, or any change of physical conditions which causes the airport or heliport to become either unsafe or unusable for the aeronautical purposes for which the original license was issued. Substantial modification of existing facilities may be exempt from the provisions of this section if those modifications are constructed as a result of an FAA airport improvement project. To keep the Department informed as to the modifications made to an airport, a copy of the FAA approved Airport Layout Plan and the final "as constructed" plans shall be furnished to the Department.

(3) Written application for site approval shall set forth, on a form provided by the Department, the proposed use of the airport or heliport, a map, plan, or sketch depicting location, layout, dimensions, topographic features, obstructions, and relationship to all other aeronautical facilities within five miles. Payment of a nonrefundable fee of \$75, together with \$300 for the cost of inspecting an airport site for potential approval, as established by ORS 836.085(1), shall accompany the application.

(4) Within a reasonable time after receiving such application, the Director will render a finding as to whether the proposed airport is compatible with the State Aviation System Plan. If found to be compatible, an the Department inspector will then make a physical site investigation to evaluate certain aspects of the proposed site, including, but not limited to:

(a) All real property devoted to or to be used in connection with any aeronautical activity at the proposed airport;

(b) The location of the airport in relation to any surrounding topography, trees or structures that could affect the safety of the airport;

(c) The location and configuration of the proposed airport's runways and operation areas in relation to those of existing and approved airports or airport sites in the vicinity that could affect the safety of aircraft operating from the proposed airport, or from other airports.

(5) If satisfied that the site will meet aeronautical safety standards for the proposed use of the airport or heliport, as well as safety of adjoining property, the Department will issue a provisional site approval. If not satisfied, the Department will deny site approval or may make suggestions as to how the site can meet the standards.

(6) The Department shall forward provisional site approval to the proponent of the airport or heliport and also provide a copy of the approval to the appropriate local planning/zoning bodies for review and comment. If no significant adverse comment is received within thirty days, and upon receipt of evidence that the proponent has notified the FAA, on the appropriate form, of this intent to establish an airport or heliport, the Department shall issue final site approval.

(7) If the proposed airport site is found not to be compatible with the State Aviation System Plan as provided in section (4) of this rule, or is for any other reason not inspected, the refundable inspection fee shall be returned to the applicant.

Stat. Auth.: ORS 184.616, 184.619, 835.035 & 836.085

Stats. Implemented: ORS 836.085 & 836.095

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 1-1998, f. & cert. ef. 2-25-98; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 1-2005, f. & cert. ef. 5-23-05

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Oregon Liquor Control Commission
Chapter 845

Adm. Order No.: OLCC 3-2005

Filed with Sec. of State: 5-16-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 12-1-04

Rules Amended: 845-015-0143

Subject: This rule lists the items a retail sales agent may sell in an exclusive retail sales agency. The list of allowed related items includes such things as ice and mixers, foods used in drinks, glass-

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ware, chewing gum and tobacco. The Commission has amended this rule to allow exclusive retail sales agents to sell liquor logo branded giftware and apparel.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-015-0143

Sale of Related Items

(1) In an exclusive retail liquor store, the retail sales agent may sell only distilled spirits distributed by the Commission and related items.

(2) Related items are:

(a) Ice and mixers;

(b) Foods used in drinks, such as olives, onions and cherries;

(c) Bartender's guides, shakers, strainers, mixing spoons, swizzle sticks and similar tools used in preparing drinks;

(d) Glassware, coasters, straws, napkins and other such items associated with drinking alcoholic liquor;

(e) Liquor branded logo giftware and apparel; and

(f) Items such as chewing gum, breath mints and tobacco products.

(3) Only the retail sales agent may conduct business out of an exclusive retail liquor store. This business must be authorized by statute or Commission rule.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 25-1980, f. 9-30-80, ef. 1-1-81; LCC 19-1986, f. 10-16-86, ef. 1-1-87; OLCC 24-1987, f. 12-9-87, cert. ef. 1-1-88; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0045; OLCC 3-2005, f. 5-16-05, cert. ef. 6-1-05

Adm. Order No.: OLCC 4-2005

Filed with Sec. of State: 6-7-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 3-1-05

Rules Amended: 845-009-0010, 845-009-0015

Subject: These two rules list requirements for who must have a service permit, and how licensees must ensure that employees who sell and serve alcohol, or manage those who sell and serve alcohol, must apply for or have valid service permits before they begin work as servers. We need to make a housekeeping change to one rule, and a slight change to another to clarify that managers who supervise those who sell and serve alcohol must have service permits.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-009-0010

Service Permit Requirements

(1) Who Needs a Service Permit. ORS 471.360 requires the following persons to have service permits:

(a) Any person who mixes, sells or serves alcoholic beverages for consumption on licensed premises;

(b) Any person who directly supervises persons who mix, sell or serve alcoholic beverages for consumption on licensed premises;

(c) The individual principals of a licensed corporation or partnership who mix, sell or serve alcoholic beverages for consumption on licensed premises or who directly supervise those who do;

(d) Any licensee's employee who delivers wine, cider, or malt beverages as OAR 845-005-0420, 845-005-0422, 845-006-0396, and 845-006-0398 allow.

(2) Exceptions. The following are exceptions to the service permit requirement:

(a) An individual named on the license as a licensee does not need a service permit;

(b) ORS 471.360 allows the Commission to waive the service permit requirement if the licensee's primary business is not the sale or service of alcoholic beverages or food. Under this authority, the Commission waives the service permit requirement for Public Passenger Carriers whose primary business is transportation (for example airlines, and most trains), and does not waive the requirement for Public Passenger Carriers whose primary business is touring (for example tour boats in Oregon waters more than 30 days per calendar year, and small excursion-type railroads). The Commission waives the service permit requirement for some temporary licenses (see OAR 845-005-0440(9), Temporary Sales Licenses). Employees must, however, be at least 21 years old to sell or serve alcoholic beverages on these licensed premises.

(3) Authority to Sell and Serve Based on an Application:

(a) ORS 471.375 allows some service permit applicants to begin selling or serving alcoholic beverages after the applicant completes an official

service permit application and an authorized person as defined by ORS 471.375 endorses and sends the application to the Commission;

(b) The authority to sell or serve alcoholic beverages based on an application does not apply to any applicant:

(A) Who has had a service permit denied or cancelled within the three years before the current application;

(B) Who has had a service permit denied because they failed to complete the required alcohol server education program. When the applicant completes an alcohol server education course and passes the exam, the applicant may then sell and serve alcoholic beverages;

(C) Whose service permit application meets the criteria in OAR 845-009-0005, Return of Applications;

(D) Whose service permit is currently suspended.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.360, 471.365(2) & 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05

845-009-0015

Licensee and Authorized Person's Responsibility for Verifying Identification

(1) Before allowing anyone who is required to have a service permit to mix, sell, serve or to supervise those who mix, sell or serve alcoholic beverages for on-premises consumption, a licensee must:

(a) Make sure the person has a valid service permit; and

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description).

(2) If the person does not have a service permit but has filed an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages for on-premises consumption:

(a) Verify that the person has a pending application (for example, see a copy of the service permit application the person filed or call the person's former employer);

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description); and

(c) Verify the person's age.

(3) If the person does not have a service permit or a pending application, the licensee must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission by the end of the first work day following the person's first work shift.

(4) If the person does not have a service permit or has a pending application, the licensee has a continuing duty to verify that the person has taken and passed a Server Education course, and that the person's service permit has been issued.

(5) All other persons authorized to indorse applications under ORS 471.375 must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission within 36 hours of indorsement. Holidays and weekends are not included in counting the 36 hours.

(6) If a company authorized by ORS 471.375(2)(b) fails to follow the standards of OAR 845-009-0015(5), the Commission will rescind the company's approval to indorse service permit applications.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1)

Stats. Implemented: ORS 471.360(1), 471.365(2) & 471.375

Hist.: OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 20-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05

Oregon Patient Safety Commission Chapter 325

Adm. Order No.: PSC 1-2005

Filed with Sec. of State: 6-8-2005

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Certified to be Effective: 6-8-05

Notice Publication Date:

Rules Adopted: 325-001-0005

Subject: The Commission adopts, in their entirety, the Attorney General's Uniform and Model Rules of Procedure dated January 14, 2004. These rules will regulate the Commission's rulemaking activities and any contested case proceedings.

Rules Coordinator: James C. Dameron—(503) 731-4017

325-001-0005

Model Rules of Procedure

The Patient Safety Commission adopts, in their entirety, the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act dated January 14, 2004.

Stat. Auth.: ORS 442.820 & Sec. 9, Ch. 686, OL 2003

Stats. Implemented: ORS 183.341

Hist.: PSC 1-2005, f. & cert. ef. 6-8-05

Adm. Order No.: PSC 2-2005(Temp)

Filed with Sec. of State: 6-14-2005

Certified to be Effective: 7-1-05 thru 12-27-05

Notice Publication Date:

Rules Adopted: 325-005-0010

Subject: This rule establishes the Commission's biennial budget at \$945,299. It covers the period from July 1, 2005 through June 30, 2007.

Rules Coordinator: James C. Dameron—(503) 731-4017

325-005-0010

Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Safety Commission's 2005-2007 Biennial Budget of \$945,299 covering the period July 1, 2005, through June 30, 2007. The Commission's Administrator will amend budgeted accounts as necessary, within the approved budget of \$945,299, for the effective operation of the Commission. The Commission will not exceed the approved 2005-2007 Biennium Budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820 & Sec. 9, Ch. 686, OL 2003

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

Hist.: PSC 2-2005(Temp), f. 6-14-05, cert. ef. 7-1-05 thru 12-27-05

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 5-2005(Temp)

Filed with Sec. of State: 5-20-2005

Certified to be Effective: 5-20-05 thru 11-11-05

Notice Publication Date:

Rules Amended: 177-100-0010, 177-100-0180

Subject: A definition of "service" and "video lottery terminal" is being added to OAR 177-100-0010. OAR 177-100-0180 is being amended to clarify the process and requirements for obtaining approval to manufacture and service gray machines in Oregon as authorized by ORS 167.117(9)(c)(C).

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-100-0010

Definitions

For purposes of division 100, the following definitions apply except as otherwise provided in OAR chapter 177, or unless the context requires otherwise:

(1) "Certification" means the inspection process used by the Lottery to approve video lottery terminals and games.

(2) "Decal" means the stamp displayed by the Lottery upon a video lottery terminal to provide notice that the terminal is authorized by the Lottery.

(3) "Display" means the visual presentation of video lottery game features shown on the screen of a video lottery terminal.

(4) "Gray machine" means a gambling device as described in ORS 167.117(9).

(5) "Manufacturer" means any individual, partnership, corporation, trust, association, joint venture, limited liability company, or other business entity that manufactures, assembles, services, or produces video lottery terminals or gray machines in Oregon.

(6) "Service" means the activities of a manufacturer related to the maintenance, repair, testing, or quality assurance of gray machines.

(7) "Video lottery" or "Video lottery game" means a lottery conducted through video lottery terminals that are monitored by a central computer system.

(8) "Video lottery terminal" is a device operated under the authority of the Oregon State Lottery and has the meaning set forth in OAR 177-010-0003(22).

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

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 6-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 14-2003, f. & cert. ef. 9-29-03;

LOTT 5-2005(Temp), f. & cert. ef. 5-20-05 thru 11-11-05

177-100-0180

Approval for Instate Manufacturing and Servicing of Gray Machines Shipped Out-of-State

(1) **General Approval:** A manufacturer shall apply to the Director of the Oregon Lottery for approval to manufacture or service gray machines within Oregon.

(a) **Director's Approval:** The Director may authorize a manufacturer to manufacture or service gray machines within the state of Oregon only if the manufacturer intends to export the gray machines to another state or jurisdiction where the operation or possession of the machines is legal. The Director shall require a manufacturer to cite the law that authorizes the legal operation or possession of the machines in the state or jurisdiction, and may require additional evidence that the gray machines will be sold or otherwise provided to a person who is authorized to operate or possess the machines in that jurisdiction. The authorization includes approval to engage in ongoing research and development related to the improvement and development of video lottery terminals the manufacturer intends to manufacture.

(b) **Disclosure Requirements:** The manufacturer is subject to the same disclosure and background investigation requirements as an applicant for a major procurement. The manufacturer may be required by the Director to reimburse the Lottery for the costs of background investigations.

(c) **Inspections and Audits:** A manufacturer's premises, and all production, shipping, service, and financial records, shall be made available for routine and unannounced inspections and audits by the Assistant Director of Security. A manufacturer shall provide to the Lottery, upon request of the Assistant Director for Security, a report listing: the types and numbers of gray machines manufactured; the types and number of machines in storage; the types and number of machines serviced; the name and address of each individual or entity who purchased, leased, or otherwise was provided gray machines or who agreed or expressed an intent to purchase, lease, or otherwise acquire gray machines, or who own, operate, or otherwise possess gray machines serviced by the manufacturer; the number of shipments; destinations of all shipments; and methods of shipment, including carrier used. The information in the report shall be for a time period designated by the Assistant Director for Security. Shipment or transport of gray machines to a destination outside of Oregon also must comply with OAR 177-100-0160.

(2) **Temporary Approval:** The Director may temporarily authorize a manufacturer to manufacture or service gray machines within the state of Oregon that the manufacturer intends to export to another state or jurisdiction where the operation or possession of the machines is legal. The temporary authorization is subject to such terms, conditions, or limitations as the Director deems necessary.

(a) The manufacturer must submit the following:

(A) The information required by ORS 461.410(1);

(B) A written description of the proposed use of the gray machines;

(C) A cite for the law that authorizes the legal operation or possession of the gray machines in the state or jurisdiction where the machines will be used; and

(D) The identity of the individuals or entities who have agreed to or have expressed an intent to purchase or otherwise acquire gray machines from the manufacturer, or who own, operate, or otherwise possess gray machines serviced by the manufacturer.

(b) When the Lottery receives the above materials for temporary approval, the Lottery will conduct an abbreviated background investigation of the manufacturer. The investigation includes, but is not limited to:

(A) A computerized criminal background check of all control persons and any employee deemed necessary by the Assistant Director for Security.

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(B) A credit check using the services of a commercial credit reporting company; and

(C) An inspection of the manufacturer's business premises where the gray machines will be manufactured or serviced.

(c) If the Director issues a temporary approval, it is effective for no longer than 180 days.

(3) **Cancellation of Approval:** The Director may cancel any general or temporary approval if the Director determines that the manufacturer has failed to adhere to the qualifications or conditions required for authorization of the manufacturer or otherwise poses a threat to the integrity, security, or honesty of the Lottery. Approval also may be cancelled if within a reasonable time from the date of production, the manufacturer is unable to show the machines have been purchased, leased, or otherwise acquired by a person or entity authorized to obtain or possess the machines.

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

Stats. Implemented: ORS 167.117 & 167.164

Hist.: LC 7-1991(Temp), f. & cert. ef. 10-28-91; LC 8-1991, f. & cert. ef. 11-25-91; LOTT 6-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 14-2003, f. & cert. ef. 9-29-03; LOTT 5-2005(Temp), f. & cert. ef. 5-20-05 thru 11-11-05

Oregon University System, Eastern Oregon University Chapter 579

Adm. Order No.: EOU 1-2005

Filed with Sec. of State: 5-16-2005

Certified to be Effective: 5-16-05

Notice Publication Date: 4-1-05

Rules Amended: 579-020-0006

Subject: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Lara Moore—(541) 962-3773

579-020-0006

Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2005-06 school year.

[ED NOTE: Fee list referenced is available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05

Oregon University System, Oregon Institute of Technology Chapter 578

Adm. Order No.: OIT 1-2005

Filed with Sec. of State: 6-10-2005

Certified to be Effective: 6-10-05

Notice Publication Date: 5-1-05

Rules Amended: 578-041-0030

Subject: 578-041-0030 - Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2005-2006. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Office.

Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-041-0030

Special Institution Fees and Charges

The Schedule of Special Institution Fees and Charges establishes charges for selected courses and general services for Oregon Institute of Technology for the academic year 2005-06 and are hereby adopted by reference. Copies of this fee schedule may be obtained from the Oregon Institute of Technology Business Office.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070(2)

Hist.: OIT 1-1985, f. 1-10-85, ef. 2-1-85; OIT 1-1986, f. & ef. 9-4-86; OIT 4-1991, f. & cert. ef. 7-22-91; OIT 5-1992, f. & cert. ef. 9-24-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1995, f. & cert. ef. 7-7-95; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 2-1996, f. & cert. ef. 12-

19-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 1-2003, f. & cert. ef. 6-11-03; OIT 1-2004, f. & cert. ef. 6-9-04; OIT 1-2005, f. & cert. ef. 6-10-05

Adm. Order No.: OIT 2-2005

Filed with Sec. of State: 6-10-2005

Certified to be Effective: 6-10-05

Notice Publication Date: 5-1-05

Rules Amended: 578-072-0030

Subject: 578-072-0030 - Amendments allow for increases of parking permit and fees for fiscal year 2005-2006. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Office.

Rules Coordinator: Ceilia E. Foster—(541) 885-1105

578-072-0030

Parking Permit and Fees

Amendments allow for increases of parking permits and fees for fiscal year 2005-2006. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Office.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: OIT 2, f. & ef. 9-7-76; OIT 10, f. & ef. 6-6-77; OIT 1-1978, f. & ef. 6-5-78; OIT 1-1979, f. & ef. 6-8-79; OIT 6-1980, f. & ef. 6-9-80; OIT 3-1985, f. 8-5-85, ef. 9-1-85; OIT 1-1988(Temp), f. 6-20-88, cert. ef. 7-1-88; OIT 3-1991, f. & cert. ef. 7-8-91; OIT 2-1992, f. & cert. ef. 7-21-92; OIT 1-1993, f. & cert. ef. 9-24-93; OIT 1-1994, f. & cert. ef. 8-25-94; OIT 1-1996, f. & cert. ef. 9-11-96; OIT 1-1997, f. & cert. ef. 12-31-97; OIT 2-1998, f. & cert. ef. 11-12-98; OIT 1-1999, f. & cert. ef. 8-26-99; OIT 1-2000, f. & cert. ef. 7-7-00; OIT 1-2001, f. & cert. ef. 7-19-01; OIT 1-2002, f. & cert. ef. 7-15-02; OIT 2-2005, f. & cert. ef. 6-10-05

Oregon University System, Oregon State University Chapter 576

Adm. Order No.: OSU 1-2005

Filed with Sec. of State: 6-13-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 5-1-05

Rules Amended: 576-010-0000

Subject: The amendment will set fees and charges for designated services at Oregon State University for fiscal year 2005-2006. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2005-2006. The List of Fees and Charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."

Rules Coordinator: Bonnie Dasenko—(541) 737-2474

576-010-0000

Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2005-2006. This List of Fees and Charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

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

Stat. Auth.: ORS 351.070, 352.360 & 580.040-0010

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05

Oregon Watershed Enhancement Board Chapter 695

Adm. Order No.: OWEB 3-2005

Filed with Sec. of State: 6-8-2005

Certified to be Effective: 6-8-05

Notice Publication Date: 4-1-05

Rules Adopted: 695-035-0015

ADMINISTRATIVE RULES

Rules Amended: 695-035-0010, 695-035-0020, 695-035-0030, 695-035-0040, 695-035-0050, 695-035-0060, 695-035-0070

Subject: The Small Grant Program, established in 2002, provides funding through a competitive grant process for watershed restoration projects of \$10,000 or less. The revised rules address in part: 1) Small Grant Team administration of the program; and 2) eligible and ineligible projects.

Rules Coordinator: Bonnie Ashford—(503) 986-0181

695-035-0010

Small Grant Program

(1) The Oregon Watershed Enhancement Board (OWEB) may provide funding for a locally administered Small Grant Program from its Watershed Improvement Grant Fund. Funds may be allocated for the Small Grant Program in amounts and at times decided by the Board.

(2) The goals of the Small Grant Program are to:

(a) Support implementation of the Oregon Plan for Salmon and Watersheds.

(b) Support projects designed to improve water quality, water quantity, and fish and wildlife habitat. Such projects include, but are not limited to, those developed to address Total Maximum Daily Loads (TMDLs), Agricultural Water Quality Management Area Plans, urban nonpoint source pollution management plans, and the Board of Forestry's Forestry Program for Oregon.

(c) Make funds available to local Small Grant Teams to address local priority resource concerns, habitat values, and watershed functions.

(d) Encourage landowner participation in watershed improvement by making funds available more quickly than is possible through OWEB's Regular Grant Program.

(e) Treat the source of watershed health problems through technically sound projects that use proven techniques from one of the approved sources listed in OAR 695-035-0030(3), and that demonstrate benefits to aquatic species, wildlife, or watershed health across all land uses.

(f) Encourage partnerships among watershed councils, soil and water conservation districts (SWCDs), and tribes.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0015

Definitions

(1) "Small Grant" is a grant of \$10,000 or less for an eligible watershed restoration project awarded by OWEB on the recommendation of a Small Grant Team.

(2) "Small Grant Team" (Team) is composed of representatives of watershed councils, soil and water conservation districts, and tribes formed in each Small Grant Area to recommend funding for watershed restoration projects.

(3) "Small Grant Area" is a geographic area established by the OWEB Board based upon hydrologic boundaries, existing watershed restoration partnerships, and similarities in resource concerns.

(4) "Program Grant" is a grant from OWEB to a Small Grant Team to recommend as eligible Small Grants of up to \$10,000 within the Small Grant Area.

(5) "Program Grant Agreement" is a grant agreement between OWEB and a Small Grant Team regarding the allocation of Small Grant funds within a Small Grant Area by the Small Grant Team using OWEB funds.

(6) "Project Evaluation Committee" (Committee) is a group of Small Grant Team members designated by vote of the Team to evaluate Small Grant Project applications received and to make Small Grant Project award recommendations based upon the Team's adopted priority watershed concerns and eligible project types. A Team may by unanimous vote decide not to designate a Committee.

(7) "Program Administration" refers to all efforts made by Teams or individual team members on behalf of applicants or the Small Grant Team prior to a project grant award recommendation. No program administration costs may be included in Small Grant project grant awards.

(8) The "Small Grant Fiscal Agent" is responsible for managing all expenses associated with a Small Grant Project and for reporting those expenses to OWEB in a manner consistent with OWEB fiscal reporting standards. Fiscal Agents will be councils, districts, tribes, or entities designated as eligible by the Small Grant Team in their operating procedures. A Small Grant project's eligible fiscal agent will be identified on the Small Grant Project application and in the OWEB Small Grant Project grant agreement.

(9) "Project Manager for the Grantee" is the individual (typically, but not necessarily, the grantee) who will shepherd the project from start to finish. This person will serve as the Team's and OWEB's main point of contact for a project.

(10) "Team Contact" is OWEB's main point of contact for the Small Grant Team, and is also the person authorized by the Team to sign OWEB Small Grant agreements.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0020

Small Grant Program Administered by Small Grant Teams

(1) The OWEB Board may award program grants to eligible Small Grant Teams to enable the Teams to administer a Small Grant Program within a Small Grant Area. A Small Grant Team must submit a program grant application to OWEB on a designated form at times designated by the OWEB Board to be eligible to receive a program grant to administer a Small Grant program.

(2) Small Grant Program funds not used in one biennium may not be carried over by the Small Grant Team to the next biennium unless otherwise determined by the Board.

(3) The Board will only enter into new Small Grant Team agreements once Teams have submitted on a standard OWEB form, and to OWEB's satisfaction, the revised Team bylaws for the coming biennium, a revised list of the Team's priority watershed concerns and eligible project types, a revised Application Evaluation Worksheet, and all Year-Two Status Reports due in the previous biennium.

(4) Small Grant Teams will invite in writing each soil and water conservation district (SWCD) and watershed council located partially or entirely within the Small Grant Area, and each tribe with reservation, tribal, aboriginal, or ceded lands, or usual and accustom sites located partially or entirely within the Small Grant Area to appoint one representative to a Small Grant Team. Participation on a Team is voluntary. A Small Grant Team must have at least one actively participating watershed council representative and one soil and water conservation district representative to be eligible to allocate Small Grant funds. Each eligible Team may receive a program grant from OWEB to allocate Small Grant Project awards of up to \$10,000 for eligible watershed restoration projects consistent with local priority watershed concerns and eligible project types adopted by the Team.

(5) Members of each Small Grant Team are encouraged to invite individuals with expertise in a watershed restoration discipline or other watershed restoration interests to consult with the Team on its priorities, program elements, and recommendations for project grant awards.

(6) The OWEB Board will establish Small Grant Areas for the Small Grant Program. The boundaries of the Small Grant Areas will be drawn based upon hydrologic boundaries, existing watershed restoration partnerships, and similarities in resource concerns. Only one Small Grant Team may administer a Small Grant Program in each Small Grant Area. A copy of the Small Grant Area map is available upon request from OWEB and can also be viewed on the OWEB website.

(7) A Small Grant Team may petition the OWEB Board to adjust the boundaries of Small Grant Areas. If a Team has not been formed in a Small Grant Area, an organization eligible to appoint a member to a Small Grant Team may petition the Board to adjust the boundaries of Small Grant Areas. Written approval from all Small Grant Teams affected, or if a Small Grant Team has not been formed, all entities eligible to appoint a member to the Small Grant Team in that area, is required before a boundary adjustment petition may be filed with the Board.

(8) The OWEB Board will consider all boundary-adjustment petitions once a biennium at the time it considers reauthorizing Small Grant Program funds for the next biennium. The OWEB Board may choose to consider a boundary adjustment upon a valid motion by Board members, without petition by a Small Grant Team or organization that is an eligible Small Grant Team member. However, the OWEB Board will consult with affected Small Grant Teams, and if a Team has not been formed, eligible Team members in the area before considering the boundary adjustment. A decision by the OWEB Board to approve a boundary adjustment will consider one of the following:

(a) The current Small Grant Area boundaries fragment existing watershed restoration partnerships; or

(b) The current Small Grant Area boundaries fragment hydrologically connected areas or ecologically similar landscapes in a way that would make setting local restoration priorities difficult; or

(c) The current Small Grant Area boundaries encompass many different limiting factors for water quality, water quantity, and fish and wildlife

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habitat. Adjusting boundaries would improve the ability of watershed restoration partners to focus their efforts on the limiting factors with which they have expertise.

(9) Prior to submitting a program grant application to OWEB, the Small Grant Team will adopt the following program elements that will be attached as part of the program grant application:

(a) Rules of operation for administration of the Small Grant Team and the Small Grant Program, including:

- (A) Rules governing decision-making and membership;
- (B) Application processing and project grant agreement procedures;
- (C) Designation of a Team contact, and a member with authority to sign project grant agreements on behalf of the Small Grant Team;
- (D) Record keeping;
- (E) Processes and criteria for recommending project grant awards;
- (F) Processes for evaluating the technical feasibility of projects;
- (G) Processes and formats for biennial reporting;

(H) Entities, in addition to watershed councils, soil and water conservation districts, and tribes, designated by the Small Grant Team as being eligible fiscal agents; and

(I) Application acceptance windows.

(b) Priority watershed concerns to be addressed by the Small Grant Team;

(c) A list of project types most likely to effectively address the local watershed concerns adopted by the Small Grant Team. This list must be consistent with the list of eligible project types in OAR 695-035-0050(4). Teams wishing to add project types not on the list need to petition OWEB for their eligibility in their Small Grant Area. The proposed project type needs to demonstrate to the satisfaction of the OWEB Director a clear watershed benefit for the Small Grant Area. It must also be consistent with the Team's adopted priority watershed concerns, and must be referenced to one of the approved technical guidance sources listed in OAR 695-035-0030(3).

