# OREGON BULLETIN

**Supplements the 2006 *Oregon Administrative Rules Compilation***

**Volume 45, No. 3**
**March 1, 2006**

**For January 16, 2006–February 15, 2006**

Published by
**BILL BRADBURY**
Secretary of State

# 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, Opinions of the Attorney General, and orders issued by the Director of the Dpartment of Revenue.

## Background on Oregon Administrative Rules

ORS 183.310(9) defines "rule" as "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." Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 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 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" 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 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

## 2005–2006 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 97301. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following publication deadlines.

### Submission Deadline — Publishing Date

| | |
|---|---|
| December 15, 2005 | January 1, 2006 |
| January 13, 2006 | February 1, 2006 |
| February 15, 2006 | March 1, 2006 |
| March 15, 2006 | April 1, 2006 |
| April 14, 2006 | May 1, 2006 |
| May 15, 2006 | June 1, 2006 |
| June 15, 2006 | July 1, 2006 |
| July 14, 2006 | August 1, 2006 |
| August 15, 2006 | September 1, 2006 |
| September 15, 2006 | October 1, 2006 |
| October 13, 2006 | November 1, 2006 |
| November 15, 2006 | December 1, 2006 |

## 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 97301, 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, 97301; (503) 373-0701. The Archives Division charges for such copies.

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**EXECUTIVE ORDER NO. 06-02**

**SUSTAINABILITY FOR THE 21ST CENTURY**

Pursuant to my authority as Governor of the State of Oregon, I find that:

Sustainability represents a significant economic opportunity for the State of Oregon. Sustainability enables state and local government to operate in a more efficient and effective manner. Sustainability benefits all Oregonians, urban and rural. Oregon prospers when the economy, the environment, and our communities support each other.

Oregon's business and higher education sectors increasingly are focusing on the opportunities presented by sustainable development. The Oregon Business Plan has identified Sustainable Industries as a key development cluster for the state. The Oregon University System is pursuing opportunities to increase the focus on research and development related to sustainable technologies.

Executive Order 03-03 directed the Oregon Sustainability Board and certain state agencies to develop policies and practices to make Oregon a more sustainable state, consistent with and in furtherance of the goals regarding sustainability adopted by the Legislative Assembly in 2001.

The primary intent of Executive Order 03-03 was to establish meaningful and measurable sustainability planning within state agencies and to encourage state agencies to lead by example in this important area.

The efforts of the Oregon Sustainability Board and forward thinking state agency directors and personnel have resulted in the following achievements:

• All 20 state agencies included in Executive Order 03-03 developed sustainability plans for their agencies and continue to update those plans and integrate them into their budgetary and strategic planning.

• Environmental management system ("EMS") plans have been developed within three state agencies.

• The state light duty vehicle fleet is transitioning to alternative fuel and hybrid vehicles and is using increasing amounts of ethanol and biodiesel.

• The state established a "green" building policy requiring all new state buildings to meet, at a minimum, the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") program's silver equivalency status, with major renovations also requiring LEED certification.

• State procurement practices are beginning to include life cycle costs and sustainability considerations when making contracting and purchasing decisions, from computer equipment to janitorial supplies.

• The state dedicated L.L. Stub Stewart State Park, the first Oregon state park developed with sustainability as a primary objective.

• The Oregon Department of Transportation (ODOT) is incorporating sustainability into its $1.3 billion bridge repair program. One benefit of this innovative approach is that environmental baselines are assessed before design begins for each project, resulting in more efficient permitting, better environmental results and millions of dollars of projected cost savings.

Collectively, these and other successes resulted in economic, environmental and community benefits to the state and prove that state policy makers do not need to choose between the economy and the environment when making decisions aimed at providing a prosperous and sustainable future for Oregonians.

**NOW, THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:**

1. The Oregon Sustainability Board ("Board") shall continue as an executive branch board serving at the pleasure of the Governor. The Board shall consist of 11 members representing business, local government and natural resource sectors and shall reflect the geographic diversity of Oregon. The members of the Board, including the Chair, will be appointed by the Governor. The Chair shall establish the agenda for Board meetings and generally provide leadership and direction to the Board. A quorum for Board meetings shall consist of a majority of the appointed members. The Board shall strive to operate by consensus; however, the Board may approve measures and make recommendations based on an affirmative vote of a majority of the quorum present. The members of the Board shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495.