(10) The program elements adopted by the Small Grant Team will be included as an attachment to the program grant application to OWEB from the Small Grant Team. A program grant to a Small Grant Team to administer a Small Grant Program will not be awarded until the Team has adopted the required program elements.

(11) In identifying priority watershed concerns, the Small Grant Team will consider current information on the condition of the watershed and its limiting factors to support native fish and to meet water quality standards. The priority watershed concerns should be adopted with reference to documents addressing the limiting factors to:

(a) Clean Water Act standards as identified in Total Maximum Daily Load Water Quality Management Plans and in Agricultural Water Quality Management Area Plans; and

(b) Watershed assessments and action plans, other watershed analyses, the Oregon Forest Practices Act, and soil and water conservation district annual work plans and long-range business plans. Priority watershed concerns and the list of eligible project types adopted by the Small Grant Team will address the source of watershed health problems, and not the effects.

(12) Small Grant Teams may designate members of the Team as a Project Evaluation Committee to evaluate Small Grant Project applications in lieu of the entire Team. If established, this Committee will have equal representation from soil and water conservation district and watershed council Team members. The Team, or if designated, its Committee, will select applications to recommend for funding based on its priority watershed concerns, eligible project types, and the technical merits of the project. The Small Grant Team, or if designated, the Committee, is encouraged to invite technical experts to assist in the evaluation of proposed projects.

(13) Each Small Grant Team will develop application evaluation criteria that will be based on the questions asked in the application, as well as on additional evaluation considerations listed by Teams in their operating procedures. Evaluation criteria will be attached to a Team's operating procedures. Teams will make available to applicants the evaluation criteria along with the Team's list of priority watershed concerns and eligible project types.

(14) Small Grant Teams will establish in their operating procedures the terms by which they receive and act on applications. At a minimum, Teams will establish two-week windows four times in the State fiscal year (July 1 through June 30) during which they or their designated committee will receive applications. Teams may also accept applications at any time throughout the State fiscal year. All Teams must act within 30 days of receiving a complete application.

(15) Small Grant Teams will write their own project grant agreements, using an OWEB-provided template. Teams will create one original grant agreement and secure all relevant signatures before forwarding it to OWEB for final signature. In case of discrepancy, the OWEB signed original supersedes all other signed copies. The OWEB Director reserves the discretion to alter this arrangement as necessary.

(16) OWEB has 20 working days after receipt of the application materials to verify that the approved application is consistent with the Team's local priorities and with OWEB's statutes and administrative rules. Upon verification, OWEB will return fully executed copies of the project grant agreement to the Team Contact, listed in the Team Bylaws. OWEB will keep the original project grant agreement on file, and the Team Contact will be responsible for providing copies to all signatories. Signatories to the grant agreement will include the Grantee; Landowner; Team Contact; a representative of OWEB; and a Fiscal Agent for the Grantee, if different from the Grantee. A project grant agreement is not valid until all signatories to the agreement have signed. Project grant agreements must be signed within 90 days of the first signature on the grant agreement, or they will be considered void. Work will not begin on a project until a project grant agreement is valid. OWEB will make Small Grant Project award payments directly to the fiscal agent designated in the Small Grant Project agreement.

(17) Project maintenance and effectiveness monitoring are the responsibility of the landowner. OWEB will not pay for either, and applicants may not use any planned post-project maintenance and effectiveness monitoring as match for the OWEB project grant. However, applicants may budget for plant establishment (i.e., weeding and watering of plants over time to improve chances of successful establishment) in the Small Grant Project application, or they may put the amount estimated for plant establishment toward the required 25 percent match. OWEB will pay for no more than two years of post-project plant establishment, or up to \$1,000 for two years, which is paid for in the final payment request.

(18) The Small Grant Team will be responsible for providing the Oregon Watershed Enhancement Board and the Soil and Water Conservation Commission with a summary Biennial Report, due no later than 60 days after the close of each OWEB biennium that:

(a) Addresses:

(A) How the Team's funded projects demonstrated clear watershed benefit to aquatic species, wildlife, or watershed health.

(B) Which specific projects met the Team's high-priority watershed concerns that it identified for the biennium (show award amounts for each project).

(C) Which specific projects the Team awarded for other priority watershed concerns (show award amounts for these projects, as well).

(b) Evaluates the effectiveness of the Team's:

(A) External interactions with landowners, applicants, Grantees, project partners, and OWEB Small Grant Program staff (i.e., the challenges that faced the Team with each of these groups and whether the Team was successful at resolving them).

(B) Internal interactions with each other (i.e., the challenges that faced the Team and whether the Team was successful at resolving them).

(c) Attaches the following:

(A) Tracking sheets for recommended and denied applications for the current biennium.

(B) Revised operating procedures, priority watershed concerns, eligible project types for the coming biennium, and application evaluation worksheet, if any.

(19) The OWEB Director may authorize an independent performance audit of any Small Grant Team, and if the Director determines the Team is not complying with the rules of the Small Grant Program, may restrict future Team funds.

(20) Small Grant Teams will retain for a period of five years unsuccessful applications and copies of successful applications, as well as meeting records.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0030

Small Grant Program Application

(1) A Small Grant applicant may be a tribe, watershed council, or soil and water conservation district. These entities may act on behalf of private landowners, not-for-profit institutions, schools, community colleges, state institutions of higher education, independent not-for-profit institutions of higher education, local agencies, state agencies, or federal agencies.

ADMINISTRATIVE RULES

(2) When reviewing applications, Team members will abide by the same conflict of interest standards that apply to Oregon's public officials, as detailed in ORS 244.020.

(3) Small Grant Project applications submitted to the Small Grant Team will include a completed application form provided by OWEB, and will use technical guidance from at least one of the sources listed below in this subsection. Small Grant Project applicants will cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed. The Small Grant Team will verify the citation. If technical guidance and standards for a project are not available from one of these sources, the project is not eligible for funding under the Small Grant Program.

(a) The Natural Resources Conservation Service (NRCS) Field Office Technical Guide, and local cost share list.

(b) A Guide to Placing Large Wood in Streams (Oregon Department of Fish and Wildlife and Oregon Department of Forestry, 1995).

(c) The Oregon Road/Stream Crossing Restoration Guide (Oregon Department of Forestry, Spring 1999).

(d) Forest Practices Technical Note No. 4: Fish Passage Guidelines for New and Replacement Stream Crossing Structures (Oregon Department of Forestry, May 10, 2002).

(e) Forest Practices Technical Note No. 5: Determining the 50-Year Peak Flow and Stream Crossing Structure Size for New and Replacement Crossings Structures (Oregon Department of Forestry, May 10, 2002).

(f) The Nonpoint Source Pollution Control Guidebook for Local Government (Oregon Department of Environmental Quality and Oregon Department of Land Conservation and Development, 1994).

(g) Urban Subwatershed Restoration Manual Series #4: Urban Stream Repair Practices (Center for Watershed Protection, November 2004).

(h) Tribal Natural Resource Plans or Water Plans on Tribal Trust Lands.

(4) Only watershed councils, soil and water conservation districts, tribes, and entities designated as eligible by the Small Grant Team in their operating procedures may serve as fiscal agents for a Small Grant Project.

(5) The application budget is the Small Grant applicant's statement of how OWEB funds will be spent. Should the Small Grant Team approve the application for funding, the Grantee will only be able to bill OWEB for the line items appearing in the OWEB column in the application budget. Changes in line item amounts are permissible, with the exception of Project Management, which may change only with prior approval from OWEB. Grantees wishing to add new line items must also request prior permission from OWEB.

(6) The applicant, landowner, and fiscal agent will sign the application. Teams may write a separate cooperative agreement where multiple landowners are involved. Teams will keep the original cooperative landowner agreement on file, and all signatories, plus OWEB, will be provided copies. Project funds will not be released until OWEB has a signed copy of the cooperative landowner agreement.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0040

Small Grant Program Grants

(1) Prior to the disbursement of any Small Grant Project funds, the Grantee must sign a Small Grant Project agreement containing such terms and conditions as may be deemed necessary by the OWEB Director to ensure that the expected benefits of the project are realized, and that applicable legal requirements and any special conditions of the Board with regard to particular grants are met.

(2) Each Small Grant Project awarded will be limited to a maximum of \$10,000 per project, per landowner, per OWEB fiscal year, including technical assistance and fiscal administrative expenses.

(3) The Board will only enter into new Small Grant project agreements with a grantee once that grantee has addressed to OWEB's satisfaction all active Small Grants with outstanding advances and all expired Small Grants with outstanding advances.

(4) Fiscal administrative expenses included in each Small Grant Project may not exceed 10 percent of the OWEB grant amount for direct project costs. However, project grants for a total of \$2,000 or less may include fiscal administrative expenses up to \$200, not to exceed the total amount awarded.

(5) A change in fiscal agent requires an amendment to the original grant agreement, and must be requested in writing of the OWEB Small Grant Program.

(6) Travel expenses directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. Travel expenses will be reimbursed only in accordance with rates approved by the Department of Administrative Services and which are in effect at the time the expense was incurred. The Grantee must identify the reason or purpose for all travel expense reimbursement requests. No mileage reimbursement will be paid for the use of motorcycles or mopeds. The Small Grant Program will not reimburse for meals, lodging, or out-of-state travel.

(7) Equipment purchases directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. However, OWEB discourages the use of limited Small Grant Project funds on equipment purchases, and instead encourages Teams to work with applicants to obtain equipment through other means, such as borrowing or renting. Following project completion, equipment purchased with OWEB funds will reside with any of the following: watershed council, soil and water conservation district, tribe, local government, or a school district. These entities will make the equipment available to each other at no cost, other than nominal maintenance costs.

(8) Small Grant Project award recipients must provide evidence of at least 25 percent secured match for the Small Grant Project award prior to disbursement of grant funds by including a signature of commitment from the entity(ies) providing match on the OWEB Secured Match Form. Match must be current and specific to the Small Grant Project. The same match may not be used for multi-phased projects, unless it is divided among the phases. Applicants may attach the completed match form to their application or they may submit the form with their first grant award payment request. Disbursement of the final grant award payment requires evidence of actual match contributed, shown on the Actual Match Form. Match may include labor, volunteer time, technical assistance, materials or services provided, donated property, or cash. OWEB funding may not be used as match for a Small Grant Project funded by OWEB.

(9) All Small Grant Projects will be completed within 24 months from the date of Team approval of the application. No project completion extensions beyond 24 months will be allowed.

(10) Upon project completion, the Grantee will provide OWEB and the Small Grant Team with a copy of the Project Completion Report and color photographs with captions. Final project accounting and reporting are due no later than 60 days following the project completion date.

(11) The following standards will be applied to each Small Grant Project payment:

(a) OWEB will not pay for activities that were not covered under the project grant agreement, or did not receive prior approval from OWEB per OAR 695-035-0030(5).

(b) Each Small Grant award will be disbursed in no more than two payments.

(c) The Board will retain ten percent of project funds until the final report, as required in the grant agreement, has been approved.

(d) The first payment may consist either of an advance of up to 60 percent of the Small Grant award upon presentation of a detailed estimate of expenses for a specified time period, or of a reimbursement of expenses to date upon presentation of receipts and invoices.

(e) No funds will be released until evidence is submitted to OWEB that all required permits and licenses for the project have been granted.

(f) Receipts for the full advance amount are due within 120 days of the date OWEB issues the advance check.

(g) The second and final payment will not be disbursed until OWEB receives from the Grantee through the designated fiscal agent:

(A) Receipts and invoices for expenditures of previous fund releases, and receipts and invoices supporting the new fund release request;

(B) A spreadsheet documenting all project expenses;

(C) A completed Actual Match Form, showing all project match, which must total at least 25 percent of the amount of OWEB funds actually spent on the Small Grant Project;

(D) A satisfactory Project Completion Report and color photographs with captions of the project site; and

(E) A current Oregon Watershed Restoration Reporting Form, showing among other things, evidence of actual match contributed.

(12) Two years following receipt by OWEB of the project completion report, the individual designated in the project application will provide OWEB and the local Small Grant Team with a Year-Two Status Report. Applicants may budget for this as an expense to OWEB in the application (not to exceed \$200), or they may put the amount toward the required 25 percent match funds by showing the amount in the cost share column.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

ADMINISTRATIVE RULES

695-035-0050

Eligible Small Grant Projects

(1) The Small Grant Program will fund only those projects that:

(a) Demonstrate in the Small Grant Project application a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are consistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Adhere to OWEB administrative rules, OAR 695-005-0010–695-005-0060 and 695-050-0010–695-050-0050.

(d) Meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Are implemented in a manner consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(f) Use and clearly identify in the small grant application technical guidance from at least one of the approved sources in OAR 695-035-0030(3), and cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed.

(g) Where applicable, have been approved for technical sufficiency by the appropriate state agency, or by the appropriate tribal government for projects on Tribal Trust Lands.

(2) Small Grant Projects to be completed in phases on the same property are eligible for Small Grant Project funding, provided only one phase is submitted for funding consideration per OWEB fiscal year, and provided all phases occur at different locations on the property. In general, OWEB encourages multi-phased project applications to be submitted through the OWEB Regular Grant Program.

(3) Teams must select from the following list when identifying priority watershed concerns for their Small Grant Area:

(a) Instream Process and Function;

(b) Fish Passage;

(c) Urban Impact Reduction;

(d) Riparian Process and Function;

(e) Wetland Process and Function;

(f) Upland Process and Function;

(g) Water Quantity and Quality/Irrigation Efficiency;

(h) Road Impact Reduction.

(4) The following project types are eligible for funding. Teams are encouraged to be strategic in identifying eligible project types in an effort to better support salmon recovery objectives and Agricultural Water Quality Management Area Plans. Teams may petition OWEB to allow project types not appearing on the list, as described in OAR 695-035-0020(9)(c).

(a) Instream Process and Function.

(A) Improve Instream Habitat: place large wood, boulders, or salmon carcasses;

(B) Manage Erosion: bioengineer stream banks, slope stream banks, or develop water gaps, streambank barbs;

(C) Eradicate or Control Exotic Aquatic Species.

(b) Fish Passage.

(A) Remove Irrigation or Push-Up Dams: install alternatives (e.g., infiltration galleries, point-of-diversion transfers) or convert from gravity diversion to pumps;

(B) Remove and/or Replace Culverts (as a condition of funding, such projects require ODFW or ODF technical review and approval, or tribal government review and approval for projects on Tribal Trust Lands, using a standard OWEB form; and for culverts under state roads, a 50 percent ODOT match);

(C) Remove or Replace Stream Crossings (as a condition of funding, such projects require ODFW or ODF technical review and approval, or tribal government review and approval for projects on Tribal Trust Lands, using a standard OWEB form).

(c) Urban Impact Reduction.

(A) Install Stormwater Runoff Treatments (e.g., create bioswales, pervious surfaces, native plant buffers, green roofs);

(B) Create Off-Channel Flood Storage;

(C) Employ Integrated Pest Management.

(d) Riparian Process and Function.

(A) Manage Nutrient and Sediment Inputs through managed grazing (e.g., fencing and developing off-channel watering) and plantings;

(B) Manage Vegetation: plant or seed native riparian species, propagate native riparian plants, or control weeds in conjunction with a restoration project;

(C) Employ Integrated Pest Management.

(e) Wetland Process and Function.

(A) Manage Nutrient and Sediment Inputs: fence out livestock or develop alternative watering sites;

(B) Manage Vegetation: control weeds (in conjunction with a restoration project), or plant native wetland species;

(C) Restore Wetlands: excavate or remove fill, or eliminate drainage structures;

(D) Employ Integrated Pest Management.

(f) Upland Process and Function.

(A) Manage Erosion on Agricultural Lands: terrace land; employ laser leveling; create windbreaks; install water and sediment control basins (WASCBs); develop filter strips/grassed waterways; manage mud (e.g., gravel high-use areas, develop paddocks); seed bare areas (OWEB may require a grazing management plan, if appropriate, prior to release of funds. For post-fire areas, seed only where natural regeneration is unlikely — e.g., on slopes of 30 percent or more — or where it can be demonstrated that seeding would retard or prevent the spread of noxious weeds); or reduce tillage.

(B) Manage Nutrient and Sediment Inputs to Streams through the management of grazing, vegetation cover, animal waste, or irrigation runoff.

(C) Manage Vegetation: prescribed burning, except when conducted as part of a commercial harvest; non-commercial thinning; control/remove juniper (except late-seral/old growth); plant or seed (native upland species or native beneficial mixes preferred); or control weeds (in conjunction with a restoration project). Projects for prescribed burning to reduce fuel loads require ODF technical review and approval, or tribal government review and approval for projects on Tribal Trust Lands, using a standard OWEB form.

(D) Manage Wildlife: install water guzzlers.

(E) Employ Integrated Pest Management.

(g) Water Quantity and Quality/Irrigation Efficiency.

(A) Recharge Groundwater: roof water harvesting;

(B) Implement Irrigation Practices (e.g., pipe existing ditch, install drip or sprinkler systems, install automated soil moisture sensors where water and electrical savings can be documented, or recover or eliminate tail water). Such projects must either not adversely impact the current level of groundwater in a Groundwater Management Area, or must measurably reduce the diversion of water at the point of diversion. As a condition of funding, irrigation efficiency projects require local watermaster technical review and approval, or tribal government review and approval for projects on Tribal Trust Lands, using a standard OWEB form.

(h) Private Road Impact Reduction.

(A) Decommission Roads;

(B) Improve Surface Drainage: surface road drainage improvements, gravel surfacing, stream crossings.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0060

Ineligible Small Grant Projects

(1) The Small Grant Program will not fund projects that:

(a) Do not demonstrate a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are not consistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Do not adhere to OWEB administrative rules: OAR 695-005-0010–695-005-0060, 695-035-0010–695-035-0070, and 695-050-0010–695-050-0050.

(d) Do not meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Do not use and clearly identify in the small grant application technical guidance and standards from one of the approved sources listed in OAR 695-035-0030(3).

(f) Are at the same location as, and are identical to, projects that have already been funded, are currently being funded, or are currently being considered for funding through either the Small Grant Program or the OWEB Regular Grant Program.

(2) The following project types are ineligible for funding through the Small Grant Program:

(a) Project planning and design not done in conjunction with the implementation of funded restoration or enhancement activities.

(b) Routine maintenance.

(c) Trash removal.

(d) Fish screens and trash racks.

(e) Tide gate removal, replacement, or installation.

(f) Constructed stream bank armoring.

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(g) Development of off-channel watering systems not done in conjunction with fencing a riparian area or managing nutrient and sediment inputs in upland areas.

(h) Pond cleaning and pond creation (does not include off-channel watering systems and pump-back systems).

(i) Residential landscaping not done in conjunction with the implementation of funded riparian restoration or enhancement activities.

(j) Weed control not done in conjunction with the implementation of funded restoration or enhancement activities.

(k) Projects required as a condition of a local, state, or federal permit, order, or enforcement action (e.g., mitigation projects, manure storage and management projects that are required by a permit from ODA).

(l) Irrigation practices that adversely impact the current level of groundwater in a Groundwater Management Area, or do not measurably reduce the diversion of water at the point of diversion.

(m) Irrigation water conservation projects that propose any of the following activities:

(A) Irrigation system maintenance or renovation of existing pipe.

(B) Restoring a system that has deteriorated due to lack of maintenance and/or inadequate design.

(C) Portable pipe (does not include gated pipe) or ditch cleaning.

(D) Electrical costs resulting from conversion to pump from flood irrigation.

(n) Western juniper management that involves the removal of lateral/old growth juniper.

(o) Reforestation or tree planting on lands following a commercial harvest.

(p) Prescribed burning when conducted as part of a commercial operation.

(q) Commercial thinning.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

695-035-0070

Periodic Review and Evaluation of the Small Grant Program

Once a biennium, and in consultation with representatives of the Soil and Water Conservation Commission, tribes, and Small Grant Teams, OWEB will review annual reports submitted by Small Grant Teams and evaluate the need for program improvements and administrative rule changes.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.351 - 541.401

Hist.: OWEB 4-2004, f. 11-2-04, cert. ef. 2-1-05; OWEB 3-2005, f. & cert. ef. 6-8-05

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 12-2005

Filed with Sec. of State: 6-13-2005

Certified to be Effective: 6-13-05

Notice Publication Date: 5-1-05

Rules Adopted: 416-315-0000, 416-315-0010, 416-315-0020, 416-315-0030

Subject: OAR 416-315-0000 - Will define the process detention facilities will use to request approval and designation of youth care center programs, and the criteria the OYA will apply to review the requests. OAR 416-315-0010 - Will set criteria for the operation of youth care center programs operated within juvenile detention facilities and the review standards for designation. OAR 416-315-0020 - Will define approval notification, on-going renewal, and termination standards. OAR 416-315-0030 - Will define grievance procedures.

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-315-0000

Purpose

Oregon statute vests with the Oregon Youth Authority (OYA) the responsibility to approve youth care center (YCC) programs operated within county secure facilities, based on reasonable and satisfactory assurances that minimum standards are met. The purpose of these rules is to define the process detention facilities will use to request approval and designation of such programs, and the criteria the OYA will apply to review the requests.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.855 - 420.885

Hist.: OYA 12-2005, f. & cert. ef. 6-13-05

416-315-0010

Program Review

(1) YCC programs are designed to offer treatment and rehabilitation services to the population served. Such programs may be operated within juvenile detention facilities only when:

(a) Youth enter the YCC program through a referral and screening process that assumes that placement of the youth in a treatment environment best meets the needs of the youth and is the least restrictive placement for the youth based on review of assessments and other supporting documentation;

(b) Treatment and rehabilitation services are offered to youth separate from those offered to youth placed in detention;

(c) YCC programs are reviewed and approved by the OYA prior to implementation.

(2) The OYA will review each request to operate a YCC. That review will include:

(a) A determination whether:

(A) Physical facilities comply with applicable rules of the Department of Human Services (DHS) and the State Fire Marshal;

(B) The YCC program currently employs capable, trained, and experienced personnel;

(C) The YCC program includes educational, vocational, recreational, medical, and counseling opportunities that best meet the needs of the youth served; and

(D) A system is in place to ensure that each youth's county probation officer, or other applicable government agent, closely monitors the youth's progress in the program and participates in the planning process.

(b) A review of:

(A) YCC program policies and procedures to ensure that care and rehabilitation services are offered separate from detention program services; and

(B) The YCC treatment and rehabilitation program to ensure that it includes, at a minimum:

(i) A clearly articulated program based on research and sound theory.

(ii) A referral process that identifies a target population to be served (including definition of those youth not appropriate for placement) and a screening process to ensure appropriate placement of youth;

(iii) A written, individualized service plan for each youth that outlines the treatment goals the youth must work toward during his/her stay and the youth's transition needs. This plan will differ from those of other youth served;

(iv) A treatment environment that integrates each youth's service plan goals into the program's daily routine. This environment should be unique to each youth served;

(v) A physical environment that clearly distinguishes the YCC program from the detention environment;

(vi) A system that involves the youth's service worker closely monitoring the youth's progress in the program and participating in the youth's planning process; and

(vii) A clearly defined length of stay based on the youth's attainment of service plan goals. The youth's length of stay in the YCC program may not be influenced by space needs within the detention facility.

(C) The most recent detention facility evaluation completed by the Department of Corrections.

(D) An on-site visit to review the YCC program.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.855 - 420.885

Hist.: OYA 12-2005, f. & cert. ef. 6-13-05

416-315-0020

Approval Notification

(1) All communication between a county and the OYA will be in writing.

(2) Within 30 days following the completion of the compliance site review, the OYA will notify the county of its approval or denial of the YCC program.

(a) If approved, the county will be able to operate the YCC program for a period of two years.

(b) If denied, the OYA will issue a written denial that states:

(A) The reasons the YCC program does not meet the approval criteria;

(B) A list of corrective actions required for subsequent approval; and

(C) A timeline for implementing the corrective actions.

(3) In some cases, the OYA may issue provisional approval:

(a) For a newly-designed YCC program that has not been fully implemented (e.g. staff have not been hired; youth have not been placed).

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(b) For an operating YCC program that does not fully meet the approval criteria but requires minimal corrective action in order to comply.

(c) Provisional approvals will be issued for up to 180 days, at which time the YCC program will be re-reviewed for a regular approval.

(4) Once a county receives approval to operate a YCC program, the county must notify the OYA, in writing, when it makes YCC program changes directly related to the approval criteria. The OYA will inform the county if it determines that an on-site YCC program review is necessary to review the changes. The OYA may continue its approval only if it determines that the approval criteria are still being met.

(5) Sixty days prior to the expiration of an approval, the county will inform the OYA of its intent to continue YCC program operation. At that time, the OYA will determine whether an on-site YCC program review is warranted and inform the county.

(6) The county must notify the OYA in writing if it decides to terminate its YCC program.

(7) The OYA reserves the right to terminate its approval at any time when a YCC program no longer meets the criteria described in these rules.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.855 - 420.885
Hist.: OYA 12-2005, f. & cert. ef. 6-13-05

416-315-0030

Grievance

A county that disagrees with any OYA action or decision during the approval process may request a formal or informal hearing to grieve a particular OYA action.

(1) To request an informal grievance, the county will inform the OYA that the YCC program wishes to informally grieve a particular action.

(a) Within seven working days of receiving the request, the OYA will contact the YCC program to schedule a meeting designed to define the problem, identify the desired outcome, and establish a plan for resolution.

(b) The results of the meeting will be provided in writing to the YCC program, and include the steps necessary to initiate a formal grievance review if the county remains dissatisfied.

(2) The county will inform the OYA in writing the desire to initiate a formal grievance.

(a) Within 10 calendar days of receiving the request, the OYA will contact the YCC program to schedule a review of the matter.

(b) The review will be held within 30 calendar days of the request, unless the YCC program and the OYA mutually agree to a delay. All involved parties will be notified in writing of the date and time for the review.

(c) The review will be held at the YCC program and during normal working hours, unless the YCC program requests a different time or location, and prior authorized by the OYA.

(d) The Deputy Director, or designee, will convene a Program Review Committee. Individuals may be selected from external and internal stakeholders and experts as indicated by the YCC program to be reviewed.

(e) The review will be recorded, and the recording preserved until the grievance is resolved or for two years, whichever is longer.

(3) Only information directly related to issue(s) of the grievance will be considered.

(4) Copies of documents relied upon will be provided to the YCC program and the OYA. If information contained within those documents is confidential, as defined by federal or state laws or policies, it will be redacted and the non-confidential portions will be provided.

(5) Within 10 working days of completing the review, the OYA will prepare a written decision. The decision will include directions to the county for filing an appeal to the Director.

(6) A copy of the decision will be sent to the YCC program as soon as practical following its completion.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.855 - 420.885
Hist.: OYA 12-2005, f. & cert. ef. 6-13-05

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Adm. Order No.: OYA 13-2005

Filed with Sec. of State: 6-13-2005

Certified to be Effective: 6-13-05

Notice Publication Date: 5-1-05

Rules Repealed: 416-350-0000, 416-350-0010, 416-350-0020, 416-350-0030

Subject: OAR Chapter 416, Division 350 will be repealed in its entirety. Payment language is found in other legal documents and does not require rule.

Rules Coordinator: Kimberly Walker—(503) 378-6834

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Adm. Order No.: OYA 14-2005

Filed with Sec. of State: 6-13-2005

Certified to be Effective: 6-13-05

Notice Publication Date: 5-1-05

Rules Amended: 416-530-0010

Subject: This rule amendment takes the place of a permanent rule adopted March 4, 2005 as the corrected copy of the rule was not submitted to legislative counsel in a timely manner. OAR 416-530-0010 is amended to redefine a “respite provider” by removing the language “and not a member of the household.”

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-530-0010

Definitions

(1) Applicant: A person who applies for a certificate of approval to operate and maintain a foster home, including persons who seek initial certification or re-certification.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youths’ interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certificate: A certificate of approval, issued by the OYA, to operate a foster home where offenders in OYA custody are placed.

(4) Certification process: The process of initial or renewal application for certification to operate a foster home.

(5) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(6) Denial: The refusal of the OYA to issue a certificate of approval (including re-certification) to operate a foster home.

(7) Discipline: A process by which foster parents and OYA assist offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(8) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(9) Foster parent employee: Any person receiving compensation from foster parents for assistance in the care and supervision of offenders placed in the foster home.

(10) Foster care maintenance payment: The OYA’s monthly payment to the foster parent to cover expenses such as the offender’s room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, or other costs approved by the OYA.

(11) Foster home: A home in the community which is certified by the OYA and maintained and lived in by a foster parent who provides supervision, food, and lodging for offenders in OYA custody.

(12) Foster parent: A person certified by the OYA who demonstrates special competence to supervise offenders with serious social and/or behavioral maladaptive characteristics in a foster home setting. A foster parent must be unrelated to an offender by blood or marriage. Foster parents provide supervision, food, and lodging to offenders as the offenders progress through their case plan.

(13) Family foster home agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(14) Home study: The assessment process, conducted prior to issuance of a certificate, to determine an applicant’s ability to provide foster care services to offenders.

(15) Information required: All information requested by the OYA, including information used to process criminal history checks.

(16) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for offenders. The process is a collaborative effort between OYA staff, the offender’s biological and foster families and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

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(17) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to the offender to limit movement.

(18) Members of household: Any person who lives in the foster home or who assists in the care provided to offenders including but not limited to the provision of tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(19) Offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 415C.005 for an act committed when the person was under 18 years of age.

(20) Physical force: To physically force or constrain the movement of a person in order to prevent self-harm, harm to others, damage to property, or to remove a person from a scene of danger.

(21) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(22) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to: Physical force or threat of physical force inflicted in any manner upon an offender; verbal abuse, including derogatory remarks about the offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting punishment of an offender by another offender; and use of cold shower as punishment.

(23) Regular certificate: A certificate of approval issued by the OYA, for a period of one year, when all foster care standards have been met.

(24) Respite care: A temporary arrangement between the foster parent and the respite provider to allow the foster parent(s) time away of 12 hours or more from the offender.

(25) Respite provider: An individual approved by the OYA who is at least 21 years of age who temporarily assists with supervision of offenders when the foster parent is not available.

(26) Revocation: The action taken to rescind a foster home certificate of approval after the OYA determines that the foster parent or the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with OYA.

(27) Special certificate: A conditional certificate of approval that limits the foster home to care and supervision of a specific offender, or other specified offenders, under specific conditions.

(28) Suspension: A temporary withdrawal of the foster home certificate after the OYA determines that the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with the OYA.

(29) Volunteer: Any person who is not a member of the household and who assists, for no compensation, with the supervision of offenders and with other activities, including but not limited to, food preparation, household chores, recreation, tutoring, mentoring, or respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05

Public Utility Commission Chapter 860

Adm. Order No.: PUC 3-2005

Filed with Sec. of State: 6-3-2005

Certified to be Effective: 6-3-05

Notice Publication Date: 5-1-05

Rules Amended: 860-024-0020, 860-024-0021

Subject: Pursuant to ORS 757.039(3), the Commission has agreements with USDOT that the Oregon PUC will adopt federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. The amended rules adopt published US Department of Transportation (USDOT) amendments associated with the construction, operation, and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments being adopted are from the Code of Federal Regulations, CFR Title 49, Part 192 (six amendments), and Part 193 (one amendment).

Rules Coordinator: Diane Davis—(503) 378-4372

860-024-0020

Gas Pipeline Safety

Every gas operator shall construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 192, and amendments through No. 98 — Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on September 9, 2004.

(3) 49 CFR, Part 199, and amendments through No.19 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

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

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 172, f. & ef. 1-14-76 (Order No. 76-036); PUC 180, f. 4-8-77, ef. 5-1-77 (Order No. 77-232); PUC 2-1978, f. & ef. 3-16-78 (Order No. 78-158); PUC 6-1980, f. & ef. 10-22-80 (Order No. 80-777); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05

860-024-0021

Liquefied Natural Gas Safety

Every gas operator shall construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 193, and amendments through No. 18 Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on April 9, 2004.

(3) 49 CFR, Part 199, and amendments through No. 19 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

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

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.039

Hist.: PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03; PUC 3-2005, f. & cert. ef. 6-3-05

Racing Commission Chapter 462

Adm. Order No.: RC 1-2005

Filed with Sec. of State: 5-23-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 4-1-05

Rules Amended: 462-220-0040

Subject: Amends the rule by changing the manner in which Multi-jurisdictional Wagering Hubs calculate payments of the tax authorized by ORS 462.725(3)(b) to the Oregon Racing Commission during the license period.

Rules Coordinator: Carol N. Morgan—(971) 673-0207

462-220-0040

State of Oregon Share of the Pari-Mutuel Handle

In addition to the licensing fee set forth in OAR 462-220-0030(5), the operator of a hub shall pay to the Oregon Racing Commission the tax authorized by ORS 462.725(3)(b) on all of the gross mutuel wagering receipts recorded by the hub's totalizator system during the license period. The payments shall be made as follows:

(1) Payments shall be made each week based on the gross mutuel wagering receipts for that week.

(2) Payments shall be made in a timely manner as prescribed by the executive director of the commission.

(3) Payments shall be calculated according to one of the following formulas as elected by the hub operator in the manner specified in section (4):

ADMINISTRATIVE RULES

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05

(a) Payment of 0.125% of the first 60 million dollars in gross mutual wagering receipts during the license period and 0.25% of the gross mutual wagering receipts in excess of 60 million dollars during that period.

(A) Total payments during the license period will not exceed \$300,000 for the fiscal year 2006; \$325,000 for the fiscal year 2007; and \$350,000 for the fiscal year 2008.

(B) The maximum payment set out in section (3), subsection (a), paragraph (A), will increase 7.5% on an annual basis for each fiscal year after the fiscal year 2008 unless the commission changes that limit before the beginning of a fiscal year.

(b) Payment of 0.25% of gross mutual wagering receipts, except that, if the hub operator conducts business in a state where hubs are specifically authorized and the tax rate is less than 0.25%, the tax rate for wagers by the residents of such state would be that of the state in which they reside. This exception is limited to a single state designated by the hub operator in the manner specified in section (4).

(c) Payment of a flat 0.25% of all wagers on merged pools and 1.0% of wagers on non-merged pools.

(4) The hub operator shall state in its election to pay tax calculated pursuant to section (3), subsections (a), (b), or (c), and shall designate a state that is subject to the exception in section (3), subsection (b), if that formula is elected, in its license application for each year or at such other time as is specified by the commission. Neither the payment formula nor the state subject to the exception may be changed during a license period without the prior approval of the commission.

Stat. Auth.: 462.270(3) & 462.725

Stats. Implemented: 462.725

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 1-2001, f. & cert. ef. 3-19-01; RC 4-2002, f. & cert. ef. 6-28-02; RC 3-2003, f. 6-13-03, cert. ef. 7-1-03; RC 4-2003, f. 6-20-03, cert. ef. 7-1-03; RC 3-2004, f. 6-23-04, cert. ef. 7-1-04; RC 1-2005, f. 5-23-05, cert. ef. 7-1-05

Real Estate Agency Chapter 863

Adm. Order No.: REA 2-2005(Temp)

Filed with Sec. of State: 6-9-2005

Certified to be Effective: 7-1-05 thru 12-26-05

Notice Publication Date:

Rules Amended: 863-010-0640, 863-015-0020, 863-015-0040, 863-015-0045, 863-015-0060

Subject: Proposed temporary administrative rule changes to OAR 863-015-0020, OAR 863-015-0040, OAR 863-015-0045 and OAR 863-015-0060 are required to fix inconsistencies within the rules and are necessary to further implement the policies and procedures contemplated in the legislative scheme, Oregon Revised Chapter 696.

OAR 863-010-0640(4) currently sets a fee of \$40.00 for processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant. However, ORS 696.793 requires the agency to set by rule a fee not to exceed agency cost to obtain this information. As presently stated, subsection (4) is inconsistent with a statutory directive. This proposed temporary rule change is to precisely implement the agency's authority to recover agency costs, notwithstanding the current enumerated fee and in light of the Oregon State Police's authority to decrease or increase fee for fingerprint check services. Also, this rule change makes the particular subsection consistent with all agency rules implementing ORS 696.793 (See OAR 863-015-0015(3), 863-050-0240 and 863-040-0040(2)).

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-010-0640

Fees

The following fees shall apply to filings made pursuant to Chapter 217, Oregon Laws 1995:

(1) Issuance or renewal of a real estate marketing organization license: \$500.00;

(2) Filing of change of information required by OAR 863-010-0610(5): \$75.00;

(3) Upon loss or destruction of license, issuance of a duplicate license: \$5.00; and

(4) A fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

Stat. Auth.: ORS 696.793

Stats. Implemented: ORS 696.606

863-015-0020

Licensing; Examinations

The Real Estate Board, pursuant to and implementing ORS 696.425(2), authorizes the Agency to conduct licensing examinations as follows:

(1) All applicants for a real estate broker's license shall be required to pass a basic real estate examination. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(2) Those applicants licensed as salespersons as of June 30, 2002 shall be required to pass a real estate examination, after July 1, 2002, to be licensed as a principal real estate broker or to engage in professional real estate activity as a sole practitioner. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(3) All applicants for a real estate property manager's license shall be required to pass a property management examination. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(4) To be considered eligible to sit for a licensing examination, the applicant shall apply for the examination on a form prescribed by the Commissioner. The examination application fee prescribed in ORS 696.270 shall accompany every application for a licensing examination.

(5) An applicant may take a licensing examination even if the Agency has not completed the processing of the applicant's fingerprint card, has not received and reviewed all the criminal offender information on the applicant, or has not received documentation that all required education has been completed by the applicant. However, an applicant may not be considered for licensing until the Agency has completed such processing and review.

(6) The Agency shall hold licensing examinations in a manner and at such times and locations as it may determine, except that the Agency shall hold the examinations no less frequently than every 30 days. The manner and method of licensing examination may include, but is not limited to, written examinations and computer-based examinations.

(7) An applicant who fails to pass an examination, or who fails to appear for a scheduled examination appointment is not entitled to the return of any examination fees previously paid.

(8) If any individual who has completed successfully both the national portion and the state-specific portion of the examination for any real estate license category does not become licensed in that category within one year from the date of the examination, the individual is no longer eligible for the license on the basis of the examination. In order to again qualify, the individual must resubmit to the entire examination. If any individual who has successfully completed one portion of a license examination does not successfully complete the remaining portion within twelve months from the date of the examination of the completed portion, the successfully completed portion of the examination is no longer valid.

(9) The successful passing of the national portion of a broker examination taken in another state may be accepted by the Agency in lieu of the national portion of the examination required in this rule, under the following circumstances:

(a) The broker exam was taken since November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The broker exam was taken within the 12 months prior to the date the application, required forms and fees for an Oregon broker's license are received in the Agency's office.

[Publications referenced are available from the Agency.]

Stat. Auth.: ORS 696.385, 696.425 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05

863-015-0040

Licensing; Principal Real Estate Broker

(1) To be eligible for issuance of a principal real estate broker's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the application requirements of OAR 863-0015-0010 and 863-015-0015;

(d) Pay the licensing fees required under ORS 696.270;

ADMINISTRATIVE RULES

(e) Demonstrate satisfactory evidence of competence in and shall have successfully completed the required course of study for principal real estate broker licensing as prescribed by the Commissioner; and

(f) Furnish proof satisfactory to the Commissioner that the applicant has acquired at least three years of active experience as a real estate licensee prior to the date of the application for issuance of the license; or

(g) Upon petition to the Real Estate Board and at the discretion of the Real Estate Board, furnish proof of compliance that the applicant has real estate related experience equivalent to the requirements of subsection (f) of this section, and details the nature of such experience.

(2) Notwithstanding subsections (a) to (g) of section (1), an applicant for a principal real estate broker's license who has graduated from a four-year college or university with a degree in real estate, in a curriculum approved by the Commissioner, who has held an active license as a real estate broker for a period of at least one year may, upon petition to the Real Estate Board, and approval by the Real Estate Board, be issued a principal real estate broker's license.

(3) Notwithstanding subsections (a) to (g) of section (1), an applicant for a principal real estate broker's license who has a two-year community college associate degree in real estate in a curriculum approved by the Commissioner, who has held an active license as a real estate broker for a period of at least two years, who has completed the course of study for principal real estate brokers as required by subsection (1)(e), upon petition to the Real Estate Board, and approval by the Real Estate Board, may be issued a principal real estate broker's license.

(4) If an individual requests that the Real Estate Board exercise its lawful discretion relating to the individual meeting the experience requirement for a principal real estate broker's license under sections (1)(g), (2) or (3), the request must be filed with the Agency no later than 20 days prior to the scheduled Real Estate Board meeting.

(5) If the qualifications of an applicant for a principal real estate broker's license are based wholly or partially upon an active real estate license held in another state, the applicant shall furnish with the application a certification of active licensing from the licensing agency of the other state.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05

863-015-0045

Licensing; Property Manager

(1) To be eligible for issuance of a real estate property manager's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the requirements of OAR 863-015-0010 and 863-015-0015;

(d) Successfully complete the licensing examination prescribed by the Commissioner under OAR 863-015-0020;

(e) Pay the licensing fees required under ORS 696.270; and

(f) Demonstrate satisfactory evidence of competence in and shall have successfully completed the course of study for real estate property manager licensing as prescribed by the Commissioner.

(2) A real estate property manager's license may not be issued to an individual holding an outstanding real estate license unless the individual first surrenders all rights to the outstanding real estate license.

(3) An individual licensed as a real estate property manager may engage only in real estate property management activity. The individual may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal or exchange of real estate for another individual for compensation. The individual may not charge, pay, receive or accept a referral fee, finder's fee or compensation from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal or exchange of real estate. However, the individual may charge, pay, receive and accept a referral fee or finder's fee from or to a real estate broker or another real estate property manager for finding or referring an owner, renter or lessee in real estate property management activity.

(4) A real estate property manager licensed as a sole practitioner in the individual's own name or under a business name registered with the Commissioner, is responsible for all property management activity conducted under the property manager's license and for the actions of the property manager's nonlicensed property management employees. A licensed real estate property manager may not authorize an unlicensed individual to supervise that property manager's licensed activity in the manager's

absence. Except as provided for in OAR 863-015-0085(1), a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(5) A real estate property manager may be associated with another real estate property manager in property management activity, if the property manager applicant submits, as part of the application for licensing, an agreement that the applicant will engage in property management activity only as the agent of another real estate property manager with whom the applicant intends to be associated. The applicant and the real estate property manager with whom the applicant will be associated shall sign the agreement.

(6) A real estate property manager may be associated with a principal real estate broker to engage in property management activity on behalf of the principal real estate broker and under the supervision of that principal real estate broker. However, a principal real estate broker may not authorize a real estate property manager licensee to act in the broker's absence under OAR 863-015-0085.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05

863-015-0060

Licensing; Limited Licenses

(1) At the Commissioner's sole discretion, the Commissioner may issue a limited license.

(2) The limited license issued may be limited:

(a) By term;

(b) To serve as the agent of a particular principal real estate broker, if a real estate broker; or

(c) By conditions to be observed in the exercise of the privileges granted.

(3) A limited license issued under sections (1) and (2) does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license may not have the right to renewal of such license. A limited license may be suspended or revoked, or the Commissioner on the grounds set out in ORS 696.301 may reprimand the licensee.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05

Secretary of State, Business Services Division Chapter 167

Adm. Order No.: BSD 2-2005

Filed with Sec. of State: 6-15-2005

Certified to be Effective: 6-15-05

Notice Publication Date: 4-1-05

Rules Adopted: 167-001-0007, 167-001-0065, 167-001-0081, 167-001-0085, 167-001-0300, 167-001-0360, 167-001-0600, 167-001-0605, 167-001-0620, 167-001-0625, 167-001-0630, 167-001-0635

Rules Amended: 167-001-0005, 167-001-0010, 167-001-0020, 167-001-0030, 167-001-0070

Subject: The existing procurement rules were repealed by HB 2341, effective March 1, 2005. Temporary rules have been filed to allow current procurement processes to continue. These permanent rules will replace those temporary rules.

Rules Coordinator: Robin Rickard—(503) 986-2357

167-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Secretary of State adopts for use by its Business Services Division the Attorney General's Model Rules of Procedure as amended and effective on March 1, 2005.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Attorney General or Business Services Division.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: SS 1-1992, f. & cert. ef. 8-17-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

ADMINISTRATIVE RULES

167-001-0007

Application of Rules

These OAR chapter 167, division 001 rules apply to public contracts of the Secretary of State first advertised, but if not advertised then entered into, on or after March 1, 2005.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0010

Notice of Proposed Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the Secretary of State, Business Services Division, shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360(3) at least 21 days prior to the effective date of the intended action.

(2) By mailing a copy of the notice to persons on the Secretary of State's Business Services Division mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule; and

(3) By mailing or furnishing a copy of the notice to:

- (a) The Capitol Press Room;
- (b) Associated Press; and
- (c) Attorney General.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: SS 2-1992, f. & cert. ef. 10-13-92; BSD 1-1995, f. & cert. ef. 5-17-95; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0020

Purpose

The Divisions of the Oregon Secretary of State (Secretary) occasionally require the services of an outside party to accomplish all or part of a project. The Secretary intends that the Attorney General's Model Public Contracting Rules, Chapter 137, will govern all Secretary of State public contracting. It is the intent of the Secretary that these Model Rules will be accepted by default in accordance with the provisions of ORS 279A.065(4).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0030

Basic Policy

(1) The Secretary will contract for personal services when the specialized skills, knowledge or resources are not available within the Secretary of State's office; when the work cannot be done in a reasonable time with the Secretary's own work force; when it will be less expensive to contract for the work; or when an independent and impartial evaluation of a situation by recognized professionals is required. Contracts will be granted only after approval of the Secretary or his/her designee.

(2) Agreement for services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public agency may be by interagency agreement.

(3) For purposes of the Secretary, personal services means the services or type of services performed under a personal services contract. A contract for personal services means a contract, or a member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including without limitation, a contract for the services of an accountant, physician or dentist, educator, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor) or consultant.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.015
Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0065

Small Purchases

The Secretary will conduct small purchases as defined in ORS 279B.065 as follows:

(1) Any procurement of goods or services not exceeding \$5,000 may be awarded by using non-competitive negotiations.

(2) Any small procurement may be amended in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total contract price to greater than \$6,000.00.

(3) A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0070

Notification of the Advocate for Minority, Women, and Emerging Small Business

The Secretary of State will comply with the requirements of ORS 200.035.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.100 & 279A.105
Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0081

Reinstatement of Expired Contracts

(1) The Secretary of State, Business Services Division Director may approve reinstatement of an expired Personal Services Contract if the following conditions are met:

(a) Failure to renew or extend the Personal Services Contract would prevent the Secretary from carrying out the duties of the Secretary;

(b) Written request for reinstatement is submitted to the Business Services Division Director for approval within ninety (90) days after the expiration of the original contract;

(c) A written statement justifying the Contractor's completion of the work after expiration of the contract, there is no change in the Statement of Work, and either:

(A) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or

(B) When services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:

- (i) Does not increase the rate of compensation; or
- (ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.

(2) When a Personal Services Contract is reinstated pursuant to this section, the Secretary may compensate the Contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the execution and approval(s) of the extension or amendment.

(3) This rule authorizes only one reinstatement of a Personal Services Contract.

(4) No reinstatement of a Personal Services Contract shall modify the original contract except with respect to the time for performance.

(5) If the reinstatement of a Personal Services Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires Attorney General approval under ORS 291.045 and 291.047, the Secretary shall obtain such approval or ratification before the extension becomes binding and before any services may be performed under the reinstated contract.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065, 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0085

Legal Sufficiency Review

Unless exempted by the Attorney General under ORS 291.045 and 291.047, all personal service (including architectural and engineering services contracts) and information technology contracts calling for payment in excess of \$75,000.00, and all other public contracts in excess of \$100,000.00, will require legal sufficiency review by the Department of Justice.

Stat. Auth.: ORS 291.045 & 291.047
Stats. Implemented: ORS 291.045 & 291.047
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0300

Electronic Public Notice

The Secretary may publish the advertisement (notice) for Offers on the Department of Administrative Services ORPIN Electronic Procurement

ADMINISTRATIVE RULES

System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b). In addition, the Secretary may publish the advertisement on the Secretary's web-page.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.065, 279A.070 & 279B.055
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0360

Purchases Through Federal Programs

(1) The Secretary may purchase supplies and services under the Federal Programs identified in ORS 279A.180, without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Secretary has federal authorization to purchase through the program.

(2) To purchase through a Federal Program, the Secretary must document in its contract file that:

(a) The acquisition meets the Secretary's requirements;

(b) The price and other terms of the acquisition are advantageous to the Secretary;

(c) No other DAS price agreement for the supply or services exists, based upon the Secretary's review of the contracts on ORPIN;

(d) Preference programs, including but not limited to the Inmate Work Program of ORS 279A.025(2)(h);

(e) The Secretary may add to its contract such contract terms and conditions as are required by State statute or rules, if such additions do not conflict with the Federal Program's contract terms and conditions, including but not limited to prompt payment requirements, additional commercial terms, and conflict resolution.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.180
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0600

Policy

These rules supplement and do not replace ORS 244.010 through ORS 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Secretary of State (Secretary) public contracting under the Public Contracting Code and related rules. The Secretary's public contracting is a public trust. The Secretary and contractors involved in public contracting must safeguard this public trust.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0605

Selection and Award of Public Contracts

(1) Secretary officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) Secretary officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) Secretary officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Secretary officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0620

Specifications

Secretary staff and providers may not develop specifications that primarily benefit only one provider, directly or indirectly, to the detriment of the Secretary.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0625

Sole-Source

The Secretary may not select a sole-source procurement pursuant to ORS 279B.075 to avoid a competitive procurement if the purpose of the selection is to primarily benefit the provider, directly or indirectly, to the detriment of the Secretary or the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0630

Fragmentation

A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065, or an intermediate procurement, pursuant to ORS 279B.070, in order to avoid competition.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279B.065
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

167-001-0635

Agency and Provider Communications

(1) Secretary staff are encouraged to freely conduct market research in support of a procurement. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any providers that may be able to meet a need for an approved procurement. Secretary staff are encouraged to meet with providers whose products or services can meet the Secretary's needs and to document the items discussed during the market research phase of Solicitation development. The research phase should end prior to a release of a solicitation or a request for quote, unless the solicitation provides for a different process that permits on-going research.