2. The Board is directed to manage and carry out the following primary objectives:

a. Assist Local Governments and the Private Sector with the Development of Sustainability Practices.

i. The Board shall coordinate a multi-agency effort to develop a "Sustainable Practices" toolbox for state and local governments and for the private sector. The Department of Administrative Services (DAS) and the Oregon Economic and Community Development Department (OECDD) shall lead this effort. The Board, together with DAS and OECDD, shall determine the appropriate components of the toolboxes, which may include information regarding best practices, sustainability certification programs and processes, training opportunities and case studies.

ii. The Board shall coordinate the development of a Sustainability Awards Program to promote and advance the inclusion of sustainable practices in government and the private sector. OECDD shall be the agency primarily responsible for assisting the Board with this effort, with staff assistance, as needed, from the Department of Agriculture (DOA), the Department of Environmental Quality (DEQ), the Department of Land Conservation and Development (DLCD), DAS and the Department of Energy (DOE).

b. Promote Sustainable Economic Investment and Development. In this area, the Board shall give priority to efforts related to renewable energy and working landscapes.

i. The Board's energy focus requires working with the private sector, academic institutions, non-profits and state and local governments to maximize practices in Oregon that create economic opportunities, while also promoting renewable and efficient energy use, reducing greenhouse gas emissions and reducing material use and costs. One priority area should be to assist efforts to develop viable bioenergy markets in Oregon.

ii. The working landscapes focus requires working with the natural resource sectors, academic institutions, non-profits, state and local government and consumers to incent and promote practices that help agricultural, ranching, forestry and fishing sectors achieve value-added market opportunities that are built and marketed around sustainable practices. Such opportunities include replication of the Oregon Natural Beef model in the wood products and agricultural sectors and efforts to strengthen initiatives,

such as the Oregon Sustainable Agriculture Resource Center (OSARC), that promote better coordination, collaboration and integration of public and private efforts and resources and aim to enhance investment and job creation and retention while also achieving better environmental results.

c. Advance Sustainability Performance in State Government. The Board shall continue to work with state agencies that have developed sustainability plans and shall assist agency efforts to update and improve sustainability planning and to monitor and measure achievements. The Board shall also oversee the following new pilot initiatives with identified state agencies and shall receive regular reports from the agencies on progress:

i. DAS shall coordinate a State Procurement Interagency Team, that will include DOE, ODOT and DEQ. This interagency team shall develop recommended procurement acquisition models and training that take into account relevant sustainability principles, including, but not limited to, life-cycle cost assessment, energy impact assessment, and vendor take-back, re-use, re-charge, and re-build assessment. This task shall be completed by December 31, 2006.

ii. DAS shall coordinate a Greenhouse Gas Emissions Interagency Team which shall include DOE, ODOT, and DEQ. This interagency team shall develop a methodology for state agencies to develop greenhouse gas emission baseline assessments and recommend best practices for reducing greenhouse gas emissions. This task shall be completed by December 31, 2006.

iii. Beginning in 2007, DAS shall provide annual reports to the Sustainability Board detailing the greenhouse gas reductions that have been achieved within each agency vehicle fleet. Each state agency that operates a vehicle fleet shall develop a greenhouse gas reduction baseline and annual reduction targets utilizing the methodology developed by the Greenhouse Gas Interagency Team and shall annually report emission reductions to DAS. This report shall include the volume of ethanol and biodiesel used by agency fleets and any costs savings attributable to the use of more fuel efficient vehicles and alternative fuels.

iv. DAS shall collaborate and coordinate with California and Washington on possible regional purchasing strategies that aggregate the three states' purchasing power to maximize environmental and economic value. DAS shall report to the Board regarding these efforts.

v. DAS, in coordination with the Strategic IT Investment Team and DEQ, shall develop electronic waste disposal procedures that enable and encourage product take back, protect the security of information, recycle usable equipment and protect the environment. This task shall be completed by June 30, 2006.

vi. DOE shall coordinate an Energy Efficiency Interagency Team that will include DAS and the Oregon University System. The Energy Efficiency Interagency Team shall develop strategies to meet the Governor's previously announced goal of 20 percent energy efficiency savings in state government and education institutions in ten years, including consideration of the expanded use of energy service contracts in the public sector.

vii. OECDD, in coordination with DOE, and within existing funding and authority, shall establish and administer a renewable energy feasibility revolving loan fund to assist community renewable energy projects develop the information needed to assess the technical feasibility of developing renewable energy projects.

viii. The Department of State Lands is encouraged to coordinate an interagency team including ODF, DOE and DLCD to develop a streamlined process for developing renewable energy on state lands and waterways and for issuing leases for private sector development on state lands and waterways.

3. The Board shall be assisted in carrying out its activities by the following:

a. Sustainability Leadership Team. A Sustainability Leadership Team shall be comprised of the following: the Governor's Sustainability Policy Advisor (Chair), the Sustainability Board Chair and the Directors of the following agencies or their designees: DAS, OECDD, DOE, ODOT, DEQ, and such other members as may be requested by the Governor. The Leadership Team shall meet regularly, shall advise the Governor and the Board, as appropriate, and shall assist the Board with carrying out its responsibilities under this Executive Order.

b. Interagency Sustainability Network. DAS shall coordinate an Interagency Sustainability Network ("Network"). The Network shall be an informal forum of state agency personnel. The purpose of the Network is to exchange ideas and practices and to develop new approaches to sustainability among state agencies.

c. Oregon Solutions. Oregon Solutions shall periodically report to the Board regarding opportunities for sustainability related projects. The Board shall provide guidance to Oregon Solutions and to state agencies regarding projects that simultaneously address economic, environmental, and community concerns, as well as the ten community objectives listed in ORS 184.423(2). The Board and the Leadership Team shall identify opportunities for state agencies to participate in Oregon Solutions projects.

d. Sustainability Web Site. DAS will ensure that the state's sustainability website, SustainableOregon.net, continues to be a resource for the public and interested stakeholders.

4. Oregon University System. The Governor's Office shall work with a person designated by the Chancellor to develop and carry out a sustainability initiative for the Oregon University System. The Chancellor's designated coordinator will work with the institutions of higher education, the Academic Excellence Committee of the Board of Higher Education, the Oregon Innovation Council, OECDD and other state agencies to assess the feasibility of, and to implement research and development efforts regarding, areas that include, but are not limited to: (1) green building and forest products; (2) water systems and management; and (3) renewable energy. The coordinator shall also facilitate efforts to implement the OUS Sustainability Plan and to develop further policies to integrate sustainability into academic programs, operations and research and outreach within the university system. The coordinator shall work with the Governor's Office, the Board of Higher Education, the Oregon University System, the Oregon Innovation Council, OECDD and other state agencies to secure funding to accomplish this initiative.

5. Executive Orders EO-03-03 and EO-00-07 are superseded by this Executive Order and rescinded.

Done at Portland, Oregon this 19th day of January, 2006

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 06-03**

**GOVERNOR'S TASKFORCE ON EQUALITY IN OREGON**

Pursuant to my authority as Governor of the State of Oregon, I find that:

Equal protection under the law is the cornerstone of a just and democratic society.

In order for Oregon to compete and succeed in the global economy, each Oregonian must be provided with the opportunity to reach his or her full potential and to contribute to the general welfare as an equal member of society. Discrimination of any type prevents Oregonians from enjoying the full pursuit of happiness to which all are entitled and prevents the State of Oregon from being the best it can be and from competing effectively in the world.

Anti-discrimination legislation that protects against discrimination based on sexual orientation in employment, housing and/or public accommodation has been adopted in at least seventeen states of the United States of America and in numerous countries around the world.

The citizens of Oregon deserve to have their government examine this issue carefully and to consider the need for legislation in Oregon to assure equal protection and opportunities for all. If statutory changes are warranted, then such changes must be brought before the next Legislative Assembly and given full consideration.

**NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:**

1. The Governor's Taskforce on Equality (the "Taskforce") is established.

2. The Taskforce shall consider whether changes to the laws of the State of Oregon are needed in order to guarantee that all Oregonians are adequately protected from discrimination in employment, housing, public accommodations, and other opportunities regardless of sexual orientation or gender identity. As part of this analysis, the Taskforce shall review anti-discrimination legislation adopted by other states, as well as the proposals introduced during the 2005 session of the Oregon Legislative Assembly. When considering legislation adopted by other states, the Taskforce should focus on the actual effects of adoption of such legislation, including any effects on business. The Taskforce shall review, analyze and recommend whatever changes to the laws of the State of Oregon that it considers necessary and appropriate.

3. The Taskforce shall also review, analyze and recommend changes to the laws and administrative rules of the State of Oregon in order to ensure that all levels of state government afford the same rights and privileges to all Oregonians regardless of sexual orientation or gender identity and to ensure that Oregon law provides an appropriate legal pathway for grievance, enforcement and resolution if Oregonians experience unequal treatment or discrimination in either the public or private sectors.