(2) Any communication between Secretary and providers after the solicitation release or request for a quote must only be made within the context of the solicitation document requirements, which may allow for discussions, negotiations, and addenda. Secretary purchasing staff are encouraged to respond to written inquiries by addenda or letter in a timely manner.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05

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101-050-0015	4-14-05	Amend	5-1-05	123-065-1520	2-25-05	Amend	4-1-05
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115-045-0010	1-24-05	Amend	3-1-05	123-065-1540	2-25-05	Amend	4-1-05
115-045-0020	1-24-05	Amend	3-1-05	123-065-1550	2-25-05	Amend	4-1-05
115-045-0021	1-24-05	Amend	3-1-05	123-065-1553	2-25-05	Adopt	4-1-05
115-045-0023	1-24-05	Amend	3-1-05	123-065-1557	2-25-05	Adopt	4-1-05
115-045-0025	1-24-05	Amend	3-1-05	123-065-1560	2-25-05	Amend	4-1-05
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123-011-0021	5-5-05	Amend	6-1-05	123-065-1580	2-25-05	Amend	4-1-05
123-011-0025	5-5-05	Amend	6-1-05	123-065-1590	2-25-05	Amend	4-1-05
123-011-0027	5-5-05	Amend	6-1-05	123-065-1600	2-25-05	Amend	4-1-05
123-011-0030	5-5-05	Amend	6-1-05	123-065-1610	2-25-05	Amend	4-1-05
123-011-0035	5-5-05	Amend	6-1-05	123-065-1620	2-25-05	Amend	4-1-05
123-011-0040	5-5-05	Amend	6-1-05	123-065-1650	2-25-05	Amend	4-1-05
123-011-0045	5-5-05	Amend	6-1-05	123-065-1670	2-25-05	Adopt	4-1-05
123-011-0050	5-5-05	Amend	6-1-05	123-065-1700	2-25-05	Amend	4-1-05
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123-017-0035	5-11-05	Amend	6-1-05	123-065-1750	2-25-05	Amend	4-1-05
123-017-0037	5-11-05	Amend	6-1-05	123-065-1920	2-25-05	Adopt	4-1-05
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123-065-0005	2-25-05	Adopt	4-1-05	123-065-2520	2-25-05	Amend	4-1-05
123-065-0010	2-25-05	Amend	4-1-05	123-065-2530	2-25-05	Amend	4-1-05
123-065-0048	2-25-05	Am. & Ren.	4-1-05	123-065-2540	2-25-05	Amend	4-1-05
123-065-0080	2-25-05	Amend	4-1-05	123-065-2550	2-25-05	Amend	4-1-05
123-065-0090	2-25-05	Amend	4-1-05	123-065-2700	2-25-05	Amend	4-1-05
123-065-0095	2-25-05	Adopt	4-1-05	123-065-3000	2-25-05	Amend	4-1-05
123-065-0100	2-25-05	Amend	4-1-05	123-065-3030	2-25-05	Amend	4-1-05
123-065-0140	2-25-05	Amend	4-1-05	123-065-3110	2-25-05	Amend	4-1-05
123-065-0150	2-25-05	Amend	4-1-05	123-065-3130	2-25-05	Amend	4-1-05
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123-065-0210	2-25-05	Amend	4-1-05	123-065-3170	2-25-05	Amend	4-1-05
123-065-0220	2-25-05	Amend	4-1-05	123-065-3200	2-25-05	Amend	4-1-05
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123-065-0240	2-25-05	Amend	4-1-05	123-065-3300	2-25-05	Amend	4-1-05
123-065-0255	2-25-05	Adopt	4-1-05	123-065-3330	2-25-05	Amend	4-1-05
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123-065-0410	2-25-05	Am. & Ren.	4-1-05	123-065-3545	2-25-05	Adopt	4-1-05
123-065-0420	2-25-05	Am. & Ren.	4-1-05	123-065-3560	2-25-05	Amend	4-1-05
123-065-0430	2-25-05	Am. & Ren.	4-1-05	123-065-3600	2-25-05	Amend	4-1-05
123-065-0440	2-25-05	Am. & Ren.	4-1-05	123-065-3800	2-25-05	Amend	4-1-05
123-065-1000	2-25-05	Adopt	4-1-05	123-065-3830	2-25-05	Amend	4-1-05
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123-065-4100	2-25-05	Amend	4-1-05	123-065-4700	2-25-05	Amend	4-1-05
123-065-4110	2-25-05	Amend	4-1-05	123-065-4710	2-25-05	Amend	4-1-05
123-065-4120	2-25-05	Amend	4-1-05	123-065-4720	2-25-05	Amend	4-1-05
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123-065-4160	2-25-05	Repeal	4-1-05	123-065-4760	2-25-05	Amend	4-1-05
123-065-4200	2-25-05	Amend	4-1-05	123-065-4800	2-25-05	Adopt	4-1-05
123-065-4220	2-25-05	Amend	4-1-05	123-065-4950	2-25-05	Amend	4-1-05
123-065-4230	2-25-05	Amend	4-1-05	123-065-4960	2-25-05	Amend	4-1-05
123-065-4240	2-25-05	Amend	4-1-05	123-065-4970	2-25-05	Amend	4-1-05
123-065-4250	2-25-05	Amend	4-1-05	123-065-4980	2-25-05	Amend	4-1-05
123-065-4260	2-25-05	Amend	4-1-05	123-065-4990	2-25-05	Amend	4-1-05
123-065-4270	2-25-05	Amend	4-1-05	123-065-7000	2-25-05	Amend	4-1-05
123-065-4280	2-25-05	Amend	4-1-05	123-065-7100	2-25-05	Amend	4-1-05
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123-065-4330	2-25-05	Amend	4-1-05	123-065-8300	2-25-05	Adopt	4-1-05
123-065-4340	2-25-05	Amend	4-1-05	123-065-8400	2-25-05	Adopt	4-1-05
123-065-4343	2-25-05	Repeal	4-1-05	123-070-1000	2-25-05	Amend	4-1-05
123-065-4345	2-25-05	Adopt	4-1-05	123-070-1100	2-25-05	Amend	4-1-05
123-065-4355	2-25-05	Adopt	4-1-05	123-070-1150	2-25-05	Amend	4-1-05
123-065-4360	2-25-05	Repeal	4-1-05	123-070-1200	2-25-05	Amend	4-1-05
123-065-4365	2-25-05	Adopt	4-1-05	123-070-1300	2-25-05	Amend	4-1-05
123-065-4370	2-25-05	Repeal	4-1-05	123-070-1500	2-25-05	Amend	4-1-05
123-065-4375	2-25-05	Adopt	4-1-05	123-070-1600	2-25-05	Amend	4-1-05
123-065-4380	2-25-05	Amend	4-1-05	123-070-1700	2-25-05	Amend	4-1-05
123-065-4390	2-25-05	Am. & Ren.	4-1-05	123-070-1800	2-25-05	Amend	4-1-05
123-065-4400	2-25-05	Amend	4-1-05	123-070-1900	2-25-05	Amend	4-1-05
123-065-4410	2-25-05	Amend	4-1-05	123-070-2000	2-25-05	Amend	4-1-05
123-065-4420	2-25-05	Amend	4-1-05	123-070-2100	2-25-05	Amend	4-1-05
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123-065-4450	2-25-05	Amend	4-1-05	123-070-2400	2-25-05	Amend	4-1-05
123-065-4460	2-25-05	Amend	4-1-05	125-020-0100	3-1-05	Repeal	3-1-05
123-065-4470	2-25-05	Amend	4-1-05	125-020-0110	3-1-05	Repeal	3-1-05
123-065-4480	2-25-05	Amend	4-1-05	125-020-0120	3-1-05	Repeal	3-1-05
123-065-4500	2-25-05	Amend	4-1-05	125-020-0130	3-1-05	Repeal	3-1-05
123-065-4510	2-25-05	Amend	4-1-05	125-020-0140	3-1-05	Repeal	3-1-05
123-065-4520	2-25-05	Amend	4-1-05	125-020-0200	3-1-05	Repeal	3-1-05
123-065-4530	2-25-05	Amend	4-1-05	125-020-0210	3-1-05	Repeal	3-1-05
123-065-4540	2-25-05	Amend	4-1-05	125-020-0220	3-1-05	Repeal	3-1-05
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125-020-0320	3-1-05	Repeal	3-1-05	125-031-0010	3-1-05	Repeal	3-1-05
125-020-0330	3-1-05	Repeal	3-1-05	125-050-0000	3-1-05	Repeal	3-1-05
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125-020-0410	3-1-05	Repeal	3-1-05	125-055-0015	12-28-04	Amend(T)	2-1-05
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125-020-0440	3-1-05	Repeal	3-1-05	125-055-0025	12-28-04	Amend(T)	2-1-05
125-020-0500	3-1-05	Repeal	3-1-05	125-055-0030	12-28-04	Amend(T)	2-1-05
125-020-0510	3-1-05	Repeal	3-1-05	125-055-0035	12-28-04	Amend(T)	2-1-05
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125-025-0085	3-1-05	Repeal	3-1-05	125-145-0020(T)	2-24-05	Suspend	4-1-05
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125-025-0110	3-1-05	Repeal	3-1-05	125-145-0030	5-27-05	Adopt	7-1-05
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125-030-0005	3-1-05	Repeal	3-1-05	125-145-0040(T)	2-24-05	Suspend	4-1-05
125-030-0007	3-1-05	Repeal	3-1-05	125-145-0040(T)	5-27-05	Repeal	7-1-05
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125-030-0029	3-1-05	Repeal	3-1-05	125-145-0045(T)	2-24-05	Suspend	4-1-05
125-030-0030	3-1-05	Repeal	3-1-05	125-145-0045(T)	5-27-05	Repeal	7-1-05
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125-145-0080	5-27-05	Adopt	7-1-05	125-246-0440	3-1-05	Adopt	1-1-05
125-145-0080(T)	2-24-05	Suspend	4-1-05	125-246-0450	3-1-05	Adopt	1-1-05
125-145-0080(T)	5-27-05	Repeal	7-1-05	125-246-0460	3-1-05	Adopt	1-1-05
125-145-0090	12-1-04	Adopt(T)	1-1-05	125-246-0470	3-1-05	Adopt	1-1-05
125-145-0090	2-24-05	Amend(T)	4-1-05	125-246-0500	3-1-05	Adopt	1-1-05
125-145-0090	5-27-05	Adopt	7-1-05	125-246-0550	3-1-05	Adopt	1-1-05
125-145-0090(T)	2-24-05	Suspend	4-1-05	125-246-0555	3-1-05	Adopt	1-1-05
125-145-0090(T)	5-27-05	Repeal	7-1-05	125-246-0560	3-1-05	Adopt	1-1-05
125-145-0100	12-1-04	Adopt(T)	1-1-05	125-246-0560	6-6-05	Amend	5-1-05
125-145-0100	2-24-05	Amend(T)	4-1-05	125-246-0560	6-6-05	Amend	7-1-05
125-145-0100	5-27-05	Adopt	7-1-05	125-246-0570	3-1-05	Adopt	1-1-05
125-145-0100(T)	2-24-05	Suspend	4-1-05	125-246-0575	3-1-05	Adopt	1-1-05
125-145-0100(T)	5-27-05	Repeal	7-1-05	125-246-0580	3-1-05	Adopt	1-1-05
125-145-0105	12-1-04	Adopt(T)	1-1-05	125-246-0600	3-1-05	Adopt	1-1-05
125-145-0105	2-24-05	Amend(T)	4-1-05	125-246-0605	3-1-05	Adopt	1-1-05
125-145-0105	5-27-05	Adopt	7-1-05	125-246-0610	3-1-05	Adopt	1-1-05
125-145-0105(T)	2-24-05	Suspend	4-1-05	125-246-0615	3-1-05	Adopt	1-1-05
125-145-0105(T)	5-27-05	Repeal	7-1-05	125-246-0620	3-1-05	Adopt	1-1-05
125-145-0110	12-1-04	Adopt(T)	1-1-05	125-246-0625	3-1-05	Adopt	1-1-05
125-145-0110	2-24-05	Suspend	4-1-05	125-246-0630	3-1-05	Adopt	1-1-05
125-145-0120	12-1-04	Adopt(T)	1-1-05	125-246-0635	3-1-05	Adopt	1-1-05
125-145-0120	2-24-05	Suspend	4-1-05	125-246-0700	3-1-05	Adopt	1-1-05
125-145-0130	2-24-05	Adopt(T)	4-1-05	125-246-0710	3-1-05	Adopt	1-1-05
125-145-0130(T)	5-27-05	Repeal	7-1-05	125-246-0720	3-1-05	Adopt	1-1-05
125-246-0100	3-1-05	Adopt	1-1-05	125-246-0730	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	5-1-05	125-246-0800	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	7-1-05	125-246-0900	3-1-05	Adopt	1-1-05
125-246-0110	3-1-05	Adopt	1-1-05	125-247-0005	3-1-05	Adopt	1-1-05
125-246-0120	3-1-05	Adopt	1-1-05	125-247-0010	3-1-05	Adopt	1-1-05
125-246-0130	3-1-05	Adopt	1-1-05	125-247-0100	3-1-05	Adopt	1-1-05
125-246-0140	3-1-05	Adopt	1-1-05	125-247-0165	3-1-05	Adopt	1-1-05
125-246-0150	3-1-05	Adopt	1-1-05	125-247-0170	3-1-05	Adopt	1-1-05
125-246-0170	3-1-05	Adopt	1-1-05	125-247-0200	3-1-05	Adopt	1-1-05
125-246-0200	3-1-05	Adopt	1-1-05	125-247-0255	3-1-05	Adopt	1-1-05
125-246-0210	3-1-05	Adopt	1-1-05	125-247-0256	3-1-05	Adopt	1-1-05
125-246-0220	3-1-05	Adopt	1-1-05	125-247-0260	3-1-05	Adopt	1-1-05
125-246-0300	3-1-05	Adopt	1-1-05	125-247-0261	3-1-05	Adopt	1-1-05
125-246-0310	3-1-05	Adopt	1-1-05	125-247-0265	3-1-05	Adopt	1-1-05
125-246-0320	3-1-05	Adopt	1-1-05	125-247-0270	3-1-05	Adopt	1-1-05
125-246-0321	3-1-05	Adopt	1-1-05	125-247-0275	3-1-05	Adopt	1-1-05
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125-246-0323	3-1-05	Adopt	1-1-05	125-247-0285	3-1-05	Adopt	1-1-05
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125-246-0330	3-1-05	Adopt	1-1-05	125-247-0287	3-1-05	Adopt	1-1-05
125-246-0335	3-1-05	Adopt	1-1-05	125-247-0288	3-1-05	Adopt	1-1-05
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125-246-0400	3-1-05	Adopt	1-1-05	125-247-0410	3-1-05	Adopt	1-1-05
125-246-0410	3-1-05	Adopt	1-1-05	125-247-0420	3-1-05	Adopt	1-1-05
125-246-0420	3-1-05	Adopt	1-1-05	125-247-0430	3-1-05	Adopt	1-1-05

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125-247-0450	3-1-05	Adopt	1-1-05	125-249-0280	3-1-05	Adopt	1-1-05
125-247-0460	3-1-05	Adopt	1-1-05	125-249-0290	3-1-05	Adopt	1-1-05
125-247-0470	3-1-05	Adopt	1-1-05	125-249-0300	3-1-05	Adopt	1-1-05
125-247-0480	3-1-05	Adopt	1-1-05	125-249-0310	3-1-05	Adopt	1-1-05
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125-247-0600	3-1-05	Adopt	1-1-05	125-249-0370	3-1-05	Adopt	1-1-05
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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
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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
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125-310-0180	3-1-05	Repeal	3-1-05	137-055-6220	1-3-05	Amend	2-1-05
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125-310-0400	3-1-05	Repeal	3-1-05	137-076-0018	11-22-04	Adopt	1-1-05
125-310-0500	3-1-05	Repeal	3-1-05	137-076-0020	11-22-04	Amend	1-1-05
125-320-0010	3-1-05	Repeal	3-1-05	137-076-0025	11-22-04	Amend	1-1-05
125-320-0020	3-1-05	Repeal	3-1-05	137-084-0001	11-22-04	Amend	1-1-05
125-320-0025	3-1-05	Repeal	3-1-05	137-086-0000	11-22-04	Adopt	1-1-05
125-330-0030	3-1-05	Repeal	3-1-05	137-086-0010	11-22-04	Adopt	1-1-05
125-330-0140	3-1-05	Repeal	3-1-05	137-086-0020	11-22-04	Adopt	1-1-05
125-330-0200	3-1-05	Repeal	3-1-05	137-086-0030	11-22-04	Adopt	1-1-05
125-330-0260	3-1-05	Repeal	3-1-05	137-086-0040	11-22-04	Adopt	1-1-05
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125-330-0450	3-1-05	Repeal	3-1-05	141-001-0005	5-19-05	Amend(T)	7-1-05
125-330-0500	3-1-05	Repeal	3-1-05	141-001-0020	5-19-05	Adopt(T)	7-1-05
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125-330-0700	3-1-05	Repeal	3-1-05	141-073-0105	2-28-05	Amend	3-1-05
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137-009-0005	3-18-05	Suspend	5-1-05	141-073-0150	2-28-05	Repeal	3-1-05
137-009-0010	3-18-05	Suspend	5-1-05	141-073-0155	2-28-05	Repeal	3-1-05
137-009-0045	3-18-05	Suspend	5-1-05	141-073-0160	2-28-05	Repeal	3-1-05
137-009-0060	3-18-05	Suspend	5-1-05	141-073-0165	2-28-05	Repeal	3-1-05
137-009-0065	3-18-05	Suspend	5-1-05	141-073-0170	2-28-05	Repeal	3-1-05
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150-305.220(1)	12-31-04	Amend	2-1-05	166-150-0110	5-10-05	Amend	6-1-05
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150-311.690(4)	12-31-04	Amend	2-1-05	167-001-0065	6-15-05	Adopt	7-1-05
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309-035-0270	4-1-05	Amend	5-1-05	309-046-0140	1-1-05	Am. & Ren.	1-1-05
309-035-0280	4-1-05	Amend	5-1-05	309-046-0150	1-1-05	Am. & Ren.	1-1-05
309-035-0290	4-1-05	Amend	5-1-05	309-046-0160	1-1-05	Am. & Ren.	1-1-05
309-035-0300	4-1-05	Amend	5-1-05	309-046-0170	1-1-05	Am. & Ren.	1-1-05
309-035-0310	4-1-05	Amend	5-1-05	309-046-0180	1-1-05	Am. & Ren.	1-1-05
309-035-0320	4-1-05	Amend	5-1-05	309-046-0190	1-1-05	Am. & Ren.	1-1-05
309-035-0330	4-1-05	Amend	5-1-05	309-046-0200	1-1-05	Am. & Ren.	1-1-05
309-035-0340	4-1-05	Amend	5-1-05	309-046-0210	1-1-05	Am. & Ren.	1-1-05
309-035-0350	4-1-05	Amend	5-1-05	309-046-0220	1-1-05	Am. & Ren.	1-1-05
309-035-0360	4-1-05	Amend	5-1-05	309-046-0230	1-1-05	Repeal	1-1-05
309-035-0370	4-1-05	Amend	5-1-05	309-046-0240	1-1-05	Am. & Ren.	1-1-05
309-035-0380	4-1-05	Amend	5-1-05	325-001-0005	6-8-05	Adopt	7-1-05
309-035-0390	4-1-05	Amend	5-1-05	325-005-0010	7-1-05	Adopt(T)	7-1-05
309-035-0400	4-1-05	Amend	5-1-05	330-100-0000	12-20-04	Amend	2-1-05
309-035-0410	4-1-05	Amend	5-1-05	330-100-0005	12-20-04	Amend	2-1-05
309-035-0420	4-1-05	Amend	5-1-05	330-105-0005	12-20-04	Amend	2-1-05
309-035-0430	4-1-05	Amend	5-1-05	330-105-0007	12-20-04	Amend	2-1-05
309-035-0440	4-1-05	Amend	5-1-05	330-105-0008	12-20-04	Amend	2-1-05
309-035-0450	4-1-05	Amend	5-1-05	330-105-0015	12-20-04	Amend	2-1-05
309-035-0460	4-1-05	Amend	5-1-05	330-105-0020	12-20-04	Amend	2-1-05
309-040-0000	4-1-05	Am. & Ren.	5-1-05	330-105-0025	12-20-04	Amend	2-1-05
309-040-0005	4-1-05	Am. & Ren.	5-1-05	330-105-0030	12-20-04	Amend	2-1-05
309-040-0010	4-1-05	Am. & Ren.	5-1-05	330-105-0035	12-20-04	Amend	2-1-05
309-040-0011	4-1-05	Am. & Ren.	5-1-05	330-105-0040	12-20-04	Amend	2-1-05
309-040-0012	4-1-05	Am. & Ren.	5-1-05	330-105-0045	12-20-04	Amend	2-1-05
309-040-0015	4-1-05	Am. & Ren.	5-1-05	330-110-0005	12-20-04	Amend	2-1-05
309-040-0020	4-1-05	Am. & Ren.	5-1-05	330-110-0010	12-20-04	Amend	2-1-05
309-040-0025	4-1-05	Am. & Ren.	5-1-05	330-110-0015	12-20-04	Amend	2-1-05
309-040-0030	4-1-05	Am. & Ren.	5-1-05	330-110-0016	12-20-04	Amend	2-1-05
309-040-0035	4-1-05	Am. & Ren.	5-1-05	330-110-0020	12-20-04	Amend	2-1-05
309-040-0040	4-1-05	Am. & Ren.	5-1-05	330-110-0025	12-20-04	Amend	2-1-05
309-040-0045	4-1-05	Am. & Ren.	5-1-05	330-110-0030	12-20-04	Amend	2-1-05
309-040-0050	4-1-05	Am. & Ren.	5-1-05	330-110-0035	12-20-04	Amend	2-1-05
309-040-0052	4-1-05	Am. & Ren.	5-1-05	330-110-0036	12-20-04	Amend	2-1-05
309-040-0055	4-1-05	Am. & Ren.	5-1-05	330-110-0040	12-20-04	Amend	2-1-05
309-040-0057	4-1-05	Am. & Ren.	5-1-05	330-110-0042	12-20-04	Amend	2-1-05
309-040-0060	4-1-05	Am. & Ren.	5-1-05	330-110-0045	12-20-04	Amend	2-1-05
309-040-0065	4-1-05	Am. & Ren.	5-1-05	330-110-0050	12-20-04	Amend	2-1-05
309-040-0070	4-1-05	Am. & Ren.	5-1-05	330-110-0055	12-20-04	Amend	2-1-05
309-040-0075	4-1-05	Am. & Ren.	5-1-05	331-710-0010	3-1-05	Amend	4-1-05
309-040-0090	4-1-05	Am. & Ren.	5-1-05	331-715-0010	3-1-05	Amend	4-1-05
309-040-0092	4-1-05	Am. & Ren.	5-1-05	331-720-0010	3-1-05	Amend	4-1-05
309-040-0093	4-1-05	Am. & Ren.	5-1-05	333-004-0000	2-18-05	Adopt	4-1-05
309-040-0095	4-1-05	Am. & Ren.	5-1-05	333-004-0010	2-18-05	Adopt	4-1-05
309-040-0097	4-1-05	Am. & Ren.	5-1-05	333-004-0020	2-18-05	Adopt	4-1-05
309-040-0098	4-1-05	Am. & Ren.	5-1-05	333-004-0030	2-18-05	Adopt	4-1-05
309-040-0099	4-1-05	Am. & Ren.	5-1-05	333-004-0040	2-18-05	Adopt	4-1-05

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333-004-0060	2-18-05	Adopt	4-1-05	333-050-0010(T)	2-3-05	Repeal	3-1-05
333-004-0070	2-18-05	Adopt	4-1-05	333-050-0020	2-3-05	Amend	3-1-05
333-004-0080	2-18-05	Adopt	4-1-05	333-050-0020(T)	2-3-05	Repeal	3-1-05
333-004-0090	2-18-05	Adopt	4-1-05	333-050-0030	2-3-05	Amend	3-1-05
333-004-0100	2-18-05	Adopt	4-1-05	333-050-0030(T)	2-3-05	Repeal	3-1-05
333-004-0110	2-18-05	Adopt	4-1-05	333-050-0040	2-3-05	Amend	3-1-05
333-004-0120	2-18-05	Adopt	4-1-05	333-050-0040(T)	2-3-05	Repeal	3-1-05
333-004-0130	2-18-05	Adopt	4-1-05	333-050-0050	2-3-05	Amend	3-1-05
333-004-0140	2-18-05	Adopt	4-1-05	333-050-0050(T)	2-3-05	Repeal	3-1-05
333-004-0150	2-18-05	Adopt	4-1-05	333-050-0060	2-3-05	Amend	3-1-05
333-004-0160	2-18-05	Adopt	4-1-05	333-050-0060(T)	2-3-05	Repeal	3-1-05
333-004-0170	2-18-05	Adopt	4-1-05	333-050-0080	2-3-05	Amend	3-1-05
333-004-0180	2-18-05	Adopt	4-1-05	333-050-0080(T)	2-3-05	Repeal	3-1-05
333-004-0190	2-18-05	Adopt	4-1-05	333-050-0090	2-3-05	Amend	3-1-05
333-008-0020	1-1-05	Amend	2-1-05	333-050-0090(T)	2-3-05	Repeal	3-1-05
333-012-0250	6-21-05	Amend	7-1-05	333-050-0100	2-3-05	Amend	3-1-05
333-019-0041	6-21-05	Amend	7-1-05	333-050-0100(T)	2-3-05	Repeal	3-1-05
333-024-0210	12-7-04	Amend	1-1-05	333-050-0130	2-3-05	Amend	3-1-05
333-024-0210(T)	12-7-04	Repeal	1-1-05	333-050-0130(T)	2-3-05	Repeal	3-1-05
333-024-0215	12-7-04	Amend	1-1-05	333-050-0140	2-3-05	Amend	3-1-05
333-024-0215(T)	12-7-04	Repeal	1-1-05	333-050-0140(T)	2-3-05	Repeal	3-1-05
333-024-0220	12-7-04	Amend	1-1-05	333-050-0141(T)	2-3-05	Repeal	3-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-054-0010	5-2-05	Amend(T)	6-1-05
333-024-0225	12-7-04	Amend	1-1-05	333-054-0020	5-2-05	Amend(T)	6-1-05
333-024-0225(T)	12-7-04	Repeal	1-1-05	333-054-0030	5-2-05	Amend(T)	6-1-05
333-024-0230	12-7-04	Amend	1-1-05	333-054-0050	5-2-05	Amend(T)	6-1-05
333-024-0230(T)	12-7-04	Repeal	1-1-05	333-054-0060	5-2-05	Amend(T)	6-1-05
333-024-0231	12-7-04	Amend	1-1-05	333-054-0100	5-2-05	Amend(T)	6-1-05
333-024-0231(T)	12-7-04	Repeal	1-1-05	333-064-0025	7-1-05	Amend	7-1-05
333-024-0232	12-7-04	Amend	1-1-05	333-064-0035	7-1-05	Amend	7-1-05
333-024-0232(T)	12-7-04	Repeal	1-1-05	333-064-0070	7-1-05	Amend	7-1-05
333-024-0235	12-7-04	Amend	1-1-05	333-100-0001	12-1-04	Amend	1-1-05
333-024-0235(T)	12-7-04	Repeal	1-1-05	333-100-0001(T)	12-1-04	Repeal	1-1-05
333-024-0240	12-7-04	Amend	1-1-05	333-100-0005	12-1-04	Amend	1-1-05
333-024-0240(T)	12-7-04	Repeal	1-1-05	333-100-0005(T)	12-1-04	Repeal	1-1-05
333-024-0241	12-7-04	Adopt	1-1-05	333-100-0057	12-1-04	Adopt	1-1-05
333-024-0241(T)	12-7-04	Repeal	1-1-05	333-100-0057(T)	12-1-04	Repeal	1-1-05
333-029-0015	1-14-05	Amend	2-1-05	333-100-0060	12-1-04	Amend	1-1-05
333-029-0050	1-14-05	Amend	2-1-05	333-100-0060(T)	12-1-04	Repeal	1-1-05
333-029-0075	1-14-05	Amend	2-1-05	333-100-0065	12-1-04	Amend	1-1-05
333-030-0015	1-14-05	Amend	2-1-05	333-100-0065(T)	12-1-04	Repeal	1-1-05
333-030-0040	1-14-05	Amend	2-1-05	333-100-0070	12-1-04	Amend	1-1-05
333-030-0045	1-14-05	Amend	2-1-05	333-100-0070(T)	12-1-04	Repeal	1-1-05
333-030-0050	1-14-05	Amend	2-1-05	333-100-0080	12-1-04	Adopt	1-1-05
333-030-0080	1-14-05	Amend	2-1-05	333-100-0080(T)	12-1-04	Repeal	1-1-05
333-030-0085	1-14-05	Amend	2-1-05	333-101-0001	12-1-04	Amend	1-1-05
333-030-0120	1-14-05	Amend	2-1-05	333-101-0001(T)	12-1-04	Repeal	1-1-05
333-031-0002	1-14-05	Amend	2-1-05	333-101-0003	12-1-04	Adopt	1-1-05
333-031-0004	1-14-05	Amend	2-1-05	333-101-0003(T)	12-1-04	Repeal	1-1-05
333-031-0006	1-14-05	Amend	2-1-05	333-101-0010	12-1-04	Amend	1-1-05
333-031-0010	1-14-05	Amend	2-1-05	333-101-0010(T)	12-1-04	Repeal	1-1-05
333-031-0012	1-14-05	Amend	2-1-05	333-101-0020	4-11-05	Amend	5-1-05
333-031-0018	1-14-05	Amend	2-1-05	333-102-0001	12-1-04	Amend	1-1-05
333-031-0066	1-14-05	Amend	2-1-05	333-102-0001(T)	12-1-04	Repeal	1-1-05
333-049-0065	4-13-05	Adopt	5-1-05	333-102-0005	12-1-04	Amend	1-1-05