4. The Taskforce shall also review, analyze and recommend changes to the laws and administrative rules of the State of Oregon in order to ensure that all levels of state government afford the same rights and privileges to all Oregonians regardless of sexual orientation or gender identity and to ensure that Oregon law provides an appropriate legal pathway for grievance, enforcement and resolution if Oregonians experience unequal treatment or discrimination in either the public or private sectors.

5. The Taskforce shall consist of between 8 and 12 members appointed by the Governor.

6. The Governor will appoint a chair of the Taskforce. The chair shall establish an agenda for the Taskforce, and provide leadership and direction for the Taskforce.

7. A quorum for Taskforce meetings shall consist of a majority of the appointed members. The Taskforce shall strive to operate by consensus; however, the Taskforce may approve measures and make recommendations based on an affirmative vote of a majority of the members appointed to the Taskforce.

8. The Taskforce shall provide a final report to the Governor's Office no later than December 1, 2006. The report shall include recommendations for changes to Oregon law that the Taskforce believes are warranted and shall include drafts of any such legislative changes for consideration by the 2007 Legislative Assembly.

9. The Taskforce shall be staffed by the Office of the Governor. If the Taskforce requires the assistance of any other executive branch agency of the State, then such agency shall provide such assistance to the Taskforce upon request.

9. The members of the Commission shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495.

10. This Order expires on December 31, 2006.

Done at Salem, Oregon, this 9th day of February, 2006.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 06-04**

**REPRESENTATION OF SUBSIDIZED, LICENSE-EXEMPT FAMILY CHILD CARE PROVIDERS**

The availability of quality child care enables Oregon parents to work and contribute directly to Oregon's economy. Further, quality child care is a vital contributor to the healthy development of Oregon's young children. More than one-third of Oregon children are in paid child care during the most critical stage of their development, from birth to age five. Numerous long-term studies have shown that high quality care during these formative years increases the likelihood of a child's success in school and later in life.

The quality of child care depends upon several factors, including the caregiver's training and continuity in the relationship between the child and the caregiver. The State now requires all providers and staff to have criminal background checks and to maintain health and safety standards, but there is a need to provide them with more training opportunities.

To ensure quality standards of care, it is in the public interest for Oregon to maintain a child care delivery system that encourages the recruitment and retention of family child care providers delivering these services. Increased stability in the child care workforce will preserve freedom of choice for parents to select appropriate child care services for their children based on increased availability of a wide range of child care options. Increased recruitment, retention and stability will also benefit children by allowing them continuity with their caregiver.

The state Child Care Division is the executive agency authorized to administer and direct regulated child care services in Oregon and the Department of Human Services administers state-subsidized care for Oregon families. The Child Care Division, Department of Human Services, parents, children and family child care providers will all benefit from a process that allows for collective input from family child care providers on how to improve stability in the workforce and quality of care provided.

SEIU Local 503 has presented cards to the Employment Relations Board ("ERB") and ERB has certified that the cards represent a request to be represented by SEIU Local 503 by more than fifty percent of eligible family child care providers who provide subsidized care and are neither certified nor registered. For purposes of this Executive Order, "Subsidized, License-Exempt Family Child Care Providers" are family child care providers who participate in the program of state-subsidized care, excluding family child care homes and facilities that are registered pursuant to ORS 657A.330 or certified pursuant to ORS 657A.280 (as described more fully in OAR 414-205-0000 through 414-205-0170 and OAR 414-350-0000 through OAR 414-350-0400).

Executive Order 05-10 was promulgated on September 23, 2005. EO 05-10 relates to the representation of certified and registered child care providers. This Executive Order 06-04 relates only to child care providers who are neither certified nor registered. There is intended to be no overlap among the populations of child care providers covered by Executive Orders 05-10 and 06-04.

**THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:**

1. The Director of the Department of Human Services and the Director of the Employment Department, as appropriate, or their designees, shall meet and confer with SEIU Local 503, on behalf of Subsidized, License-Exempt Family Child Care Providers, regarding issues of mutual concern. Such issues of mutual concern may include, but are not limited to, training and other requirements and opportunities that are appropriate for providers in the license-exempt classification, reimbursement rates, payment procedures, health and safety conditions, and any other changes to current practice that would improve recruitment and retention of qualified family child care providers, that would improve the quality of the programs they provide, or that would encourage qualified providers to seek additional education and training.