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333-102-0010	12-1-04	Amend	1-1-05	333-102-0275	12-1-04	Amend	1-1-05
333-102-0010(T)	12-1-04	Repeal	1-1-05	333-102-0275(T)	12-1-04	Repeal	1-1-05
333-102-0015	12-1-04	Amend	1-1-05	333-102-0285	12-1-04	Amend	1-1-05
333-102-0015(T)	12-1-04	Repeal	1-1-05	333-102-0285(T)	12-1-04	Repeal	1-1-05
333-102-0020	12-1-04	Amend	1-1-05	333-102-0287	12-1-04	Repeal	1-1-05
333-102-0020(T)	12-1-04	Repeal	1-1-05	333-102-0290	12-1-04	Amend	1-1-05
333-102-0025	12-1-04	Amend	1-1-05	333-102-0290(T)	12-1-04	Repeal	1-1-05
333-102-0025(T)	12-1-04	Repeal	1-1-05	333-102-0293	12-1-04	Amend	1-1-05
333-102-0030	12-1-04	Amend	1-1-05	333-102-0293(T)	12-1-04	Repeal	1-1-05
333-102-0030(T)	12-1-04	Repeal	1-1-05	333-102-0295	12-1-04	Repeal	1-1-05
333-102-0035	12-1-04	Amend	1-1-05	333-102-0300	12-1-04	Amend	1-1-05
333-102-0035(T)	12-1-04	Repeal	1-1-05	333-102-0300(T)	12-1-04	Repeal	1-1-05
333-102-0040	12-1-04	Adopt	1-1-05	333-102-0305	12-1-04	Amend	1-1-05
333-102-0040(T)	12-1-04	Repeal	1-1-05	333-102-0305(T)	12-1-04	Repeal	1-1-05
333-102-0075	12-1-04	Amend	1-1-05	333-102-0310	12-1-04	Amend	1-1-05
333-102-0075(T)	12-1-04	Repeal	1-1-05	333-102-0310(T)	12-1-04	Repeal	1-1-05
333-102-0101	12-1-04	Amend	1-1-05	333-102-0315	12-1-04	Amend	1-1-05
333-102-0101(T)	12-1-04	Repeal	1-1-05	333-102-0315(T)	12-1-04	Repeal	1-1-05
333-102-0103	12-1-04	Amend	1-1-05	333-102-0327	12-1-04	Amend	1-1-05
333-102-0103(T)	12-1-04	Repeal	1-1-05	333-102-0327(T)	12-1-04	Repeal	1-1-05
333-102-0105	12-1-04	Amend	1-1-05	333-102-0330	12-1-04	Amend	1-1-05
333-102-0105(T)	12-1-04	Repeal	1-1-05	333-102-0330(T)	12-1-04	Repeal	1-1-05
333-102-0110	12-1-04	Amend	1-1-05	333-102-0335	12-1-04	Amend	1-1-05
333-102-0110(T)	12-1-04	Repeal	1-1-05	333-102-0335(T)	12-1-04	Repeal	1-1-05
333-102-0120	12-1-04	Amend	1-1-05	333-102-0340	12-1-04	Amend	1-1-05
333-102-0120(T)	12-1-04	Repeal	1-1-05	333-102-0340(T)	12-1-04	Repeal	1-1-05
333-102-0125	12-1-04	Amend	1-1-05	333-102-0350	12-1-04	Adopt	1-1-05
333-102-0125(T)	12-1-04	Repeal	1-1-05	333-102-0350(T)	12-1-04	Repeal	1-1-05
333-102-0130	12-1-04	Amend	1-1-05	333-102-0355	12-1-04	Adopt	1-1-05
333-102-0130(T)	12-1-04	Repeal	1-1-05	333-102-0355(T)	12-1-04	Repeal	1-1-05
333-102-0135	12-1-04	Amend	1-1-05	333-102-0360	12-1-04	Adopt	1-1-05
333-102-0135(T)	12-1-04	Repeal	1-1-05	333-102-0360(T)	12-1-04	Repeal	1-1-05
333-102-0190	12-1-04	Adopt	1-1-05	333-102-0365	12-1-04	Adopt	1-1-05
333-102-0190(T)	12-1-04	Repeal	1-1-05	333-102-0365(T)	12-1-04	Repeal	1-1-05
333-102-0200	12-1-04	Amend	1-1-05	333-103-0015	12-1-04	Amend	1-1-05
333-102-0200(T)	12-1-04	Repeal	1-1-05	333-103-0015(T)	12-1-04	Repeal	1-1-05
333-102-0203	12-1-04	Amend	1-1-05	333-105-0001	12-1-04	Amend	1-1-05
333-102-0203(T)	12-1-04	Repeal	1-1-05	333-105-0001(T)	12-1-04	Repeal	1-1-05
333-102-0225	12-1-04	Repeal	1-1-05	333-105-0003	12-1-04	Adopt	1-1-05
333-102-0235	12-1-04	Amend	1-1-05	333-105-0003(T)	12-1-04	Repeal	1-1-05
333-102-0235(T)	12-1-04	Repeal	1-1-05	333-105-0005	12-1-04	Amend	1-1-05
333-102-0240	12-1-04	Repeal	1-1-05	333-105-0005(T)	12-1-04	Repeal	1-1-05
333-102-0245	12-1-04	Amend	1-1-05	333-105-0050	12-1-04	Adopt	1-1-05
333-102-0245(T)	12-1-04	Repeal	1-1-05	333-105-0050(T)	12-1-04	Repeal	1-1-05
333-102-0247	12-1-04	Adopt	1-1-05	333-105-0075	12-1-04	Adopt	1-1-05
333-102-0247(T)	12-1-04	Repeal	1-1-05	333-105-0075(T)	12-1-04	Repeal	1-1-05
333-102-0250	12-1-04	Amend	1-1-05	333-105-0101	12-1-04	Repeal	1-1-05
333-102-0250(T)	12-1-04	Repeal	1-1-05	333-105-0105	12-1-04	Repeal	1-1-05
333-102-0255	12-1-04	Amend	1-1-05	333-105-0110	12-1-04	Repeal	1-1-05
333-102-0255(T)	12-1-04	Repeal	1-1-05	333-105-0115	12-1-04	Repeal	1-1-05
333-102-0260	12-1-04	Amend	1-1-05	333-105-0120	12-1-04	Repeal	1-1-05
333-102-0260(T)	12-1-04	Repeal	1-1-05	333-105-0125	12-1-04	Repeal	1-1-05
333-102-0265	12-1-04	Amend	1-1-05	333-105-0130	12-1-04	Repeal	1-1-05
333-102-0265(T)	12-1-04	Repeal	1-1-05	333-105-0135	12-1-04	Repeal	1-1-05
333-102-0270	12-1-04	Amend	1-1-05	333-105-0140	12-1-04	Repeal	1-1-05

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333-105-0202	12-1-04	Repeal	1-1-05	333-105-0640(T)	12-1-04	Repeal	1-1-05
333-105-0205	12-1-04	Repeal	1-1-05	333-105-0650	12-1-04	Adopt	1-1-05
333-105-0210	12-1-04	Repeal	1-1-05	333-105-0650(T)	12-1-04	Repeal	1-1-05
333-105-0301	12-1-04	Repeal	1-1-05	333-105-0660	12-1-04	Adopt	1-1-05
333-105-0305	12-1-04	Repeal	1-1-05	333-105-0660(T)	12-1-04	Repeal	1-1-05
333-105-0310	12-1-04	Repeal	1-1-05	333-105-0670	12-1-04	Adopt	1-1-05
333-105-0315	12-1-04	Repeal	1-1-05	333-105-0670(T)	12-1-04	Repeal	1-1-05
333-105-0320	12-1-04	Repeal	1-1-05	333-105-0680	12-1-04	Adopt	1-1-05
333-105-0325	12-1-04	Repeal	1-1-05	333-105-0680(T)	12-1-04	Repeal	1-1-05
333-105-0330	12-1-04	Repeal	1-1-05	333-105-0690	12-1-04	Adopt	1-1-05
333-105-0335	12-1-04	Repeal	1-1-05	333-105-0690(T)	12-1-04	Repeal	1-1-05
333-105-0420	12-1-04	Adopt	1-1-05	333-105-0700	12-1-04	Adopt	1-1-05
333-105-0420(T)	12-1-04	Repeal	1-1-05	333-105-0700(T)	12-1-04	Repeal	1-1-05
333-105-0430	12-1-04	Adopt	1-1-05	333-105-0710	12-1-04	Adopt	1-1-05
333-105-0430(T)	12-1-04	Repeal	1-1-05	333-105-0710(T)	12-1-04	Repeal	1-1-05
333-105-0440	12-1-04	Adopt	1-1-05	333-105-0720	12-1-04	Adopt	1-1-05
333-105-0440(T)	12-1-04	Repeal	1-1-05	333-105-0720(T)	12-1-04	Repeal	1-1-05
333-105-0450	12-1-04	Adopt	1-1-05	333-105-0730	12-1-04	Adopt	1-1-05
333-105-0450(T)	12-1-04	Repeal	1-1-05	333-105-0730(T)	12-1-04	Repeal	1-1-05
333-105-0460	12-1-04	Adopt	1-1-05	333-105-0740	12-1-04	Adopt	1-1-05
333-105-0460(T)	12-1-04	Repeal	1-1-05	333-105-0740(T)	12-1-04	Repeal	1-1-05
333-105-0470	12-1-04	Adopt	1-1-05	333-105-0750	12-1-04	Adopt	1-1-05
333-105-0470(T)	12-1-04	Repeal	1-1-05	333-105-0750(T)	12-1-04	Repeal	1-1-05
333-105-0480	12-1-04	Adopt	1-1-05	333-105-0760	12-1-04	Adopt	1-1-05
333-105-0480(T)	12-1-04	Repeal	1-1-05	333-105-0760(T)	12-1-04	Repeal	1-1-05
333-105-0490	12-1-04	Adopt	1-1-05	333-106-0005	12-1-04	Amend	1-1-05
333-105-0490(T)	12-1-04	Repeal	1-1-05	333-106-0005	4-11-05	Amend	5-1-05
333-105-0500	12-1-04	Adopt	1-1-05	333-106-0005(T)	12-1-04	Repeal	1-1-05
333-105-0500(T)	12-1-04	Repeal	1-1-05	333-106-0035	12-1-04	Amend	1-1-05
333-105-0510	12-1-04	Adopt	1-1-05	333-106-0035(T)	12-1-04	Repeal	1-1-05
333-105-0510(T)	12-1-04	Repeal	1-1-05	333-106-0045	12-1-04	Amend	1-1-05
333-105-0520	12-1-04	Adopt	1-1-05	333-106-0045	4-11-05	Amend	5-1-05
333-105-0520(T)	12-1-04	Repeal	1-1-05	333-106-0045(T)	12-1-04	Repeal	1-1-05
333-105-0530	12-1-04	Adopt	1-1-05	333-106-0055	12-1-04	Amend	1-1-05
333-105-0530(T)	12-1-04	Repeal	1-1-05	333-106-0055	4-11-05	Amend	5-1-05
333-105-0540	12-1-04	Adopt	1-1-05	333-106-0055(T)	12-1-04	Repeal	1-1-05
333-105-0540(T)	12-1-04	Repeal	1-1-05	333-106-0101	12-1-04	Amend	1-1-05
333-105-0550	12-1-04	Adopt	1-1-05	333-106-0101	4-11-05	Amend	5-1-05
333-105-0550(T)	12-1-04	Repeal	1-1-05	333-106-0101(T)	12-1-04	Repeal	1-1-05
333-105-0560	12-1-04	Adopt	1-1-05	333-106-0105	12-1-04	Amend	1-1-05
333-105-0560(T)	12-1-04	Repeal	1-1-05	333-106-0105(T)	12-1-04	Repeal	1-1-05
333-105-0570	12-1-04	Adopt	1-1-05	333-106-0210	12-1-04	Amend	1-1-05
333-105-0570(T)	12-1-04	Repeal	1-1-05	333-106-0210(T)	12-1-04	Repeal	1-1-05
333-105-0580	12-1-04	Adopt	1-1-05	333-106-0220	12-1-04	Amend	1-1-05
333-105-0580(T)	12-1-04	Repeal	1-1-05	333-106-0220(T)	12-1-04	Repeal	1-1-05
333-105-0590	12-1-04	Adopt	1-1-05	333-106-0325	12-1-04	Amend	1-1-05
333-105-0590(T)	12-1-04	Repeal	1-1-05	333-106-0325(T)	12-1-04	Repeal	1-1-05
333-105-0600	12-1-04	Adopt	1-1-05	333-106-0370	4-11-05	Amend	5-1-05
333-105-0600(T)	12-1-04	Repeal	1-1-05	333-106-0512	4-11-05	Amend	5-1-05
333-105-0610	12-1-04	Adopt	1-1-05	333-106-0575	12-1-04	Amend	1-1-05
333-105-0610(T)	12-1-04	Repeal	1-1-05	333-106-0575(T)	12-1-04	Repeal	1-1-05
333-105-0620	12-1-04	Adopt	1-1-05	333-106-0700	12-1-04	Amend	1-1-05
333-105-0620(T)	12-1-04	Repeal	1-1-05	333-106-0700(T)	12-1-04	Repeal	1-1-05
333-105-0630	12-1-04	Adopt	1-1-05	333-106-0710	12-1-04	Amend	1-1-05
333-105-0630(T)	12-1-04	Repeal	1-1-05	333-106-0710	4-11-05	Amend	5-1-05

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333-106-0720	12-1-04	Amend	1-1-05	333-116-0190	12-1-04	Amend	1-1-05
333-106-0720	4-11-05	Amend	5-1-05	333-116-0190(T)	12-1-04	Repeal	1-1-05
333-106-0720(T)	12-1-04	Repeal	1-1-05	333-116-0200	12-1-04	Amend	1-1-05
333-106-0730	12-1-04	Amend	1-1-05	333-116-0200(T)	12-1-04	Repeal	1-1-05
333-106-0730	4-11-05	Amend	5-1-05	333-116-0250	12-1-04	Amend	1-1-05
333-106-0730(T)	12-1-04	Repeal	1-1-05	333-116-0250(T)	12-1-04	Repeal	1-1-05
333-106-0750	12-1-04	Adopt	1-1-05	333-116-0260	12-1-04	Amend	1-1-05
333-106-0750(T)	12-1-04	Repeal	1-1-05	333-116-0260(T)	12-1-04	Repeal	1-1-05
333-111-0010	12-1-04	Amend	1-1-05	333-116-0265	12-1-04	Adopt	1-1-05
333-111-0010(T)	12-1-04	Repeal	1-1-05	333-116-0265(T)	12-1-04	Repeal	1-1-05
333-116-0010	12-1-04	Amend	1-1-05	333-116-0290	12-1-04	Amend	1-1-05
333-116-0010(T)	12-1-04	Repeal	1-1-05	333-116-0290(T)	12-1-04	Repeal	1-1-05
333-116-0020	12-1-04	Amend	1-1-05	333-116-0300	12-1-04	Amend	1-1-05
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
333-116-0040	12-1-04	Amend	1-1-05	333-116-0330	12-1-04	Amend	1-1-05
333-116-0040(T)	12-1-04	Repeal	1-1-05	333-116-0330(T)	12-1-04	Repeal	1-1-05
333-116-0050	12-1-04	Amend	1-1-05	333-116-0340	12-1-04	Amend	1-1-05
333-116-0050(T)	12-1-04	Repeal	1-1-05	333-116-0340(T)	12-1-04	Repeal	1-1-05
333-116-0055	12-1-04	Adopt	1-1-05	333-116-0350	12-1-04	Amend	1-1-05
333-116-0055(T)	12-1-04	Repeal	1-1-05	333-116-0350(T)	12-1-04	Repeal	1-1-05
333-116-0057	12-1-04	Adopt	1-1-05	333-116-0360	12-1-04	Amend	1-1-05
333-116-0057(T)	12-1-04	Repeal	1-1-05	333-116-0360(T)	12-1-04	Repeal	1-1-05
333-116-0059	12-1-04	Adopt	1-1-05	333-116-0370	12-1-04	Amend	1-1-05
333-116-0059(T)	12-1-04	Repeal	1-1-05	333-116-0370(T)	12-1-04	Repeal	1-1-05
333-116-0070	12-1-04	Amend	1-1-05	333-116-0380	12-1-04	Amend	1-1-05
333-116-0070(T)	12-1-04	Repeal	1-1-05	333-116-0380(T)	12-1-04	Repeal	1-1-05
333-116-0080	12-1-04	Amend	1-1-05	333-116-0390	12-1-04	Amend	1-1-05
333-116-0080(T)	12-1-04	Repeal	1-1-05	333-116-0390(T)	12-1-04	Repeal	1-1-05
333-116-0090	12-1-04	Amend	1-1-05	333-116-0410	12-1-04	Amend	1-1-05
333-116-0090(T)	12-1-04	Repeal	1-1-05	333-116-0410(T)	12-1-04	Repeal	1-1-05
333-116-0100	12-1-04	Amend	1-1-05	333-116-0420	12-1-04	Amend	1-1-05
333-116-0100(T)	12-1-04	Repeal	1-1-05	333-116-0420(T)	12-1-04	Repeal	1-1-05
333-116-0105	12-1-04	Adopt	1-1-05	333-116-0430	12-1-04	Amend	1-1-05
333-116-0105(T)	12-1-04	Repeal	1-1-05	333-116-0430(T)	12-1-04	Repeal	1-1-05
333-116-0107	12-1-04	Adopt	1-1-05	333-116-0440	12-1-04	Amend	1-1-05
333-116-0107(T)	12-1-04	Repeal	1-1-05	333-116-0440(T)	12-1-04	Repeal	1-1-05
333-116-0120	12-1-04	Amend	1-1-05	333-116-0450	12-1-04	Amend	1-1-05
333-116-0120(T)	12-1-04	Repeal	1-1-05	333-116-0450(T)	12-1-04	Repeal	1-1-05
333-116-0125	12-1-04	Amend	1-1-05	333-116-0460	12-1-04	Amend	1-1-05
333-116-0125(T)	12-1-04	Repeal	1-1-05	333-116-0460(T)	12-1-04	Repeal	1-1-05
333-116-0140	12-1-04	Amend	1-1-05	333-116-0470	12-1-04	Amend	1-1-05
333-116-0140(T)	12-1-04	Repeal	1-1-05	333-116-0470(T)	12-1-04	Repeal	1-1-05
333-116-0150	12-1-04	Amend	1-1-05	333-116-0480	12-1-04	Amend	1-1-05
333-116-0150(T)	12-1-04	Repeal	1-1-05	333-116-0480(T)	12-1-04	Repeal	1-1-05
333-116-0160	12-1-04	Amend	1-1-05	333-116-0490	12-1-04	Amend	1-1-05
333-116-0160(T)	12-1-04	Repeal	1-1-05	333-116-0490	4-11-05	Amend	5-1-05
333-116-0165	12-1-04	Adopt	1-1-05	333-116-0490(T)	12-1-04	Repeal	1-1-05
333-116-0165(T)	12-1-04	Repeal	1-1-05	333-116-0495	12-1-04	Adopt	1-1-05
333-116-0170	12-1-04	Amend	1-1-05	333-116-0495(T)	12-1-04	Repeal	1-1-05
333-116-0170(T)	12-1-04	Repeal	1-1-05	333-116-0510	12-1-04	Repeal	1-1-05
333-116-0180	12-1-04	Amend	1-1-05	333-116-0515	12-1-04	Adopt	1-1-05

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333-116-0525	12-1-04	Adopt	1-1-05	333-118-0020(T)	12-1-04	Repeal	1-1-05
333-116-0525(T)	12-1-04	Repeal	1-1-05	333-118-0040	12-1-04	Amend	1-1-05
333-116-0530	12-1-04	Amend	1-1-05	333-118-0040(T)	12-1-04	Repeal	1-1-05
333-116-0530(T)	12-1-04	Repeal	1-1-05	333-118-0050	12-1-04	Amend	1-1-05
333-116-0540	12-1-04	Amend	1-1-05	333-118-0050(T)	12-1-04	Repeal	1-1-05
333-116-0540	4-11-05	Amend	5-1-05	333-118-0060	12-1-04	Amend	1-1-05
333-116-0540(T)	12-1-04	Repeal	1-1-05	333-118-0060(T)	12-1-04	Repeal	1-1-05
333-116-0560	12-1-04	Amend	1-1-05	333-118-0070	12-1-04	Amend	1-1-05
333-116-0560(T)	12-1-04	Repeal	1-1-05	333-118-0070(T)	12-1-04	Repeal	1-1-05
333-116-0570	12-1-04	Amend	1-1-05	333-118-0080	12-1-04	Amend	1-1-05
333-116-0570(T)	12-1-04	Repeal	1-1-05	333-118-0080(T)	12-1-04	Repeal	1-1-05
333-116-0573	12-1-04	Adopt	1-1-05	333-118-0090	12-1-04	Amend	1-1-05
333-116-0573(T)	12-1-04	Repeal	1-1-05	333-118-0090(T)	12-1-04	Repeal	1-1-05
333-116-0577	12-1-04	Adopt	1-1-05	333-118-0100	12-1-04	Amend	1-1-05
333-116-0577(T)	12-1-04	Repeal	1-1-05	333-118-0100(T)	12-1-04	Repeal	1-1-05
333-116-0580	12-1-04	Amend	1-1-05	333-118-0110	12-1-04	Amend	1-1-05
333-116-0580(T)	12-1-04	Repeal	1-1-05	333-118-0110(T)	12-1-04	Repeal	1-1-05
333-116-0583	12-1-04	Adopt	1-1-05	333-118-0120	12-1-04	Amend	1-1-05
333-116-0583(T)	12-1-04	Repeal	1-1-05	333-118-0120(T)	12-1-04	Repeal	1-1-05
333-116-0585	12-1-04	Adopt	1-1-05	333-118-0130	12-1-04	Amend	1-1-05
333-116-0585(T)	12-1-04	Repeal	1-1-05	333-118-0130(T)	12-1-04	Repeal	1-1-05
333-116-0587	12-1-04	Adopt	1-1-05	333-118-0140	12-1-04	Amend	1-1-05
333-116-0587(T)	12-1-04	Repeal	1-1-05	333-118-0140(T)	12-1-04	Repeal	1-1-05
333-116-0590	12-1-04	Amend	1-1-05	333-118-0150	12-1-04	Amend	1-1-05
333-116-0590(T)	12-1-04	Repeal	1-1-05	333-118-0150(T)	12-1-04	Repeal	1-1-05
333-116-0600	12-1-04	Amend	1-1-05	333-118-0160	12-1-04	Amend	1-1-05
333-116-0600(T)	12-1-04	Repeal	1-1-05	333-118-0160(T)	12-1-04	Repeal	1-1-05
333-116-0605	12-1-04	Adopt	1-1-05	333-118-0170	12-1-04	Amend	1-1-05
333-116-0605(T)	12-1-04	Repeal	1-1-05	333-118-0170(T)	12-1-04	Repeal	1-1-05
333-116-0610	12-1-04	Amend	1-1-05	333-118-0180	12-1-04	Amend	1-1-05
333-116-0610(T)	12-1-04	Repeal	1-1-05	333-118-0180(T)	12-1-04	Repeal	1-1-05
333-116-0640	12-1-04	Amend	1-1-05	333-118-0190	12-1-04	Amend	1-1-05
333-116-0640(T)	12-1-04	Repeal	1-1-05	333-118-0190(T)	12-1-04	Repeal	1-1-05
333-116-0660	12-1-04	Amend	1-1-05	333-118-0200	12-1-04	Amend	1-1-05
333-116-0660	4-11-05	Amend	5-1-05	333-118-0200(T)	12-1-04	Repeal	1-1-05
333-116-0660(T)	12-1-04	Repeal	1-1-05	333-118-0800	12-1-04	Adopt	1-1-05
333-116-0670	12-1-04	Amend	1-1-05	333-118-0800(T)	12-1-04	Repeal	1-1-05
333-116-0670(T)	12-1-04	Repeal	1-1-05	333-119-0030	12-1-04	Amend	1-1-05
333-116-0680	12-1-04	Amend	1-1-05	333-119-0030(T)	12-1-04	Repeal	1-1-05
333-116-0680	4-11-05	Amend	5-1-05	333-119-0040	12-1-04	Amend	1-1-05
333-116-0680(T)	12-1-04	Repeal	1-1-05	333-119-0040(T)	12-1-04	Repeal	1-1-05
333-116-0720	12-1-04	Amend	1-1-05	333-119-0080	12-1-04	Amend	1-1-05
333-116-0720(T)	12-1-04	Repeal	1-1-05	333-119-0080(T)	12-1-04	Repeal	1-1-05
333-116-0730	12-1-04	Amend	1-1-05	333-119-0090	12-1-04	Amend	1-1-05
333-116-0730(T)	12-1-04	Repeal	1-1-05	333-119-0090(T)	12-1-04	Repeal	1-1-05
333-116-0830	12-1-04	Amend	1-1-05	333-119-0100	12-1-04	Amend	1-1-05
333-116-0830(T)	12-1-04	Repeal	1-1-05	333-119-0100(T)	12-1-04	Repeal	1-1-05
333-116-0860	4-11-05	Amend	5-1-05	333-119-0120	12-1-04	Amend	1-1-05
333-116-0880	4-11-05	Amend	5-1-05	333-119-0120(T)	12-1-04	Repeal	1-1-05
333-116-0905	12-1-04	Adopt	1-1-05	333-120-0015	12-1-04	Adopt	1-1-05
333-116-0905(T)	12-1-04	Repeal	1-1-05	333-120-0015(T)	12-1-04	Repeal	1-1-05
333-116-0910	12-1-04	Adopt	1-1-05	333-120-0017	12-1-04	Adopt	1-1-05
333-116-0910(T)	12-1-04	Repeal	1-1-05	333-120-0017(T)	12-1-04	Repeal	1-1-05
333-116-0915	12-1-04	Adopt	1-1-05	333-120-0100	12-1-04	Amend	1-1-05
333-116-0915(T)	12-1-04	Repeal	1-1-05	333-120-0100(T)	12-1-04	Repeal	1-1-05