2. To the extent an agreement on any issue of mutual concern is reached, such agreement shall be memorialized in writing, subject to any agency rulemaking or statutory changes that may be required. Any agreement which requires rulemaking or statutory changes will be contingent upon the successful completion of such rulemaking or legislative process. The parties recognize that such rulemaking or legislative process may require reconsideration of, or modification to, any contingent agreement that is reached. The parties may jointly submit unresolved issues of mutual concern to a mutually-acceptable neutral third-party for the making of non-binding recommendations.

3. This Executive Order is not intended to create any contractual rights or obligations. It is intended solely as executive direction to the State agencies identified herein. Nothing in this Executive Order is intended to give to family child care providers, or imply that family child care providers have, any right to engage in a strike or a collective cessation of the delivery of child care services. Nothing in this Executive Order is intended to provide SEIU Local 503 or any other entity with third-party beneficiary rights.

4. Family child care providers are not employees or agents of the State. Nothing in this Executive Order is intended to alter the existing relationship between family child care providers and the State or in any way imply an employer-employee or principal-agent relationship.

5. The Director of the Department of Human Services and the Director of the Employment Department shall report to the Office of the Governor regarding their progress under this Executive Order within 120 days.

6. This Executive Order is effective immediately.

Done at Salem, Oregon this 13th day of February, 2006.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

### A CHANCE TO COMMENT ON DRAFT SULFUR DIOXIDE MILESTONE REPORT FOR REGIONAL HAZE

**COMMENTS DUE:** March 24, 2006
**COMMENT PERIOD:** February 12, 2005 to March 24, 2006.
**PROPOSAL:** The Department of Environmental Quality (DEQ) is seeking public comment on a draft report entitled: *Draft 2004 Regional $SO_2$ Emissions and Milestone Report, December 23, 2005*. This report describes 2004 sulfur dioxide ($SO_2$) emissions from large industrial sources in five states, including Oregon. The collective SO2 emissions from these states must be less than the $SO_2$ milestone for 2004, which is described in Section 5.5.2.3.1of Oregon's Section 309 Regional Haze Plan.
**HIGHLIGHTS:** On December 5, 2003, DEQ adopted a regional haze plan for Oregon. This plan is based on Section 309 of the federal Regional Haze Rule, which is designed to improve visibility in national parks and wilderness areas in the West by using regional strategies to reduce air pollution. Section 5.5.2.3.1 of the Oregon Regional Haze Plan requires that Oregon cooperate with four other states in preparing an annual report to determine if $SO_2$ emissions from large industrial sources are less than annual $SO_2$ emissions milestones. The 2004 SO2 milestone represents one of several annual milestones that must be met over the next 15 years. The draft report concludes that the total $SO_2$ emissions from the five states—Oregon, Arizona, New Mexico, Wyoming and Utah—were 334,533 tons, while the $SO_2$ milestone is 448,259 tons, indicating that DEQ has met the annual milestone requirement in the plan.
**HOW TO COMMENT:** *The Draft 2004 Regional $SO_2$ Emissions and Milestone Report, December 23, 2005* report was prepared by the Western Regional Air Partnership, and can be found at their website: http://www.wrapair.org/forums/309/documents/Draft_WRAP_Milestone_Report_2004.pdf. See also DEQ's website at http://www.deq.state.or.us/aq/haze/. A copy of this report can also be obtained by contacting Brian Finneran at (503) 229-6278, by email at finneran.brian@deq.state.or.us, or by mail to the DEQ Air Quality Division, 811 SW 6th Ave., Portland, OR, 97204. To avoid long distance charges from other parts of the state, call DEQ toll free at 800-452-4011.

Written comments should be mailed to the address above, or faxed to (503) 229-5675, to the attention of Brian Finneran. The comment period closes at 5:00 p.m. on Friday, March 24, 2006. Comments postmarked on or before that date will be accepted.
**THE NEXT STEP:** DEQ will consider all public comments. A final report will be prepared and published in the Oregon Bulletin.