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333-120-0110(T)	12-1-04	Repeal	1-1-05	333-120-0680(T)	12-1-04	Repeal	1-1-05
333-120-0130	12-1-04	Amend	1-1-05	333-120-0700	12-1-04	Amend	1-1-05
333-120-0130(T)	12-1-04	Repeal	1-1-05	333-120-0700(T)	12-1-04	Repeal	1-1-05
333-120-0170	12-1-04	Amend	1-1-05	333-120-0710	12-1-04	Amend	1-1-05
333-120-0170(T)	12-1-04	Repeal	1-1-05	333-120-0710(T)	12-1-04	Repeal	1-1-05
333-120-0180	12-1-04	Amend	1-1-05	333-120-0720	12-1-04	Amend	1-1-05
333-120-0180(T)	12-1-04	Repeal	1-1-05	333-120-0720(T)	12-1-04	Repeal	1-1-05
333-120-0190	12-1-04	Amend	1-1-05	333-121-0001	4-11-05	Adopt	5-1-05
333-120-0190(T)	12-1-04	Repeal	1-1-05	333-121-0010	4-11-05	Adopt	5-1-05
333-120-0200	12-1-04	Amend	1-1-05	333-121-0020	4-11-05	Adopt	5-1-05
333-120-0200(T)	12-1-04	Repeal	1-1-05	333-121-0030	4-11-05	Adopt	5-1-05
333-120-0210	12-1-04	Amend	1-1-05	333-121-0040	4-11-05	Adopt	5-1-05
333-120-0210(T)	12-1-04	Repeal	1-1-05	333-121-0050	4-11-05	Adopt	5-1-05
333-120-0215	12-1-04	Adopt	1-1-05	333-121-0060	4-11-05	Adopt	5-1-05
333-120-0215(T)	12-1-04	Repeal	1-1-05	333-121-0100	4-11-05	Adopt	5-1-05
333-120-0220	12-1-04	Amend	1-1-05	333-121-0110	4-11-05	Adopt	5-1-05
333-120-0220(T)	12-1-04	Repeal	1-1-05	333-121-0120	4-11-05	Adopt	5-1-05
333-120-0230	12-1-04	Amend	1-1-05	333-121-0130	4-11-05	Adopt	5-1-05
333-120-0230(T)	12-1-04	Repeal	1-1-05	333-121-0140	4-11-05	Adopt	5-1-05
333-120-0240	12-1-04	Amend	1-1-05	333-121-0150	4-11-05	Adopt	5-1-05
333-120-0240(T)	12-1-04	Repeal	1-1-05	333-121-0160	4-11-05	Adopt	5-1-05
333-120-0250	12-1-04	Amend	1-1-05	333-121-0170	4-11-05	Adopt	5-1-05
333-120-0250(T)	12-1-04	Repeal	1-1-05	333-121-0180	4-11-05	Adopt	5-1-05
333-120-0320	12-1-04	Amend	1-1-05	333-121-0190	4-11-05	Adopt	5-1-05
333-120-0320(T)	12-1-04	Repeal	1-1-05	333-121-0200	4-11-05	Adopt	5-1-05
333-120-0400	12-1-04	Amend	1-1-05	333-121-0300	4-11-05	Adopt	5-1-05
333-120-0400(T)	12-1-04	Repeal	1-1-05	333-121-0310	4-11-05	Adopt	5-1-05
333-120-0420	12-1-04	Amend	1-1-05	333-121-0320	4-11-05	Adopt	5-1-05
333-120-0420(T)	12-1-04	Repeal	1-1-05	333-121-0330	4-11-05	Adopt	5-1-05
333-120-0430	12-1-04	Amend	1-1-05	333-121-0340	4-11-05	Adopt	5-1-05
333-120-0430(T)	12-1-04	Repeal	1-1-05	333-121-0350	4-11-05	Adopt	5-1-05
333-120-0450	12-1-04	Amend	1-1-05	333-121-0360	4-11-05	Adopt	5-1-05
333-120-0450(T)	12-1-04	Repeal	1-1-05	333-121-0370	4-11-05	Adopt	5-1-05
333-120-0460	12-1-04	Amend	1-1-05	333-121-0380	4-11-05	Adopt	5-1-05
333-120-0460(T)	12-1-04	Repeal	1-1-05	333-121-0390	4-11-05	Adopt	5-1-05
333-120-0520	12-1-04	Amend	1-1-05	333-121-0500	4-11-05	Adopt	5-1-05
333-120-0520(T)	12-1-04	Repeal	1-1-05	333-121-0510	4-11-05	Adopt	5-1-05
333-120-0540	12-1-04	Amend	1-1-05	333-150-0000	1-14-05	Amend	2-1-05
333-120-0540(T)	12-1-04	Repeal	1-1-05	333-505-0007	2-4-05	Amend	3-1-05
333-120-0550	12-1-04	Amend	1-1-05	334-010-0050	2-23-05	Amend	4-1-05
333-120-0550(T)	12-1-04	Repeal	1-1-05	340-012-0026	6-1-05	Amend	6-1-05
333-120-0560	12-1-04	Amend	1-1-05	340-012-0027	6-1-05	Adopt	6-1-05
333-120-0560(T)	12-1-04	Repeal	1-1-05	340-012-0028	6-1-05	Amend	6-1-05
333-120-0600	12-1-04	Amend	1-1-05	340-012-0030	6-1-05	Amend	6-1-05
333-120-0600(T)	12-1-04	Repeal	1-1-05	340-012-0040	6-1-05	Am. & Ren.	6-1-05
333-120-0610	12-1-04	Amend	1-1-05	340-012-0041	6-1-05	Amend	6-1-05
333-120-0610(T)	12-1-04	Repeal	1-1-05	340-012-0042	6-1-05	Am. & Ren.	6-1-05
333-120-0640	12-1-04	Amend	1-1-05	340-012-0045	6-1-05	Amend	6-1-05
333-120-0640(T)	12-1-04	Repeal	1-1-05	340-012-0046	6-1-05	Repeal	6-1-05
333-120-0650	12-1-04	Amend	1-1-05	340-012-0047	6-1-05	Am. & Ren.	6-1-05
333-120-0650(T)	12-1-04	Repeal	1-1-05	340-012-0048	6-1-05	Am. & Ren.	6-1-05
333-120-0660	12-1-04	Amend	1-1-05	340-012-0049	6-1-05	Am. & Ren.	6-1-05
333-120-0660(T)	12-1-04	Repeal	1-1-05	340-012-0050	6-1-05	Am. & Ren.	6-1-05
333-120-0670	12-1-04	Amend	1-1-05	340-012-0052	6-1-05	Repeal	6-1-05
333-120-0670(T)	12-1-04	Repeal	1-1-05	340-012-0053	6-1-05	Adopt	6-1-05

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340-012-0060	3-1-05	Amend	3-1-05	340-071-0320	3-1-05	Amend	2-1-05
340-012-0065	6-1-05	Amend	6-1-05	340-071-0325	3-1-05	Amend	2-1-05
340-012-0066	6-1-05	Amend	6-1-05	340-071-0330	3-1-05	Amend	2-1-05
340-012-0067	6-1-05	Amend	6-1-05	340-071-0335	3-1-05	Amend	2-1-05
340-012-0068	6-1-05	Amend	6-1-05	340-071-0340	3-1-05	Amend	2-1-05
340-012-0071	6-1-05	Amend	6-1-05	340-071-0345	3-1-05	Amend	2-1-05
340-012-0072	6-1-05	Amend	6-1-05	340-071-0360	3-1-05	Amend	2-1-05
340-012-0073	6-1-05	Amend	6-1-05	340-071-0400	3-1-05	Amend	2-1-05
340-012-0074	6-1-05	Adopt	6-1-05	340-071-0401	3-1-05	Repeal	2-1-05
340-012-0079	6-1-05	Adopt	6-1-05	340-071-0410	3-1-05	Amend	2-1-05
340-012-0081	6-1-05	Amend	6-1-05	340-071-0415	3-1-05	Amend	2-1-05
340-012-0082	6-1-05	Amend	6-1-05	340-071-0420	3-1-05	Amend	2-1-05
340-012-0083	6-1-05	Amend	6-1-05	340-071-0425	3-1-05	Amend	2-1-05
340-012-0090	6-1-05	Am. & Ren.	6-1-05	340-071-0430	3-1-05	Amend	2-1-05
340-012-0097	6-1-05	Adopt	6-1-05	340-071-0435	3-1-05	Amend	2-1-05
340-012-0130	6-1-05	Adopt	6-1-05	340-071-0440	3-1-05	Amend	2-1-05
340-012-0145	6-1-05	Adopt	6-1-05	340-071-0445	3-1-05	Amend	2-1-05
340-012-0150	6-1-05	Adopt	6-1-05	340-071-0450	3-1-05	Repeal	2-1-05
340-012-0160	6-1-05	Adopt	6-1-05	340-071-0460	3-1-05	Amend	2-1-05
340-012-0162	6-1-05	Adopt	6-1-05	340-071-0500	3-1-05	Amend	2-1-05
340-016-0055	11-19-04	Amend	1-1-05	340-071-0520	3-1-05	Amend	2-1-05
340-071-0100	3-1-05	Amend	2-1-05	340-071-0600	3-1-05	Amend	2-1-05
340-071-0110	3-1-05	Amend	2-1-05	340-071-0650	3-1-05	Adopt	2-1-05
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340-071-0117	3-1-05	Am. & Ren.	2-1-05	340-073-0030	3-1-05	Amend	2-1-05
340-071-0120	3-1-05	Amend	2-1-05	340-073-0035	3-1-05	Amend	2-1-05
340-071-0130	3-1-05	Amend	2-1-05	340-073-0040	3-1-05	Amend	2-1-05
340-071-0131	3-1-05	Adopt	2-1-05	340-073-0041	3-1-05	Amend	2-1-05
340-071-0140	3-1-05	Amend	2-1-05	340-073-0045	3-1-05	Amend	2-1-05
340-071-0150	3-1-05	Amend	2-1-05	340-073-0050	3-1-05	Amend	2-1-05
340-071-0155	3-1-05	Amend	2-1-05	340-073-0055	3-1-05	Amend	2-1-05
340-071-0160	3-1-05	Amend	2-1-05	340-073-0056	3-1-05	Amend	2-1-05
340-071-0162	3-1-05	Amend	2-1-05	340-073-0060	3-1-05	Amend	2-1-05
340-071-0165	3-1-05	Amend	2-1-05	340-073-0065	3-1-05	Amend	2-1-05
340-071-0170	3-1-05	Amend	2-1-05	340-073-0070	3-1-05	Amend	2-1-05
340-071-0175	3-1-05	Amend	2-1-05	340-073-0075	3-1-05	Amend	2-1-05
340-071-0185	3-1-05	Amend	2-1-05	340-073-0080	3-1-05	Amend	2-1-05
340-071-0195	3-1-05	Repeal	2-1-05	340-073-0085	3-1-05	Amend	2-1-05
340-071-0200	3-1-05	Amend	2-1-05	340-150-0250	12-27-04	Amend	2-1-05
340-071-0205	3-1-05	Amend	2-1-05	340-200-0020	2-10-05	Amend	3-1-05
340-071-0210	3-1-05	Amend	2-1-05	340-200-0040	12-15-04	Amend	1-1-05
340-071-0215	3-1-05	Amend	2-1-05	340-200-0040	1-4-05	Amend	2-1-05
340-071-0220	3-1-05	Amend	2-1-05	340-200-0040	2-10-05	Amend	3-1-05
340-071-0260	3-1-05	Amend	2-1-05	340-200-0040	6-1-05	Amend	6-1-05
340-071-0265	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0270	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
340-071-0275	3-1-05	Amend	2-1-05	340-204-0040	1-4-05	Amend	2-1-05
340-071-0280	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
340-071-0285	3-1-05	Amend	2-1-05	340-218-0080	2-10-05	Amend	3-1-05
340-071-0295	3-1-05	Amend	2-1-05	340-224-0060	1-4-05	Amend	2-1-05
340-071-0300	3-1-05	Repeal	2-1-05	340-224-0070	1-4-05	Amend	2-1-05
340-071-0302	3-1-05	Amend	2-1-05	340-225-0020	1-4-05	Amend	2-1-05
340-071-0305	3-1-05	Am. & Ren.	2-1-05	340-225-0045	1-4-05	Amend	2-1-05
340-071-0310	3-1-05	Amend	2-1-05	340-225-0090	1-4-05	Amend	2-1-05

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340-230-0410	2-10-05	Amend	3-1-05	350-081-0074	7-1-05	Adopt	7-1-05
340-238-0040	2-10-05	Amend	3-1-05	350-081-0076	7-1-05	Adopt	7-1-05
340-238-0060	2-10-05	Amend	3-1-05	350-081-0078	7-1-05	Adopt	7-1-05
340-240-0030	1-4-05	Amend	2-1-05	350-081-0080	7-1-05	Adopt	7-1-05
340-240-0100	1-4-05	Amend	2-1-05	350-081-0082	7-1-05	Adopt	7-1-05
340-240-0110	1-4-05	Amend	2-1-05	350-081-0084	7-1-05	Adopt	7-1-05
340-240-0120	1-4-05	Amend	2-1-05	350-081-0086	7-1-05	Adopt	7-1-05
340-240-0130	1-4-05	Amend	2-1-05	350-081-0090	7-1-05	Adopt	7-1-05
340-240-0140	1-4-05	Amend	2-1-05	350-081-0092	7-1-05	Adopt	7-1-05
340-240-0150	1-4-05	Amend	2-1-05	350-081-0094	7-1-05	Adopt	7-1-05
340-240-0180	1-4-05	Amend	2-1-05	350-081-0096	7-1-05	Adopt	7-1-05
340-240-0190	1-4-05	Amend	2-1-05	350-081-0098	7-1-05	Adopt	7-1-05
340-240-0200	1-4-05	Repeal	2-1-05	350-081-0100	7-1-05	Adopt	7-1-05
340-240-0210	1-4-05	Amend	2-1-05	350-081-0102	7-1-05	Adopt	7-1-05
340-240-0220	1-4-05	Amend	2-1-05	350-081-0104	7-1-05	Adopt	7-1-05
340-240-0230	1-4-05	Amend	2-1-05	350-081-0106	7-1-05	Adopt	7-1-05
340-240-0240	1-4-05	Repeal	2-1-05	350-081-0108	7-1-05	Adopt	7-1-05
340-240-0270	1-4-05	Repeal	2-1-05	350-081-0110	7-1-05	Adopt	7-1-05
340-242-0440	12-15-04	Amend	1-1-05	350-081-0112	7-1-05	Adopt	7-1-05
340-244-0030	2-10-05	Amend	3-1-05	350-081-0120	7-1-05	Adopt	7-1-05
340-244-0040	2-10-05	Amend	3-1-05	350-081-0124	7-1-05	Adopt	7-1-05
340-244-0120	2-10-05	Amend	3-1-05	350-081-0126	7-1-05	Adopt	7-1-05
340-244-0210	2-10-05	Amend	3-1-05	350-081-0170	7-1-05	Adopt	7-1-05
340-244-0220	2-10-05	Amend	3-1-05	350-081-0180	7-1-05	Adopt	7-1-05
340-244-0230	2-10-05	Amend	3-1-05	350-081-0182	7-1-05	Adopt	7-1-05
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345-026-0330	5-23-05	Amend	7-1-05	350-081-0220	7-1-05	Adopt	7-1-05
345-026-0340	5-23-05	Amend	7-1-05	350-081-0230	7-1-05	Adopt	7-1-05
345-026-0350	5-23-05	Amend	7-1-05	350-081-0232	7-1-05	Adopt	7-1-05
345-026-0360	5-23-05	Repeal	7-1-05	350-081-0234	7-1-05	Adopt	7-1-05
345-026-0370	5-23-05	Amend	7-1-05	350-081-0236	7-1-05	Adopt	7-1-05
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350-081-0014	7-1-05	Adopt	7-1-05	350-081-0270	7-1-05	Adopt	7-1-05
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350-081-0046	7-1-05	Adopt	7-1-05	350-081-0365	7-1-05	Adopt	7-1-05
350-081-0050	7-1-05	Adopt	7-1-05	350-081-0370	7-1-05	Adopt	7-1-05
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350-081-0060	7-1-05	Adopt	7-1-05	350-081-0400	7-1-05	Adopt	7-1-05
350-081-0070	7-1-05	Adopt	7-1-05	350-081-0410	7-1-05	Adopt	7-1-05

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350-081-0420	7-1-05	Adopt	7-1-05	410-050-0541	2-1-05	Adopt	3-1-05
350-081-0430	7-1-05	Adopt	7-1-05	410-050-0551	2-1-05	Adopt	3-1-05
350-081-0440	7-1-05	Adopt	7-1-05	410-050-0561	2-1-05	Adopt	3-1-05
350-081-0445	7-1-05	Adopt	7-1-05	410-050-0571	2-1-05	Adopt	3-1-05
350-081-0450	7-1-05	Adopt	7-1-05	410-050-0581	2-1-05	Adopt	3-1-05
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350-081-0485	7-1-05	Adopt	7-1-05	410-050-0720	5-7-05	Adopt	5-1-05
350-081-0490	7-1-05	Adopt	7-1-05	410-050-0730	5-7-05	Adopt	5-1-05
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350-081-0510	7-1-05	Adopt	7-1-05	410-050-0750	5-7-05	Adopt	5-1-05
350-081-0520	7-1-05	Adopt	7-1-05	410-050-0760	5-7-05	Adopt	5-1-05
350-081-0530	7-1-05	Adopt	7-1-05	410-050-0770	5-7-05	Adopt	5-1-05
350-081-0540	7-1-05	Adopt	7-1-05	410-050-0780	5-7-05	Adopt	5-1-05
350-081-0550	7-1-05	Adopt	7-1-05	410-050-0790	5-7-05	Adopt	5-1-05
350-081-0560	7-1-05	Adopt	7-1-05	410-050-0800	5-7-05	Adopt	5-1-05
350-081-0570	7-1-05	Adopt	7-1-05	410-050-0810	5-7-05	Adopt	5-1-05
350-081-0580	7-1-05	Adopt	7-1-05	410-050-0820	5-7-05	Adopt	5-1-05
350-081-0590	7-1-05	Adopt	7-1-05	410-050-0830	5-7-05	Adopt	5-1-05
350-081-0600	7-1-05	Adopt	7-1-05	410-050-0840	5-7-05	Adopt	5-1-05
350-081-0610	7-1-05	Adopt	7-1-05	410-050-0850	5-7-05	Adopt	5-1-05
350-081-0620	7-1-05	Adopt	7-1-05	410-050-0860	12-3-04	Amend(T)	1-1-05
350-081-0630	7-1-05	Adopt	7-1-05	410-050-0860	5-7-05	Adopt	5-1-05
410-003-0010	3-1-05	Adopt(T)	4-1-05	410-050-0860	5-10-05	Amend(T)	6-1-05
410-003-0020	3-1-05	Adopt(T)	4-1-05	410-050-0861	5-10-05	Adopt(T)	6-1-05
410-007-0210	3-29-05	Amend	5-1-05	410-050-0870	5-7-05	Adopt	5-1-05
410-007-0220	3-29-05	Amend	5-1-05	410-120-0000	4-1-05	Amend	4-1-05
410-007-0230	3-29-05	Amend	5-1-05	410-120-1200	4-1-05	Amend	4-1-05
410-007-0240	3-29-05	Amend	5-1-05	410-120-1260	4-1-05	Amend	4-1-05
410-007-0250	3-29-05	Amend	5-1-05	410-120-1280	4-1-05	Amend	4-1-05
410-007-0260	3-29-05	Amend	5-1-05	410-120-1295	2-9-05	Amend(T)	3-1-05
410-007-0270	3-29-05	Amend	5-1-05	410-120-1295(T)	2-9-05	Suspend	3-1-05
410-007-0280	3-29-05	Amend	5-1-05	410-120-1320	4-1-05	Amend	4-1-05
410-007-0290	3-29-05	Amend	5-1-05	410-121-0021	4-1-05	Amend	4-1-05
410-007-0300	3-29-05	Amend	5-1-05	410-121-0030	12-1-04	Amend	1-1-05
410-007-0310	3-29-05	Amend	5-1-05	410-121-0030	4-1-05	Amend	5-1-05
410-007-0320	3-29-05	Amend	5-1-05	410-121-0032	1-1-05	Adopt	2-1-05
410-007-0330	3-29-05	Amend	5-1-05	410-121-0040	12-1-04	Amend	1-1-05
410-007-0340	3-29-05	Amend	5-1-05	410-121-0135	4-1-05	Amend	4-1-05
410-007-0370	3-29-05	Amend	5-1-05	410-121-0150	4-1-05	Amend	4-1-05
410-007-0380	3-29-05	Amend	5-1-05	410-121-0155	4-1-05	Amend	5-1-05
410-050-0401	2-1-05	Adopt	3-1-05	410-121-0157	1-14-05	Amend(T)	2-1-05
410-050-0411	2-1-05	Adopt	3-1-05	410-121-0157	3-31-05	Amend	4-1-05
410-050-0421	2-1-05	Adopt	3-1-05	410-121-0157	4-1-05	Amend(T)	4-1-05
410-050-0431	2-1-05	Adopt	3-1-05	410-121-0157	6-6-05	Amend	7-1-05
410-050-0441	2-1-05	Adopt	3-1-05	410-121-0157(T)	3-31-05	Repeal	4-1-05
410-050-0451	2-1-05	Adopt	3-1-05	410-121-0157(T)	6-6-05	Repeal	7-1-05
410-050-0461	2-1-05	Adopt	3-1-05	410-121-0160	4-1-05	Amend	5-1-05
410-050-0471	2-1-05	Adopt	3-1-05	410-121-0185	4-1-05	Amend	4-1-05
410-050-0481	2-1-05	Adopt	3-1-05	410-121-0190	4-1-05	Amend	4-1-05
410-050-0491	2-1-05	Adopt	3-1-05	410-121-0300	12-10-04	Amend(T)	1-1-05
410-050-0501	2-1-05	Adopt	3-1-05	410-121-0300	2-1-05	Amend	3-1-05
410-050-0511	2-1-05	Adopt	3-1-05	410-121-0300	4-1-05	Amend(T)	5-1-05
410-050-0521	2-1-05	Adopt	3-1-05	410-121-0300	6-6-05	Amend	7-1-05

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410-121-0320	1-1-05	Amend	2-1-05	410-130-0610	4-1-05	Adopt	4-1-05
410-122-0010	4-1-05	Amend	4-1-05	410-130-0680	4-1-05	Amend	4-1-05
410-122-0020	4-1-05	Amend	4-1-05	410-130-0700	4-1-05	Amend	4-1-05
410-122-0040	4-1-05	Amend	4-1-05	410-131-0120	4-1-05	Amend	4-1-05
410-122-0055	4-1-05	Amend	4-1-05	410-131-0280	4-1-05	Amend	4-1-05
410-122-0190	1-1-05	Amend	2-1-05	410-133-0000	4-5-05	Amend(T)	5-1-05
410-122-0200	4-1-05	Amend	4-1-05	410-133-0040	4-5-05	Amend(T)	5-1-05
410-122-0202	1-1-05	Amend	2-1-05	410-133-0060	4-5-05	Amend(T)	5-1-05
410-122-0202	4-1-05	Amend	4-1-05	410-133-0080	4-5-05	Amend(T)	5-1-05
410-122-0203	4-1-05	Amend	4-1-05	410-133-0090	4-5-05	Amend(T)	5-1-05
410-122-0204	1-1-05	Amend	2-1-05	410-133-0100	4-5-05	Amend(T)	5-1-05
410-122-0204	4-1-05	Amend	4-1-05	410-133-0120	4-5-05	Amend(T)	5-1-05
410-122-0207	1-1-05	Amend	2-1-05	410-133-0140	4-5-05	Amend(T)	5-1-05
410-122-0208	1-1-05	Amend	2-1-05	410-133-0160	4-5-05	Amend(T)	5-1-05
410-122-0208	4-1-05	Amend	4-1-05	410-133-0180	4-5-05	Amend(T)	5-1-05
410-122-0209	4-1-05	Amend	4-1-05	410-133-0200	4-5-05	Amend(T)	5-1-05
410-122-0210	4-1-05	Amend	4-1-05	410-133-0220	4-5-05	Amend(T)	5-1-05
410-122-0340	1-1-05	Amend	2-1-05	410-133-0245	4-5-05	Adopt(T)	5-1-05
410-122-0365	1-1-05	Amend	2-1-05	410-133-0280	4-5-05	Amend(T)	5-1-05
410-122-0375	4-1-05	Amend	4-1-05	410-133-0300	4-5-05	Amend(T)	5-1-05
410-122-0400	1-1-05	Amend	2-1-05	410-133-0320	4-5-05	Amend(T)	5-1-05
410-122-0420	4-1-05	Amend	4-1-05	410-133-0340	4-5-05	Amend(T)	5-1-05
410-122-0475	1-1-05	Amend	2-1-05	410-141-0000	5-1-05	Amend	6-1-05
410-122-0560	1-1-05	Amend	2-1-05	410-141-0060	5-1-05	Amend	6-1-05
410-122-0580	1-1-05	Amend	2-1-05	410-141-0065	4-1-05	Repeal	4-1-05
410-122-0590	4-1-05	Amend	4-1-05	410-141-0070	5-1-05	Amend	6-1-05
410-122-0625	4-1-05	Amend	4-1-05	410-141-0080	5-1-05	Amend	6-1-05
410-122-0630	1-1-05	Amend	2-1-05	410-141-0110	5-1-05	Amend	6-1-05
410-122-0660	4-1-05	Amend	4-1-05	410-141-0120	5-1-05	Amend	6-1-05
410-122-0720	1-1-05	Amend	2-1-05	410-141-0140	5-1-05	Amend	6-1-05
410-123-1085	4-1-05	Amend	4-1-05	410-141-0160	5-1-05	Amend	6-1-05
410-123-1260	4-1-05	Amend	4-1-05	410-141-0180	5-1-05	Amend	6-1-05
410-123-1670	4-1-05	Amend	4-1-05	410-141-0200	5-1-05	Amend	6-1-05
410-124-0000	12-10-04	Amend(T)	1-1-05	410-141-0220	5-1-05	Amend	6-1-05
410-124-0000	12-30-04	Amend(T)	2-1-05	410-141-0280	5-1-05	Amend	6-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	410-141-0300	5-1-05	Amend	6-1-05
410-124-0000(T)	12-30-04	Suspend	2-1-05	410-141-0320	5-1-05	Amend	6-1-05
410-124-0105	4-1-05	Adopt	5-1-05	410-141-0340	5-1-05	Amend	6-1-05
410-125-0141	4-1-05	Amend	5-1-05	410-141-0400	5-1-05	Amend	6-1-05
410-125-0195	4-1-05	Amend	5-1-05	410-141-0405	5-1-05	Amend	6-1-05
410-125-0220	4-1-05	Amend	4-1-05	410-141-0420	5-1-05	Amend	6-1-05
410-125-0410	4-1-05	Amend	4-1-05	410-141-0440	5-1-05	Amend	6-1-05
410-129-0070	4-1-05	Amend	4-1-05	410-141-0480	5-1-05	Amend	6-1-05
410-129-0200	4-1-05	Amend	4-1-05	410-141-0520	5-1-05	Amend	6-1-05
410-129-0240	4-1-05	Amend	4-1-05	410-142-0300	12-16-04	Amend	1-1-05
410-130-0010	4-1-05	Repeal	4-1-05	410-146-0080	4-1-05	Amend	4-1-05
410-130-0020	4-1-05	Repeal	4-1-05	410-147-0365	3-18-05	Adopt(T)	4-1-05
410-130-0040	4-1-05	Repeal	4-1-05	410-147-0365	6-1-05	Adopt	6-1-05
410-130-0160	4-1-05	Amend	4-1-05	410-148-0090	4-1-05	Amend	4-1-05
410-130-0180	4-1-05	Amend	4-1-05	411-002-0155	6-6-05	Adopt	7-1-05
410-130-0200	4-1-05	Amend	4-1-05	411-002-0175	12-30-04	Adopt	2-1-05
410-130-0220	4-1-05	Amend	4-1-05	411-015-0015	1-4-05	Amend	2-1-05
410-130-0240	12-1-04	Amend	1-1-05	411-015-0100	1-4-05	Amend	2-1-05
410-130-0240	4-1-05	Amend	4-1-05	411-020-0000	7-1-05	Amend	6-1-05
410-130-0368	4-1-05	Adopt	4-1-05	411-020-0002	7-1-05	Amend	6-1-05