### PROPOSED REMEDIAL ACTION LOUISIANA-PACIFIC CORPORATION ENGINEERED WOOD PRODUCTS FACILITY ECSI # 1998 HINES, HARNEY COUNTY, OREGON

**COMMENTS DUE:** March 31, 2006
**PROJECT LOCATION:** Highway 20, Hines, Oregon
**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 conducted to date. Public notification is required by ORS 465.320.
**HIGHLIGHTS:** The proposed remedial action involves implementing a deed restriction prohibiting residential use of the property and extraction of groundwater from the shallow aquifer for use as drinking water. This remedy is proposed in light of the fact that the baseline risk assessment concludes there is a minor exceedance of the acceptable risk level for arsenic and dibenz(a,h)anthracene in soil. This risk assessment was based on industrial exposure assumptions. The Department approved of this approach because current and reasonably likely future use of these parcels is industrial. The proposed remedy is therefore compatible with the proposed land use, and provides additional assurance that this assumption of future land use is accurate.

The LP property covers about 72 acres on the east side of US Highway 20, approximately one mile south of Hines, Oregon. The site is bordered on the west by Highway 20, on the north by Lottery Lane, and on the east and south by the Snow Mountain Pine Industrial Park. Most of the site was part of the former Edward C. Hines Lumber Company mill. The site has been used for storage and conveyance by railroad of scrap steel, lumber and equipment, truck and railroad maintenance, petroleum storage, and log storage. It is currently used for manufacture of laminated veneer lumber.

The proposed remedial action was selected based on extensive soil and groundwater monitoring. Cleanup activities at the site included excavation and disposal of contaminated soil, sediment and flyash, and removal of drums, open containers, a sump, catch basin, and electrical transformers.

The purpose of this notice is to provide interested parties with an opportunity to ask questions and provide input as we proceed with this important effort. This recommendation was made following completion of a site investigation conducted under Oregon Administrative Rules (OAR) Chapter 340, Division 122, Sections 010 to 115.
**HOW TO COMMENT:** Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager
Oregon DEQ
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Phone: 541-298-7255, ext. 30
Fax: 541-298-7330
Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by Friday, March 31, 2006.
**THE NEXT STEP:** DEQ will consider all comments received. A final decision concerning the proposed removal action will be made after consideration of public comments.

### PROPOSED NO FURTHER ACTION FOR FORMER GENERAL PETROLEUM/TRAUGHBER OIL SITE, BEND, OREGON

**COMMENTS DUE:** March 31, 2006
**PROJECT LOCATION:** NE First St., 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 conducted to date. Public notification is required by ORS 465.320.
**HIGHLIGHTS:** Portions of the site have previously been used as a bulk fuel facility, card-lock fuel facility and a cement plant. In the northern portion of the site, the former bulk plants include the Hitchcox & Lomax Bulk Plant (ECSI# 3909) at the far northern portion of the property, and the General Petroleum Bulk Plant (ECSI# 3042) in the central portion of the site. The General Petroleum site remained the most active for fueling facilities operating under several names, including Traughber Oil, up until 1998. A card-lock facility also occupied part of the Traughber site from 1988 to 1999. The southern portion of the site was occupied by a cement plant between 1928 and 1997. Petroleum contaminants, gasoline, diesel, heavy oil and related constituents, were encountered in 3 of the 15 test pits excavated at the site, all near the southern end of the Traughber site. A removal action was conducted at the site to remove petroleum contaminated soils from the former loading rack, fuel pumps and associated piping. Approximately 143 tons of petroleum contaminated soil and 319 feet of abandoned product piping were excavated and disposed of at an offsite permitted solid waste facility. Confirmation

sampling has indicated that the residual concentrations of petroleum hydrocarbons and related constituents are below the risk-based concentrations for the pathways of concern.

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-340-122-0040.

**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 March 31, 2006 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.

**RECOMMENDED NO FURTHER ACTION DETERMINATION, EAGLE TRUCK & MACHINE CO. LA GRANDE, OREGON**

**COMMENT PERIOD:** March 30, 2006

**PROJECT LOCATION:** LaGrande, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed "No Further Action" cleanup decision for the Eagle Truck and Machine Company (Eagle) Site, 2106 26th Street in LaGrande, Oregon.

**HIGHLIGHTS:** DEQ has completed an evaluation of the investigation and cleanup conducted at the Eagle Site. Soil contamination was originally detected at the site in 1994 near a waste oil underground storage tank (UST) that was subsequently removed. Several tons of petroleum contaminated soils were removed from the site and disposed of in a solid waste landfill, but due to the proximity of the building, the site was determined to not warrant a no-further action (NFA) determination.

Additional site investigations were completed in late 2005 in conjunction with a property transaction. The work included installation and sampling of two monitoring wells, additional soil trenching to delineate the extent of soil contamination, determination of the locality of facility, a beneficial soil and water survey, and the sampling of a drywell located at the site.

A report was submitted to DEQ in January 2006 to evaluate residual contamination in soil and groundwater at the site. The report evaluation concluded that there is no significant risk to human health or the environment from residual soil contamination at the site based on a comparison of site concentrations to DEQ risk-based concentrations.

DEQ has made a preliminary determination that historic cleanup measures and investigations undertaken by Eagle of petroleum contamination released at the site from the waste oil UST are complete and the site is currently protective of public health and the environment. Accordingly, no further action is needed under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

**HOW TO COMMENT:** DEQ's project file information is available for public review (by appointment) at DEQ's Eastern Region Office, 2146 NE Fourth Avenue, Bend, Oregon, 97701. To schedule a file review appointment, call: 541-388-6146 x258. Please send written comments to David Anderson, Project Manager, at the address listed above or via email at anderson.david@deq.state.or.us by 5 p.m., March 30, 2006. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the March 30, 2006 deadline. The Regional Administrator will make a final decision after consideration of these public comments.

**PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION KING-REIS PROPERTY SITE, PORTLAND, OREGON**

**COMMENTS DUE:** April 3, 2006

**PROJECT LOCATION:** 2550 NW 25th Place, Portland, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statutes ORS 465.230 and ORS 465.320, the Oregon Department of Environmental Quality (DEQ) proposes to approve a site remedy and add the site to the Confirmed Release List (CRL) and Inventory of Hazardous Substance sites.

**HIGHLIGHTS:** The site occupies about 18,000 square feet within the Guilds Lake industrial area of north Portland. The site contains a steel-framed warehouse with office space and an adjacent asphalt parking area. The City of Portland operated a waste incinerator on the adjacent property to the northeast from the early 1900s to the 1940s, and also operated a landfill covering about 20 acres known as the Guilds Lake landfill. The landfill deposits, which are present beneath several properties in the Guilds Lake area, consist of mixtures of dredge spoils, ash, and unburned and partially burned refuse that contain elevated levels of petroleum hydrocarbons and metals such as lead.

Soil borings at the subject site indicated that contaminated fill generated during operation of the incinerator and landfill was present beneath the northern portion of the site. Site operations did not routinely use hazardous substances, and there is no indication that significant releases of hazardous substances related to site activities have occurred. DEQ previously approved a remedy for an adjacent property (ECSI No. 404 ) that included capping of the landfill material with asphalt or existing buildings to eliminate direct contact exposure to landfill wastes and minimize groundwater infiltration, and other use restrictions. The subject property is currently capped with similar structures that prevent direct contact and limits storm water infiltration.

Based on a review of site information DEQ has determined that a conditional no further action (NFA) is warranted for the site, provided that certain engineering and institutional controls of the remedy approved for the adjacent Guilds Lake site are implemented to address the presence of the contaminated fill and reduce impacts to shallow groundwater. Conditions of the NFA require that site zoning remains heavy industrial, existing capping elements are maintained, and restricts future groundwater use and installation of dry wells.

**HOW TO COMMENT:** The Staff Report and other files will be available for public review beginning Wednesday, March 1, 2006. To schedule an appointment to review the site files call Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201 by Monday, April 3, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all public comments and DEQ's Northwest Region Cleanup Manager will make and publish the final decision after consideration of these comments.

**PROPOSED CLEANUP APPROVAL AND REMOVAL OF THE SITE FROM THE CRL AND INVENTORY, TRI-MET MERLO GARAGE SITE, BEAVERTON, OREGON**

**COMMENTS DUE:** April 3, 2006
**PROJECT LOCATION:** 16130 SW Merlo Road, Beaverton, Oregon
**PROPOSAL:** Pursuant to Oregon Revised Statutes ORS 465.230 and ORS 465.320, the Oregon Department of Environmental Quality (DEQ) proposes to approve the site cleanup, issue a No Further Action (NFA) determination for the site, and remove the site from the Confirmed Release List (CRL) and Inventory of Hazardous Substance sites.
**HIGHLIGHTS:** The site consists of a former storm water outfall channel in wetlands adjacent to Tri-Met's Merlo Garage bus maintenance facility. The facility and associated storm drain system construction was completed in 1980. Releases of untreated storm water, in addition to periodic releases of petroleum product to the system throughout the 1980s and early 1990s resulted in petroleum hydrocarbon and related metal contamination in the approximately 200 feet long by 10 feet wide outfall channel. The storm water system was upgraded in 2001 to eliminate future releases to the outfall channel, in conjunction with installation of a storm water bioswale and ongoing wetland restoration.