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411-020-0015	7-1-05	Amend	6-1-05	411-335-0090	1-1-05	Adopt	1-1-05
411-020-0020	7-1-05	Amend	6-1-05	411-335-0100	1-1-05	Adopt	1-1-05
411-020-0030	7-1-05	Amend	6-1-05	411-335-0110	1-1-05	Adopt	1-1-05
411-020-0040	7-1-05	Amend	6-1-05	411-335-0120	1-1-05	Adopt	1-1-05
411-020-0050	7-1-05	Am. & Ren.	6-1-05	411-335-0130	1-1-05	Adopt	1-1-05
411-020-0060	7-1-05	Adopt	6-1-05	411-335-0140	1-1-05	Adopt	1-1-05
411-020-0070	7-1-05	Adopt	6-1-05	411-335-0150	1-1-05	Adopt	1-1-05
411-020-0080	7-1-05	Adopt	6-1-05	411-335-0160	1-1-05	Adopt	1-1-05
411-020-0090	7-1-05	Adopt	6-1-05	411-335-0170	1-1-05	Adopt	1-1-05
411-020-0100	7-1-05	Adopt	6-1-05	411-335-0180	1-1-05	Adopt	1-1-05
411-020-0110	7-1-05	Adopt	6-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-020-0130	7-1-05	Adopt	6-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0220	1-1-05	Adopt	1-1-05
411-031-0040	1-1-05	Amend(T)	2-1-05	411-335-0230	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0240	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0250	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0260	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0270	1-1-05	Adopt	1-1-05
411-034-0030	12-1-04	Amend	1-1-05	411-335-0280	1-1-05	Adopt	1-1-05
411-034-0035	12-1-04	Adopt	1-1-05	411-335-0290	1-1-05	Adopt	1-1-05
411-034-0040	12-1-04	Adopt	1-1-05	411-335-0300	1-1-05	Adopt	1-1-05
411-034-0050	12-1-04	Amend	1-1-05	411-335-0310	1-1-05	Adopt	1-1-05
411-034-0055	12-1-04	Adopt	1-1-05	411-335-0320	1-1-05	Adopt	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	411-335-0330	1-1-05	Adopt	1-1-05
411-034-0090	12-1-04	Amend	1-1-05	411-335-0340	1-1-05	Adopt	1-1-05
411-045-0000	1-4-05	Amend	2-1-05	411-335-0350	1-1-05	Adopt	1-1-05
411-045-0010	1-4-05	Amend	2-1-05	411-335-0360	1-1-05	Adopt	1-1-05
411-045-0020	1-4-05	Amend	2-1-05	411-335-0370	1-1-05	Adopt	1-1-05
411-045-0030	1-4-05	Amend	2-1-05	411-335-0380	1-1-05	Adopt	1-1-05
411-045-0040	1-4-05	Amend	2-1-05	411-335-0390	1-1-05	Adopt	1-1-05
411-045-0050	1-4-05	Amend	2-1-05	411-340-0020	1-1-05	Amend(T)	2-1-05
411-045-0060	1-4-05	Amend	2-1-05	411-340-0130	1-1-05	Amend(T)	2-1-05
411-045-0070	1-4-05	Amend	2-1-05	411-346-0165	1-1-05	Adopt	1-1-05
411-045-0080	1-4-05	Amend	2-1-05	411-360-0010	2-1-05	Adopt	2-1-05
411-045-0090	1-4-05	Amend	2-1-05	411-360-0020	2-1-05	Adopt	2-1-05
411-045-0100	1-4-05	Amend	2-1-05	411-360-0030	2-1-05	Adopt	2-1-05
411-045-0110	1-4-05	Amend	2-1-05	411-360-0040	2-1-05	Adopt	2-1-05
411-045-0120	1-4-05	Amend	2-1-05	411-360-0050	2-1-05	Adopt	2-1-05
411-045-0130	1-4-05	Amend	2-1-05	411-360-0060	2-1-05	Adopt	2-1-05
411-045-0140	1-4-05	Amend	2-1-05	411-360-0070	2-1-05	Adopt	2-1-05
411-070-0033	4-19-05	Adopt	6-1-05	411-360-0080	2-1-05	Adopt	2-1-05
411-070-0359	12-28-04	Amend	2-1-05	411-360-0090	2-1-05	Adopt	2-1-05
411-070-0428	12-28-04	Amend	2-1-05	411-360-0100	2-1-05	Adopt	2-1-05
411-070-0440	12-28-04	Repeal	2-1-05	411-360-0110	2-1-05	Adopt	2-1-05
411-070-0442	12-28-04	Adopt	2-1-05	411-360-0120	2-1-05	Adopt	2-1-05
411-070-0446	12-28-04	Repeal	2-1-05	411-360-0130	2-1-05	Adopt	2-1-05
411-070-0465	12-28-04	Amend	2-1-05	411-360-0140	2-1-05	Adopt	2-1-05
411-335-0010	1-1-05	Adopt	1-1-05	411-360-0150	2-1-05	Adopt	2-1-05
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411-335-0050	1-1-05	Adopt	1-1-05	411-360-0190	2-1-05	Adopt	2-1-05
411-335-0060	1-1-05	Adopt	1-1-05	411-360-0200	2-1-05	Adopt	2-1-05
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411-360-0230	2-1-05	Adopt	2-1-05	413-050-0525	1-1-05	Repeal	2-1-05
411-360-0240	2-1-05	Adopt	2-1-05	413-050-0530	1-1-05	Amend	2-1-05
411-360-0250	2-1-05	Adopt	2-1-05	413-050-0535	1-1-05	Amend	2-1-05
411-360-0260	2-1-05	Adopt	2-1-05	413-050-0540	1-1-05	Repeal	2-1-05
411-360-0270	2-1-05	Adopt	2-1-05	413-050-0545	1-1-05	Repeal	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	413-050-0550	1-1-05	Repeal	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-050-0555	1-1-05	Amend	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	413-050-0560	1-1-05	Amend	2-1-05
411-360-0300	2-1-05	Adopt	2-1-05	413-050-0565	1-1-05	Amend	2-1-05
411-360-0310	2-1-05	Adopt	2-1-05	413-050-0570	1-1-05	Amend	2-1-05
411-999-0025	6-1-05	Adopt(T)	6-1-05	413-050-0575	1-1-05	Amend	2-1-05
413-010-0705	2-1-05	Amend	3-1-05	413-050-0580	1-1-05	Repeal	2-1-05
413-010-0710	2-1-05	Adopt	3-1-05	413-050-0585	1-1-05	Amend	2-1-05
413-010-0712	2-1-05	Amend	3-1-05	413-055-0100	1-1-05	Amend	2-1-05
413-010-0714	2-1-05	Amend	3-1-05	413-055-0105	1-1-05	Amend	2-1-05
413-010-0715	2-1-05	Amend	3-1-05	413-055-0110	1-1-05	Amend	2-1-05
413-010-0716	2-1-05	Amend	3-1-05	413-055-0115	1-1-05	Repeal	2-1-05
413-010-0717	2-1-05	Amend	3-1-05	413-055-0120	1-1-05	Amend	2-1-05
413-010-0718	2-1-05	Amend	3-1-05	413-055-0125	1-1-05	Repeal	2-1-05
413-010-0720	2-1-05	Amend	3-1-05	413-055-0130	1-1-05	Repeal	2-1-05
413-010-0721	2-1-05	Amend	3-1-05	413-055-0135	1-1-05	Repeal	2-1-05
413-010-0722	2-1-05	Amend	3-1-05	413-055-0140	1-1-05	Amend	2-1-05
413-010-0723	2-1-05	Amend	3-1-05	413-055-0145	1-1-05	Amend	2-1-05
413-010-0732	2-1-05	Amend	3-1-05	413-055-0150	1-1-05	Amend	2-1-05
413-010-0735	2-1-05	Amend	3-1-05	413-055-0155	1-1-05	Repeal	2-1-05
413-010-0738	2-1-05	Amend	3-1-05	413-055-0160	1-1-05	Amend	2-1-05
413-010-0740	2-1-05	Amend	3-1-05	413-055-0165	1-1-05	Amend	2-1-05
413-010-0743	2-1-05	Amend	3-1-05	413-120-0440	1-28-05	Amend(T)	3-1-05
413-010-0745	2-1-05	Amend	3-1-05	413-330-0070	3-1-05	Suspend	4-1-05
413-010-0746	2-1-05	Amend	3-1-05	414-061-0080	12-17-04	Amend	2-1-05
413-010-0748	2-1-05	Amend	3-1-05	414-061-0100	11-16-04	Amend	1-1-05
413-010-0750	2-1-05	Amend	3-1-05	414-061-0110	11-16-04	Amend	1-1-05
413-015-0115	2-1-05	Amend	3-1-05	414-205-0170	11-16-04	Amend	1-1-05
413-015-0205	2-1-05	Amend	3-1-05	414-205-0170	4-29-05	Amend	6-1-05
413-015-0210	2-1-05	Amend	3-1-05	416-170-0000	1-11-05	Amend	2-1-05
413-015-0215	2-1-05	Amend	3-1-05	416-170-0010	1-11-05	Amend	2-1-05
413-015-0305	2-1-05	Amend	3-1-05	416-170-0020	1-11-05	Amend	2-1-05
413-015-0505	2-1-05	Amend	3-1-05	416-170-0030	1-11-05	Amend	2-1-05
413-015-0511	2-1-05	Amend	3-1-05	416-170-0050	1-11-05	Adopt	2-1-05
413-015-0725	2-1-05	Amend	3-1-05	416-170-0050	1-13-05	Repeal	2-1-05
413-015-1000	4-1-05	Amend	5-1-05	416-250-0000	1-11-05	Amend	2-1-05
413-015-1100	1-28-05	Adopt(T)	3-1-05	416-250-0010	1-11-05	Amend	2-1-05
413-015-1105	1-28-05	Adopt(T)	3-1-05	416-250-0020	1-11-05	Amend	2-1-05
413-015-1110	1-28-05	Adopt(T)	3-1-05	416-250-0030	1-11-05	Amend	2-1-05
413-015-1115	1-28-05	Adopt(T)	3-1-05	416-250-0040	1-11-05	Amend	2-1-05
413-015-1120	1-28-05	Adopt(T)	3-1-05	416-250-0050	1-11-05	Amend	2-1-05
413-015-1125	1-28-05	Adopt(T)	3-1-05	416-250-0060	1-11-05	Amend	2-1-05
413-030-0140	6-1-05	Repeal	7-1-05	416-250-0070	1-11-05	Amend	2-1-05
413-030-0145	6-1-05	Repeal	7-1-05	416-250-0080	1-11-05	Amend	2-1-05
413-030-0150	6-1-05	Repeal	7-1-05	416-250-0090	1-11-05	Amend	2-1-05
413-030-0155	6-1-05	Repeal	7-1-05	416-315-0000	6-13-05	Adopt	7-1-05
413-030-0160	6-1-05	Repeal	7-1-05	416-315-0010	6-13-05	Adopt	7-1-05
413-030-0165	6-1-05	Repeal	7-1-05	416-315-0020	6-13-05	Adopt	7-1-05
413-050-0500	1-1-05	Amend	2-1-05	416-315-0030	6-13-05	Adopt	7-1-05
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416-340-0030	3-25-05	Amend	5-1-05	436-010-0210	4-1-05	Amend	5-1-05
416-340-0040	3-25-05	Amend	5-1-05	436-010-0220	4-1-05	Amend	5-1-05
416-340-0050	3-25-05	Amend	5-1-05	436-010-0230	4-1-05	Amend	5-1-05
416-340-0060	3-25-05	Amend	5-1-05	436-010-0240	4-1-05	Amend	5-1-05
416-340-0070	3-25-05	Amend	5-1-05	436-010-0250	4-1-05	Amend	5-1-05
416-340-0080	3-25-05	Repeal	5-1-05	436-010-0260	4-1-05	Amend	5-1-05
416-340-0090	3-25-05	Repeal	5-1-05	436-010-0265	4-1-05	Amend	5-1-05
416-340-0100	3-25-05	Repeal	5-1-05	436-010-0270	4-1-05	Amend	5-1-05
416-340-0110	3-25-05	Repeal	5-1-05	436-010-0275	4-1-05	Amend	5-1-05
416-350-0000	6-13-05	Repeal	7-1-05	436-010-0280	4-1-05	Amend	5-1-05
416-350-0010	6-13-05	Repeal	7-1-05	436-010-0290	4-1-05	Amend	5-1-05
416-350-0020	6-13-05	Repeal	7-1-05	436-010-0300	4-1-05	Amend	5-1-05
416-350-0030	6-13-05	Repeal	7-1-05	436-010-0330	4-1-05	Amend	5-1-05
416-400-0000	1-11-05	Repeal	2-1-05	436-010-0340	4-1-05	Amend	5-1-05
416-430-0040	3-25-05	Repeal	5-1-05	436-035-0500	5-13-05	Amend(T)	6-1-05
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416-530-0010	3-9-05	Amend	4-1-05	436-070-0003	4-1-05	Amend	5-1-05
416-530-0010	6-13-05	Amend	7-1-05	436-070-0005	4-1-05	Amend	5-1-05
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416-550-0040	3-25-05	Amend	5-1-05	436-070-0050	4-1-05	Amend	5-1-05
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416-550-0070	3-25-05	Amend	5-1-05	436-085-0002	4-1-05	Amend	5-1-05
416-550-0080	3-25-05	Amend	5-1-05	436-085-0003	4-1-05	Amend	5-1-05
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436-110-0330	7-1-05	Amend	7-1-05	437-007-1310	6-1-05	Adopt	7-1-05
436-110-0335	7-1-05	Amend	7-1-05	437-007-1315	6-1-05	Adopt	7-1-05
436-110-0336	7-1-05	Adopt	7-1-05	437-007-1320	6-1-05	Adopt	7-1-05
436-110-0337	7-1-05	Adopt	7-1-05	437-007-1325	6-1-05	Adopt	7-1-05
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436-110-0900	7-1-05	Amend	7-1-05	437-007-1394	6-1-05	Repeal	7-1-05
436-120-0004	7-1-05	Amend	7-1-05	437-007-1395	6-1-05	Repeal	7-1-05
436-120-0005	7-1-05	Amend	7-1-05	437-007-1396	6-1-05	Repeal	7-1-05
436-120-0007	7-1-05	Amend	7-1-05	437-007-1397	6-1-05	Repeal	7-1-05
436-120-0008	7-1-05	Amend	7-1-05	437-007-1398	6-1-05	Repeal	7-1-05
436-120-0320	7-1-05	Amend	7-1-05	437-007-1399	6-1-05	Repeal	7-1-05
436-120-0340	7-1-05	Amend	7-1-05	441-710-0010	3-4-05	Amend(T)	4-1-05
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436-120-0360	7-1-05	Amend	7-1-05	441-860-0020	1-1-05	Amend	1-1-05
436-120-0400	7-1-05	Amend	7-1-05	441-860-0050	1-1-05	Amend	1-1-05
436-120-0410	7-1-05	Amend	7-1-05	441-930-0030	1-1-05	Amend	1-1-05
436-120-0430	7-1-05	Amend	7-1-05	441-930-0210	1-1-05	Amend	1-1-05
436-120-0440	7-1-05	Amend	7-1-05	441-930-0270	1-1-05	Amend	1-1-05
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437-007-0685	6-1-05	Amend	7-1-05	443-002-0080	1-1-05	Adopt	2-1-05
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437-007-0935	6-1-05	Amend	7-1-05	443-002-0100	1-1-05	Adopt	2-1-05
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443-002-0150	1-1-05	Adopt	2-1-05	459-030-0001	2-22-05	Repeal	4-1-05
443-002-0160	1-1-05	Adopt	2-1-05	459-030-0011	2-22-05	Amend	4-1-05
443-002-0170	1-1-05	Adopt	2-1-05	459-030-0025	2-22-05	Amend	4-1-05
443-002-0180	1-1-05	Adopt	2-1-05	459-030-0030	2-22-05	Amend	4-1-05
443-002-0190	1-1-05	Adopt	2-1-05	459-050-0040	11-23-04	Amend	1-1-05
443-005-0000	1-1-05	Repeal	2-1-05	459-050-0070	11-23-04	Amend	1-1-05
443-005-0010	1-1-05	Repeal	2-1-05	459-050-0072	11-23-04	Adopt	1-1-05
443-005-0020	1-1-05	Repeal	2-1-05	459-050-0080	11-23-04	Amend	1-1-05
443-005-0040	1-1-05	Repeal	2-1-05	459-050-0150	11-23-04	Amend	1-1-05
443-005-0050	1-1-05	Repeal	2-1-05	459-070-0001	2-22-05	Amend(T)	4-1-05
443-005-0060	1-1-05	Repeal	2-1-05	459-070-0050	1-31-05	Adopt	3-1-05
443-005-0070	1-1-05	Repeal	2-1-05	459-070-0100	11-23-04	Amend	1-1-05
443-010-0010	1-1-05	Repeal	2-1-05	459-070-0110	11-23-04	Amend	1-1-05
443-015-0010	1-1-05	Repeal	2-1-05	459-080-0050	1-31-05	Adopt	3-1-05
459-001-0005	12-1-04	Amend	1-1-05	459-080-0250	11-23-04	Adopt	1-1-05
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459-005-0590	2-22-05	Amend	4-1-05	461-135-0780	1-1-05	Amend	2-1-05
459-005-0590(T)	2-22-05	Repeal	4-1-05	461-135-0780	4-1-05	Amend	5-1-05
459-005-0591	12-15-04	Amend(T)	1-1-05	461-135-0832	1-1-05	Amend	2-1-05
459-005-0591	1-31-05	Amend	3-1-05	461-135-1100	4-1-05	Amend	5-1-05
459-005-0591	2-22-05	Amend	4-1-05	461-135-1102	4-1-05	Amend	5-1-05
459-005-0591(T)	2-22-05	Repeal	4-1-05	461-135-1110	4-1-05	Amend	5-1-05
459-005-0595	12-15-04	Amend(T)	1-1-05	461-135-1120	4-1-05	Amend	5-1-05
459-005-0595	2-22-05	Amend	4-1-05	461-140-0040	2-1-05	Amend(T)	3-1-05
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461-145-0320	1-1-05	Amend	2-1-05	461-180-0085	1-1-05	Adopt	2-1-05
461-145-0330	1-1-05	Amend	2-1-05	461-180-0090	1-1-05	Amend	2-1-05
461-145-0330	4-1-05	Amend	5-1-05	461-180-0095	4-1-05	Repeal	5-1-05
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461-145-0380	4-1-05	Amend	5-1-05	461-180-0125	1-1-05	Adopt	2-1-05
461-145-0390	4-1-05	Amend	5-1-05	461-195-0521	4-1-05	Amend	5-1-05
461-145-0410	4-1-05	Amend	5-1-05	461-195-0531	1-1-05	Amend	2-1-05
461-145-0520	4-1-05	Amend	5-1-05	461-195-0541	4-1-05	Amend	5-1-05
461-145-0570	4-1-05	Amend	5-1-05	462-220-0040	7-1-05	Amend	7-1-05
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461-145-0910	4-1-05	Amend	5-1-05	471-015-0020	1-20-05	Amend	3-1-05
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582-100-0040	7-1-05	Amend	6-1-05	603-040-0030	11-30-04	Repeal	1-1-05
583-030-0025	3-3-05	Amend	4-1-05	603-040-0040	11-30-04	Repeal	1-1-05
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584-017-0175	4-15-05	Amend	5-1-05	603-041-0050	11-30-04	Repeal	1-1-05
584-017-0250	1-21-05	Amend	3-1-05	603-041-0060	11-30-04	Repeal	1-1-05
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584-017-0260	1-21-05	Amend	3-1-05	603-041-0075	11-30-04	Repeal	1-1-05
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584-060-0051	4-15-05	Amend	5-1-05	603-052-0114	2-14-05	Amend	3-1-05
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635-005-0045(T)	12-21-04	Suspend	2-1-05	635-023-0125(T)	5-10-05	Suspend	6-1-05
635-005-0045(T)	12-30-04	Suspend	2-1-05	635-023-0125(T)	5-22-05	Suspend	7-1-05
635-006-0232	1-7-05	Amend	2-1-05	635-023-0125(T)	6-4-05	Suspend	7-1-05
635-006-0850	12-15-04	Amend	1-1-05	635-023-0128	1-1-05	Adopt	1-1-05
635-006-0910	12-15-04	Amend	1-1-05	635-023-0128	6-16-05	Amend(T)	7-1-05
635-006-0930	12-15-04	Amend	1-1-05	635-023-0130	1-1-05	Amend	1-1-05
635-010-0020	4-1-05	Amend	3-1-05	635-023-0130	4-15-05	Amend	5-1-05
635-011-0050	1-1-05	Amend	1-1-05	635-023-0134	1-1-05	Adopt	1-1-05
635-011-0066	1-1-05	Amend	1-1-05	635-023-0134	5-21-05	Amend(T)	7-1-05
635-011-0072	5-1-05	Adopt	5-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-011-0100	1-1-05	Amend	1-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-011-0101	1-1-05	Repeal	1-1-05	635-039-0080	5-1-05	Amend(T)	6-1-05
635-013-0003	1-1-05	Amend	1-1-05	635-039-0080	6-12-05	Amend(T)	7-1-05
635-013-0003	4-15-05	Amend	5-1-05	635-039-0080(T)	6-12-05	Suspend	7-1-05
635-013-0004	1-1-05	Amend	1-1-05	635-039-0090	1-1-05	Amend	1-1-05
635-013-0009	4-15-05	Amend	5-1-05	635-039-0090	1-1-05	Amend	1-1-05
635-014-0080	1-1-05	Amend	1-1-05	635-039-0090	5-1-05	Amend(T)	6-1-05
635-014-0090	11-20-04	Amend(T)	1-1-05	635-041-0030	1-20-05	Amend(T)	3-1-05
635-014-0090	1-1-05	Amend	1-1-05	635-041-0030	2-14-05	Amend	3-1-05

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635-041-0061	1-1-05	Amend(T)	2-1-05	635-042-0160(T)	5-5-05	Suspend	6-1-05
635-041-0061	2-14-05	Amend	3-1-05	635-042-0160(T)	5-10-05	Suspend	6-1-05
635-041-0061(T)	2-14-05	Repeal	3-1-05	635-042-0170	2-14-05	Amend	3-1-05
635-041-0065	1-1-05	Amend(T)	2-1-05	635-042-0180	2-14-05	Amend	3-1-05
635-041-0065	1-31-05	Amend(T)	3-1-05	635-042-0180	4-20-05	Amend(T)	6-1-05
635-041-0065	3-15-05	Amend(T)	4-1-05	635-042-0180	4-28-05	Amend(T)	6-1-05
635-041-0065(T)	1-31-05	Suspend	3-1-05	635-042-0180	5-5-05	Amend(T)	6-1-05
635-041-0065(T)	3-15-05	Suspend	4-1-05	635-042-0180	5-10-05	Amend(T)	6-1-05
635-042-0005	2-14-05	Amend	3-1-05	635-042-0180(T)	4-28-05	Suspend	6-1-05
635-042-0022	2-14-05	Amend	3-1-05	635-042-0180(T)	5-5-05	Suspend	6-1-05
635-042-0022	3-1-05	Amend(T)	4-1-05	635-042-0180(T)	5-10-05	Suspend	6-1-05
635-042-0022	3-3-05	Amend(T)	4-1-05	635-042-0190	2-14-05	Amend	3-1-05
635-042-0022	3-7-05	Amend(T)	4-1-05	635-043-0085	1-1-05	Amend	2-1-05
635-042-0022	3-10-05	Amend(T)	4-1-05	635-043-0096	3-9-05	Amend	4-1-05
635-042-0022	3-15-05	Amend(T)	4-1-05	635-044-0130	1-1-05	Amend	2-1-05
635-042-0022	3-29-05	Amend(T)	5-1-05	635-060-0000	1-1-05	Amend	2-1-05
635-042-0022	3-31-05	Amend(T)	5-1-05	635-060-0005	1-1-05	Amend	2-1-05
635-042-0022(T)	3-3-05	Suspend	4-1-05	635-060-0023	1-1-05	Amend	2-1-05
635-042-0022(T)	3-7-05	Suspend	4-1-05	635-060-0046	1-1-05	Amend	2-1-05
635-042-0022(T)	3-10-05	Suspend	4-1-05	635-060-0046	4-20-05	Amend	6-1-05
635-042-0022(T)	3-15-05	Suspend	4-1-05	635-060-0055	4-1-05	Amend	2-1-05
635-042-0022(T)	3-29-05	Suspend	5-1-05	635-065-0001	1-1-05	Amend	2-1-05
635-042-0022(T)	3-31-05	Suspend	5-1-05	635-065-0006	1-1-05	Amend	2-1-05
635-042-0110	2-14-05	Amend	3-1-05	635-065-0015	1-1-05	Amend	2-1-05
635-042-0110	5-10-05	Amend(T)	6-1-05	635-065-0090	1-1-05	Amend	2-1-05
635-042-0110	5-23-05	Amend(T)	7-1-05	635-065-0090	6-14-05	Amend	7-1-05
635-042-0110(T)	5-23-05	Suspend	7-1-05	635-065-0401	1-1-05	Amend	2-1-05
635-042-0115	2-14-05	Amend	3-1-05	635-065-0625	1-1-05	Amend	2-1-05
635-042-0130	1-1-05	Amend(T)	2-1-05	635-065-0635	1-1-05	Amend	2-1-05
635-042-0130	2-24-05	Amend(T)	4-1-05	635-065-0720	1-1-05	Amend	2-1-05
635-042-0130(T)	2-24-05	Suspend	4-1-05	635-065-0735	1-1-05	Amend	2-1-05
635-042-0135	1-1-05	Amend(T)	2-1-05	635-065-0740	1-1-05	Amend	2-1-05
635-042-0135	2-22-05	Amend(T)	4-1-05	635-065-0745	1-1-05	Amend	2-1-05
635-042-0135(T)	2-22-05	Suspend	4-1-05	635-065-0760	6-1-05	Amend	2-1-05
635-042-0145	2-14-05	Amend	3-1-05	635-065-0765	6-14-05	Amend	7-1-05
635-042-0145	3-10-05	Amend(T)	4-1-05	635-066-0000	1-1-05	Amend	2-1-05
635-042-0145	3-15-05	Amend(T)	4-1-05	635-067-0000	1-1-05	Amend	2-1-05
635-042-0145	4-20-05	Amend(T)	6-1-05	635-067-0000	6-14-05	Amend	7-1-05
635-042-0145	4-28-05	Amend(T)	6-1-05	635-067-0004	6-14-05	Amend	7-1-05
635-042-0145	5-5-05	Amend(T)	6-1-05	635-067-0015	1-1-05	Amend	2-1-05
635-042-0145	5-10-05	Amend(T)	6-1-05	635-067-0028	1-1-05	Amend	2-1-05
635-042-0145	5-18-05	Amend(T)	7-1-05	635-067-0029	1-1-05	Amend	2-1-05
635-042-0145(T)	3-15-05	Suspend	4-1-05	635-067-0034	1-1-05	Amend	2-1-05
635-042-0145(T)	4-28-05	Suspend	6-1-05	635-067-0041	1-1-05	Amend	2-1-05
635-042-0145(T)	5-5-05	Suspend	6-1-05	635-068-0000	3-1-05	Amend	2-1-05
635-042-0145(T)	5-10-05	Suspend	6-1-05	635-068-0000	6-14-05	Amend	7-1-05
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635-042-0160	2-14-05	Amend	3-1-05	635-069-0000	2-1-05	Amend	2-1-05
635-042-0160	3-10-05	Amend(T)	4-1-05	635-069-0000	6-14-05	Amend	7-1-05
635-042-0160	3-15-05	Amend(T)	4-1-05	635-069-0030	2-1-05	Amend	2-1-05
635-042-0160	4-20-05	Amend(T)	6-1-05	635-070-0000	4-1-05	Amend	2-1-05
635-042-0160	4-28-05	Amend(T)	6-1-05	635-070-0000	6-14-05	Amend	7-1-05
635-042-0160	5-5-05	Amend(T)	6-1-05	635-071-0000	4-1-05	Amend	2-1-05
635-042-0160	5-10-05	Amend(T)	6-1-05	635-071-0000	6-14-05	Amend	7-1-05
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635-073-0000	6-14-05	Amend	7-1-05	690-021-0040	11-16-04	Am. & Ren.	1-1-05
635-073-0001	6-14-05	Amend	7-1-05	690-021-0050	11-16-04	Am. & Ren.	1-1-05
635-073-0065	6-14-05	Amend	7-1-05	690-021-0060	11-16-04	Am. & Ren.	1-1-05
635-073-0070	6-14-05	Amend	7-1-05	690-021-0070	11-16-04	Repeal	1-1-05
635-073-0080	1-1-05	Amend	2-1-05	690-021-0080	11-16-04	Repeal	1-1-05
635-075-0005	1-1-05	Amend	2-1-05	690-021-0090	11-16-04	Am. & Ren.	1-1-05
635-075-0005	6-14-05	Amend	7-1-05	690-021-0100	11-16-04	Repeal	1-1-05
635-075-0010	1-1-05	Amend	2-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
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635-075-0026	11-23-04	Amend(T)	1-1-05	690-021-0130	11-16-04	Repeal	1-1-05
635-075-0029	1-1-05	Amend	2-1-05	690-021-0140	11-16-04	Am. & Ren.	1-1-05
635-078-0001	4-1-05	Amend	2-1-05	690-021-0160	11-16-04	Am. & Ren.	1-1-05
635-078-0005	4-1-05	Amend	2-1-05	690-021-0170	11-16-04	Am. & Ren.	1-1-05
635-078-0008	4-1-05	Amend	2-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-078-0011	4-1-05	Adopt	2-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-078-0011	6-14-05	Amend	7-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-080-0065	1-1-05	Amend	2-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
635-110-0000	3-9-05	Adopt	4-1-05	690-021-0400	11-16-04	Repeal	1-1-05
635-110-0010	3-9-05	Adopt	4-1-05	690-021-0500	11-16-04	Repeal	1-1-05
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635-110-0030	3-9-05	Adopt	4-1-05	690-021-0700	11-16-04	Am. & Ren.	1-1-05
635-110-0040	3-9-05	Adopt	4-1-05	690-385-2000	11-16-04	Adopt	1-1-05
635-412-0030	11-17-04	Amend	1-1-05	690-385-2200	11-16-04	Adopt	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-385-3110	11-16-04	Adopt	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-385-3120	11-16-04	Adopt	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-385-3130	11-16-04	Adopt	1-1-05
635-430-0025	11-26-04	Adopt	1-1-05	690-385-3140	11-16-04	Adopt	1-1-05
635-430-0030	11-26-04	Amend	1-1-05	690-385-3150	11-16-04	Adopt	1-1-05
635-430-0040	11-26-04	Amend	1-1-05	690-385-3500	11-16-04	Adopt	1-1-05
635-430-0050	11-26-04	Amend	1-1-05	690-385-3520	11-16-04	Adopt	1-1-05
635-430-0060	11-26-04	Amend	1-1-05	690-385-3600	11-16-04	Adopt	1-1-05
635-430-0070	11-26-04	Amend	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-385-4100	11-16-04	Adopt	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-385-4200	11-16-04	Adopt	1-1-05
635-430-0100	11-26-04	Amend	1-1-05	690-385-4300	11-16-04	Adopt	1-1-05
635-430-0310	11-26-04	Amend	1-1-05	690-385-4400	11-16-04	Adopt	1-1-05
635-430-0320	11-26-04	Amend	1-1-05	690-385-4500	11-16-04	Adopt	1-1-05
635-430-0330	11-26-04	Amend	1-1-05	690-385-4580	11-16-04	Adopt	1-1-05
635-430-0350	11-26-04	Amend	1-1-05	690-385-4600	11-16-04	Adopt	1-1-05
635-430-0360	11-26-04	Amend	1-1-05	690-385-4700	11-16-04	Adopt	1-1-05
635-430-0375	11-26-04	Adopt	1-1-05	690-385-5600	11-16-04	Adopt	1-1-05
647-010-0010	6-1-05	Amend	6-1-05	690-385-5680	11-16-04	Adopt	1-1-05
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660-002-0010	3-18-05	Amend(T)	5-1-05	690-385-5800	11-16-04	Adopt	1-1-05
660-002-0015	3-18-05	Amend(T)	5-1-05	690-385-6000	11-16-04	Adopt	1-1-05
660-002-0020	3-18-05	Amend(T)	5-1-05	690-385-7000	11-16-04	Adopt	1-1-05
660-011-0060	2-14-05	Amend	3-1-05	690-385-7100	11-16-04	Adopt	1-1-05
660-012-0005	4-11-05	Amend	5-1-05	695-035-0010	6-8-05	Amend	7-1-05
660-012-0060	4-11-05	Amend	5-1-05	695-035-0015	6-8-05	Adopt	7-1-05
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690-021-0000	11-16-04	Am. & Ren.	1-1-05	695-035-0050	6-8-05	Amend	7-1-05
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695-045-0020	2-1-05	Adopt	3-1-05	731-005-0185	3-1-05	Repeal	4-1-05
695-045-0025	2-1-05	Adopt	3-1-05	731-005-0195	3-1-05	Repeal	4-1-05
695-045-0030	2-1-05	Adopt	3-1-05	731-005-0205	3-1-05	Repeal	4-1-05
695-045-0035	2-1-05	Adopt	3-1-05	731-005-0215	3-1-05	Repeal	4-1-05
695-045-0040	2-1-05	Adopt	3-1-05	731-005-0225	3-1-05	Repeal	4-1-05
695-045-0045	2-1-05	Adopt	3-1-05	731-005-0235	3-1-05	Repeal	4-1-05
695-045-0050	2-1-05	Adopt	3-1-05	731-005-0245	3-1-05	Repeal	4-1-05
695-045-0055	2-1-05	Adopt	3-1-05	731-005-0255	3-1-05	Repeal	4-1-05
695-045-0060	2-1-05	Adopt	3-1-05	731-005-0265	3-1-05	Repeal	4-1-05
695-045-0065	2-1-05	Adopt	3-1-05	731-005-0275	3-1-05	Repeal	4-1-05
695-045-0070	2-1-05	Adopt	3-1-05	731-005-0285	3-1-05	Repeal	4-1-05
695-045-0080	2-1-05	Adopt	3-1-05	731-005-0295	3-1-05	Repeal	4-1-05
695-045-0090	2-1-05	Adopt	3-1-05	731-005-0305	3-1-05	Repeal	4-1-05
695-045-0100	2-1-05	Adopt	3-1-05	731-005-0315	3-1-05	Repeal	4-1-05
695-045-0110	2-1-05	Adopt	3-1-05	731-005-0325	3-1-05	Repeal	4-1-05
695-045-0120	2-1-05	Adopt	3-1-05	731-005-0335	3-1-05	Repeal	4-1-05
695-045-0130	2-1-05	Adopt	3-1-05	731-005-0345	3-1-05	Repeal	4-1-05
695-045-0140	2-1-05	Adopt	3-1-05	731-005-0355	3-1-05	Repeal	4-1-05
695-045-0150	2-1-05	Adopt	3-1-05	731-005-0365	3-1-05	Repeal	4-1-05
695-046-0010	2-1-05	Adopt	3-1-05	731-005-0400	3-1-05	Adopt	4-1-05
695-046-0020	2-1-05	Adopt	3-1-05	731-005-0410	3-1-05	Adopt	4-1-05
695-046-0025	2-1-05	Adopt	3-1-05	731-005-0420	3-1-05	Adopt	4-1-05
695-046-0030	2-1-05	Adopt	3-1-05	731-005-0430	3-1-05	Adopt	4-1-05
695-046-0040	2-1-05	Adopt	3-1-05	731-005-0440	3-1-05	Adopt	4-1-05
695-046-0050	2-1-05	Adopt	3-1-05	731-005-0450	3-1-05	Adopt	4-1-05
695-046-0060	2-1-05	Adopt	3-1-05	731-005-0460	3-1-05	Adopt	4-1-05
695-046-0070	2-1-05	Adopt	3-1-05	731-005-0470	3-1-05	Adopt	4-1-05
695-046-0080	2-1-05	Adopt	3-1-05	731-005-0480	3-1-05	Adopt	4-1-05
695-046-0090	2-1-05	Adopt	3-1-05	731-005-0490	3-1-05	Adopt	4-1-05
695-046-0100	2-1-05	Adopt	3-1-05	731-005-0500	3-1-05	Adopt	4-1-05
695-046-0110	2-1-05	Adopt	3-1-05	731-005-0510	3-1-05	Adopt	4-1-05
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731-005-0035	3-1-05	Repeal	4-1-05	731-005-0620	3-1-05	Adopt	4-1-05
731-005-0045	3-1-05	Repeal	4-1-05	731-005-0630	3-1-05	Adopt	4-1-05
731-005-0055	3-1-05	Repeal	4-1-05	731-005-0640	3-1-05	Adopt	4-1-05
731-005-0065	3-1-05	Repeal	4-1-05	731-005-0650	3-1-05	Adopt	4-1-05
731-005-0075	3-1-05	Repeal	4-1-05	731-005-0660	3-1-05	Adopt	4-1-05
731-005-0085	3-1-05	Repeal	4-1-05	731-005-0670	3-1-05	Adopt	4-1-05
731-005-0095	3-1-05	Repeal	4-1-05	731-005-0680	3-1-05	Adopt	4-1-05
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731-005-0145	3-1-05	Repeal	4-1-05	731-005-0730	3-1-05	Adopt	4-1-05
731-005-0155	3-1-05	Repeal	4-1-05	731-005-0740	3-1-05	Adopt	4-1-05
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731-005-0770	3-1-05	Adopt	4-1-05	731-030-0130	11-17-04	Amend	1-1-05
731-005-0780	3-1-05	Adopt	4-1-05	731-030-0140	11-17-04	Repeal	1-1-05
731-005-0790	3-1-05	Adopt	4-1-05	731-030-0150	11-17-04	Amend	1-1-05
731-007-0010	3-1-05	Repeal	4-1-05	731-030-0160	11-17-04	Amend	1-1-05
731-007-0020	3-1-05	Repeal	4-1-05	731-070-0055	1-20-05	Adopt	3-1-05
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731-007-0040	3-1-05	Repeal	4-1-05	731-080-0010	3-18-05	Adopt	5-1-05
731-007-0050	3-1-05	Repeal	4-1-05	731-080-0020	3-18-05	Adopt	5-1-05
731-007-0060	3-1-05	Repeal	4-1-05	731-080-0030	3-18-05	Adopt	5-1-05
731-007-0070	3-1-05	Repeal	4-1-05	731-080-0040	3-18-05	Adopt	5-1-05
731-007-0080	3-1-05	Repeal	4-1-05	731-080-0050	3-18-05	Adopt	5-1-05
731-007-0090	3-1-05	Repeal	4-1-05	731-080-0060	3-18-05	Adopt	5-1-05
731-007-0100	3-1-05	Repeal	4-1-05	731-080-0070	3-18-05	Adopt	5-1-05
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731-007-0120	3-1-05	Repeal	4-1-05	731-146-0015	3-1-05	Adopt(T)	4-1-05
731-007-0130	3-1-05	Repeal	4-1-05	731-146-0020	3-1-05	Adopt(T)	4-1-05
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731-007-0170	3-1-05	Repeal	4-1-05	731-146-0050	3-1-05	Adopt(T)	4-1-05
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732-005-0066	1-1-05	Adopt	2-1-05	734-010-0340	3-1-05	Adopt	4-1-05
732-005-0071	1-1-05	Adopt	2-1-05	734-010-0350	3-1-05	Adopt	4-1-05
732-005-0076	1-1-05	Adopt	2-1-05	734-010-0360	3-1-05	Adopt	4-1-05
732-005-0081	1-1-05	Adopt	2-1-05	734-010-0370	3-1-05	Adopt	4-1-05
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735-140-0080	5-1-05	Repeal	6-1-05	736-010-0045	5-5-05	Am. & Ren.	6-1-05
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735-140-0120	5-1-05	Repeal	6-1-05	736-010-0065	5-5-05	Amend	6-1-05
735-140-0130	5-1-05	Repeal	6-1-05	736-010-0070	5-5-05	Am. & Ren.	6-1-05
735-140-0135	5-1-05	Repeal	6-1-05	736-010-0075	5-5-05	Repeal	6-1-05
735-140-0140	5-1-05	Repeal	6-1-05	736-010-0080	5-5-05	Repeal	6-1-05
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736-010-0115	5-5-05	Am. & Ren.	6-1-05	740-100-0070	4-1-05	Amend	5-1-05
736-010-0120	5-5-05	Am. & Ren.	6-1-05	740-100-0080	4-1-05	Amend	5-1-05
736-010-0125	5-5-05	Am. & Ren.	6-1-05	740-100-0090	4-1-05	Amend	5-1-05
736-015-0006	5-5-05	Adopt	6-1-05	740-100-0100	4-1-05	Amend	5-1-05
736-015-0010	5-5-05	Amend	6-1-05	740-110-0010	4-1-05	Amend	5-1-05
736-015-0015	5-5-05	Amend	6-1-05	740-200-0010	1-1-05	Amend	2-1-05
736-015-0020	5-5-05	Amend	6-1-05	740-200-0020	1-1-05	Amend	2-1-05
736-015-0030	5-5-05	Amend	6-1-05	740-200-0040	1-1-05	Amend	2-1-05
736-015-0035	5-5-05	Amend	6-1-05	800-020-0015	1-5-05	Amend	2-1-05
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736-015-0050	5-5-05	Am. & Ren.	6-1-05	801-001-0020	3-1-05	Amend	4-1-05
736-015-0055	5-5-05	Repeal	6-1-05	801-001-0035	3-1-05	Amend	4-1-05
736-015-0058	5-5-05	Am. & Ren.	6-1-05	801-005-0010	3-1-05	Amend	4-1-05
736-015-0060	5-5-05	Repeal	6-1-05	801-010-0010	1-1-05	Amend	2-1-05
736-015-0063	5-5-05	Am. & Ren.	6-1-05	801-010-0050	1-1-05	Amend	2-1-05
736-015-0065	5-5-05	Am. & Ren.	6-1-05	801-010-0060	1-1-05	Amend	2-1-05
736-015-0067	5-5-05	Am. & Ren.	6-1-05	801-010-0065	1-1-05	Amend	2-1-05
736-015-0070	5-5-05	Am. & Ren.	6-1-05	801-010-0085	1-1-05	Amend	2-1-05
736-015-0072	5-5-05	Am. & Ren.	6-1-05	801-020-0620	1-1-05	Amend	2-1-05
736-015-0075	5-5-05	Repeal	6-1-05	801-020-0690	1-1-05	Amend	2-1-05
736-015-0080	5-5-05	Am. & Ren.	6-1-05	801-020-0700	1-1-05	Amend	2-1-05
736-015-0085	5-5-05	Repeal	6-1-05	801-020-0710	1-1-05	Amend	2-1-05
736-015-0090	5-5-05	Am. & Ren.	6-1-05	801-020-0720	1-1-05	Amend	2-1-05
736-015-0093	5-5-05	Repeal	6-1-05	801-030-0015	2-1-05	Amend	3-1-05
736-015-0095	5-5-05	Am. & Ren.	6-1-05	801-040-0010	1-1-05	Amend	2-1-05
736-015-0097	5-5-05	Am. & Ren.	6-1-05	801-040-0020	1-1-05	Amend	2-1-05
736-015-0100	5-5-05	Am. & Ren.	6-1-05	801-040-0030	1-1-05	Amend	2-1-05
736-015-0102	5-5-05	Repeal	6-1-05	801-040-0040	1-1-05	Amend	2-1-05
736-015-0105	5-5-05	Repeal	6-1-05	801-040-0050	1-1-05	Amend	2-1-05
736-015-0110	5-5-05	Am. & Ren.	6-1-05	801-040-0060	1-1-05	Repeal	2-1-05
736-015-0115	5-5-05	Repeal	6-1-05	801-040-0070	1-1-05	Amend	2-1-05
736-015-0120	5-5-05	Repeal	6-1-05	801-040-0090	1-1-05	Amend	2-1-05
736-015-0125	5-5-05	Repeal	6-1-05	801-040-0100	1-1-05	Amend	2-1-05
736-015-0130	5-5-05	Am. & Ren.	6-1-05	801-040-0150	1-1-05	Amend	2-1-05
736-015-0135	5-5-05	Am. & Ren.	6-1-05	801-040-0160	1-1-05	Amend	2-1-05
736-015-0140	5-5-05	Repeal	6-1-05	804-001-0002	2-14-05	Amend	3-1-05
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808-004-0211	12-15-04	Adopt(T)	1-1-05	808-008-0500	2-15-05	Amend	3-1-05
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808-004-0300	2-15-05	Amend	3-1-05	808-008-0511(T)	2-15-05	Repeal	3-1-05
808-004-0440	2-15-05	Amend	3-1-05	808-008-0521	12-15-04	Adopt(T)	1-1-05
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808-008-0280	2-15-05	Amend	3-1-05	812-003-0160	12-10-04	Adopt	1-1-05
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812-003-0300	12-10-04	Adopt	1-1-05	818-001-0087	2-1-05	Amend	3-1-05
812-003-0310	12-10-04	Adopt	1-1-05	818-021-0011	12-1-04	Amend	1-1-05
812-003-0330	12-10-04	Adopt	1-1-05	818-021-0025	12-1-04	Amend	1-1-05
812-003-0340	12-10-04	Adopt	1-1-05	818-021-0088	2-1-05	Adopt	3-1-05
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812-003-0410	12-10-04	Adopt	1-1-05	818-026-0030	2-1-05	Amend	3-1-05
812-003-0420	12-10-04	Adopt	1-1-05	818-026-0035	2-1-05	Amend	3-1-05
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812-004-0260	12-10-04	Amend	1-1-05	818-026-0055	2-1-05	Adopt	3-1-05
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812-009-0400	12-10-04	Amend	1-1-05	818-042-0120	12-1-04	Amend	1-1-05
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813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05	836-042-0085	4-7-05	Amend	5-1-05
813-230-0010	12-17-04	Amend(T)	2-1-05	836-042-0310	8-1-05	Amend	7-1-05
813-230-0015	12-17-04	Amend(T)	2-1-05	836-042-0316	8-1-05	Amend	7-1-05
813-230-0020	12-17-04	Amend(T)	2-1-05	836-042-0322	8-1-05	Amend	7-1-05

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836-043-0086	8-1-05	Amend	7-1-05	836-054-0000	8-1-05	Amend	7-1-05
836-050-0010	8-1-05	Amend	7-1-05	836-062-0005	8-1-05	Amend	7-1-05
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836-051-0010	8-1-05	Amend	7-1-05	836-071-0127	8-1-05	Amend	7-1-05
836-051-0020	8-1-05	Amend	7-1-05	836-071-0148	8-1-05	Amend	7-1-05
836-051-0540	8-1-05	Amend	7-1-05	836-071-0150	8-1-05	Amend	7-1-05
836-051-0550	8-1-05	Amend	7-1-05	836-071-0160	8-1-05	Amend	7-1-05
836-051-0570	8-1-05	Amend	7-1-05	836-071-0180	8-1-05	Amend	7-1-05
836-051-0590	8-1-05	Amend	7-1-05	836-071-0190	8-1-05	Amend	7-1-05
836-052-0156	8-1-05	Amend	7-1-05	836-071-0195	8-1-05	Amend	7-1-05
836-052-0165	8-1-05	Amend	7-1-05	836-071-0210	8-1-05	Amend	7-1-05
836-052-0175	8-1-05	Amend	7-1-05	836-071-0215	8-1-05	Amend	7-1-05
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836-052-0520	3-1-05	Repeal	4-1-05	836-071-0250	8-1-05	Amend	7-1-05
836-052-0525	3-1-05	Repeal	4-1-05	836-071-0260	8-1-05	Adopt	7-1-05
836-052-0526	3-1-05	Adopt	4-1-05	836-071-0263	8-1-05	Adopt(T)	7-1-05
836-052-0530	3-1-05	Am. & Ren.	4-1-05	836-071-0267	8-1-05	Adopt	7-1-05
836-052-0535	3-1-05	Am. & Ren.	4-1-05	836-071-0269	8-1-05	Am. & Ren.	7-1-05
836-052-0536	3-1-05	Adopt	4-1-05	836-071-0272	8-1-05	Am. & Ren.	7-1-05
836-052-0540	3-1-05	Repeal	4-1-05	836-071-0274	8-1-05	Am. & Ren.	7-1-05
836-052-0545	3-1-05	Am. & Ren.	4-1-05	836-071-0277	8-1-05	Am. & Ren.	7-1-05
836-052-0546	3-1-05	Adopt	4-1-05	836-071-0277	8-1-05	Amend(T)	7-1-05
836-052-0550	3-1-05	Am. & Ren.	4-1-05	836-071-0280	8-1-05	Amend	7-1-05
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836-052-0565	3-1-05	Repeal	4-1-05	836-071-0287	8-1-05	Amend	7-1-05
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836-052-0570	3-1-05	Repeal	4-1-05	836-071-0295	8-1-05	Amend	7-1-05
836-052-0575	3-1-05	Am. & Ren.	4-1-05	836-071-0297	8-1-05	Amend	7-1-05
836-052-0580	3-1-05	Am. & Ren.	4-1-05	836-071-0310	8-1-05	Amend	7-1-05
836-052-0583	3-1-05	Am. & Ren.	4-1-05	836-071-0321	8-1-05	Adopt	7-1-05
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836-052-0600	3-1-05	Am. & Ren.	4-1-05	836-071-0326	8-1-05	Amend	7-1-05
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836-052-0640	3-1-05	Am. & Ren.	4-1-05	836-074-0020	8-1-05	Amend	7-1-05
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836-080-0610	4-1-05	Adopt	5-1-05	837-012-0645	2-15-05	Amend	3-1-05
836-080-0615	4-1-05	Adopt	5-1-05	837-012-0650	2-15-05	Amend	3-1-05
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836-080-0675	4-1-05	Adopt	5-1-05	837-012-1300	6-7-05	Amend	7-1-05
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837-085-0320	4-1-05	Amend	5-1-05	839-016-0750	3-1-05	Am. & Ren.	4-1-05
837-085-0350	4-1-05	Amend	5-1-05	839-021-0106	1-3-05	Adopt	2-1-05
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839-016-0003	3-1-05	Am. & Ren.	4-1-05	845-003-0670	5-1-05	Amend	6-1-05
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839-016-0330	3-1-05	Am. & Ren.	4-1-05	848-010-0070	12-29-04	Repeal	2-1-05
839-016-0340	3-1-05	Am. & Ren.	4-1-05	848-010-0080	12-29-04	Repeal	2-1-05
839-016-0500	3-1-05	Am. & Ren.	4-1-05	848-010-0090	12-29-04	Repeal	2-1-05
839-016-0510	3-1-05	Am. & Ren.	4-1-05	848-010-0105	12-29-04	Renumber	2-1-05
839-016-0520	3-1-05	Am. & Ren.	4-1-05	848-010-0110	12-29-04	Am. & Ren.	2-1-05
839-016-0530	3-1-05	Am. & Ren.	4-1-05	848-010-0115	12-29-04	Renumber	2-1-05
839-016-0540	3-1-05	Am. & Ren.	4-1-05	848-010-0120	12-29-04	Am. & Ren.	2-1-05

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848-015-0010	12-29-04	Adopt	2-1-05	851-050-0131	4-26-05	Amend	6-1-05
848-015-0020	12-29-04	Adopt	2-1-05	852-005-0010	2-23-05	Amend	4-1-05
848-015-0030	12-29-04	Adopt	2-1-05	852-010-0015	2-23-05	Amend	4-1-05
848-020-0000	12-29-04	Amend	2-1-05	852-010-0020	2-23-05	Amend	4-1-05
848-020-0010	12-29-04	Amend	2-1-05	852-010-0023	2-23-05	Amend	4-1-05
848-020-0020	12-29-04	Repeal	2-1-05	852-010-0027	2-23-05	Amend	4-1-05
848-020-0030	12-29-04	Amend	2-1-05	852-020-0035	4-8-05	Adopt	5-1-05
848-020-0040	12-29-04	Amend	2-1-05	852-050-0018	2-23-05	Amend	4-1-05
848-020-0050	12-29-04	Amend	2-1-05	852-050-0021	4-8-05	Adopt	5-1-05
848-020-0060	12-29-04	Amend	2-1-05	852-070-0030	2-23-05	Amend	4-1-05
848-030-0000	12-29-04	Amend	2-1-05	852-080-0040	4-8-05	Amend	5-1-05
848-030-0010	12-29-04	Amend	2-1-05	855-001-0000	2-7-05	Amend	3-1-05
848-040-0000	12-29-04	Repeal	2-1-05	855-041-0040	4-14-05	Amend	5-1-05
848-040-0010	12-29-04	Repeal	2-1-05	855-041-0060	4-14-05	Amend	5-1-05
848-040-0020	12-29-04	Repeal	2-1-05	855-041-0600	3-1-05	Adopt	3-1-05
848-040-0030	12-29-04	Repeal	2-1-05	855-041-0610	3-1-05	Adopt	3-1-05
848-040-0040	12-29-04	Repeal	2-1-05	855-041-0620	3-1-05	Adopt	3-1-05
848-040-0050	12-29-04	Repeal	2-1-05	855-050-0037	5-14-05	Adopt	5-1-05
848-040-0100	12-29-04	Adopt	2-1-05	855-050-0038	5-14-05	Adopt	5-1-05
848-040-0105	12-29-04	Adopt	2-1-05	855-050-0039	5-14-05	Adopt	5-1-05
848-040-0110	12-29-04	Adopt	2-1-05	855-050-0041	5-14-05	Adopt	5-1-05
848-040-0115	12-29-04	Adopt	2-1-05	855-050-0042	5-14-05	Adopt	5-1-05
848-040-0120	12-29-04	Adopt	2-1-05	855-050-0043	5-14-05	Adopt	5-1-05
848-040-0125	12-29-04	Adopt	2-1-05	855-110-0007	3-1-05	Amend	3-1-05
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848-040-0140	12-29-04	Adopt	2-1-05	860-011-0010	12-30-04	Amend	2-1-05
848-040-0145	12-29-04	Adopt	2-1-05	860-011-0011	12-30-04	Adopt	2-1-05
848-040-0150	12-29-04	Adopt	2-1-05	860-011-0012	12-30-04	Adopt	2-1-05
848-040-0155	12-29-04	Adopt	2-1-05	860-011-0015	12-30-04	Amend	2-1-05
848-040-0160	12-29-04	Adopt	2-1-05	860-011-0020	12-30-04	Repeal	2-1-05
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848-050-0000	12-29-04	Repeal	2-1-05	860-011-0030	12-30-04	Repeal	2-1-05
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860-016-0020	2-11-05	Amend	3-1-05	860-034-0320	12-30-04	Amend	2-1-05
860-016-0021	2-11-05	Adopt	3-1-05	860-034-0440	12-30-04	Amend	2-1-05
860-016-0050	2-2-05	Amend	3-1-05	860-034-0600	12-30-04	Amend	2-1-05
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860-021-0034	12-30-04	Amend	2-1-05	860-036-0075	12-1-04	Amend	1-1-05
860-021-0036	12-1-04	Amend	1-1-05	860-036-0095	12-1-04	Amend	1-1-05
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860-032-0095	12-30-04	Amend	2-1-05	860-037-0110	12-1-04	Amend	1-1-05
860-032-0097	12-1-04	Amend	1-1-05	860-037-0410	12-30-04	Amend	2-1-05
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