To address the contamination in the channel a total of about 15 tons of contaminated sediment were removed in three events from 1999 to 2005. A risk assessment was conducted to evaluate residual metal and petroleum concentrations. Three isolated areas within or near the channel contain metals or petroleum concentrations above risk-based standards. The total estimated volume of the residual material in these three areas is 4.5 cubic yards. Based on the localized nature of the remaining contamination, and potential impacts to the restored wetland environment that could result if additional removals were conducted, DEQ has determined that the site cleanup is adequate and protective of human health and the environment. Based on a review of site information DEQ has determined that a no further action (NFA) is warranted for the site, and that the site should be removed from the CRL and Inventory.
**HOW TO COMMENT:** The Staff Report and other files will be available for public review beginning Wednesday, March 1, 2006. To schedule an appointment to review the site files call Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201 by Monday, April 3, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more.
**THE NEXT STEP:** DEQ will consider all public comments and DEQ's Northwest Region Cleanup Manager will make and publish the final decision after consideration of these comments.

**OPPORTUNITY TO COMMENT RECORD OF DECISION, UNION PACIFIC RAILROAD KLAMATH FALLS RAIL YARD KLAMATH FALLS, OREGON**

**COMMENT DUE:** March 31, 2006
**PROJECT LOCATION:** 1585 Oak Street, Klamath Falls, Oregon
**PROPOSAL:** The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on a draft Record of Decision for the Union Pacific Railroad (UPRR) Klamath Falls Yard. The draft Record of Decision details the analysis and selection of preferred and protective remedial options designed to address contaminated environmental media located at the UPRR Klamath Falls Rail Yard located in Klamath Falls, Oregon. The UPRR Klamath Falls Rail Yard continues to be an active operating facility. More information concerning site-specific investigations and proposed remedial actions is available by contacting Mr. Cliff Walkey, DEQ's project manager for this site.

The Administrative File for this facility is archived at the DEQ's Bend, Oregon office, and can be reviewed in person by contacting Mr. Cliff Walkey at (541) 388-6146 extension 224 to arrange for an appointment. In addition, the draft DEQ Record of Decision and other project-specific documents can also be reviewed on the DEQ website at http://www.deq.state.or.us/er/UPRR_KFyard.com
**HOW TO COMMENT:** The public comment period will extend from March 1 through March 31, 2006. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

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

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.
**THE NEXT STEP:** DEQ will consider all public comments received before finalizing the Record of Decision for the UPRR Klamath Falls Rail Yard. DEQ will provide written responses to all received public comments.

**PROPOSED APPROVAL OF CLEANUP RO-MAR SITE, 9333 N. TIME OIL ROAD PORTLAND, OREGON**

**COMMENT PERIOD:** March 1 to 31, 2006
**COMMENTS DUE:** March 31, 2006
**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes to approve a cleanup of polychlorinated biphenyl (PCB)-contaminated soil at the Ro-Mar site.
**HIGHLIGHTS:** Environmental testing at the site identified PCBs in shallow site soil resulting from historic equipment storage. Confirmation soil samples showed adequate excavation and off-site disposal of contaminated soil. DEQ recommends that the cleanup be approved and no further action is required at the site.
**INFORMATION:** The project file is available for public review. To schedule an appointment call (503) 229-6729. For additional information regarding the site cleanup actions, contact the DEQ project manager, Tom Gainer, at (503) 229-5326.
**THE NEXT STEP:** DEQ will consider all public comments before making the final decision.

**PROPOSED APPROVAL OF CLEANUP PORTLAND GENERAL ELECTRIC SUBSTATION E SITE, 2635 NW FRONT AVENUE PORTLAND, OREGON**

**COMMENT PERIOD:** March 1 to 31, 2006
**COMMENTS DUE:** March 31, 2006
**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes to approve a cleanup of petroleum-contaminated soil at the Portland General Electric (PGE) Substation E site.
**HIGHLIGHTS:** Four underground storage tanks (USTs) with a combined capacity of 267,120 gallons of bunker fuel were decommissioned at the subject site. Confirmation soil samples showed adequate excavation and off-site disposal of petroleum-contaminated soil surrounding the USTs and associated piping. DEQ recommends that the cleanup be approved and no further action is required at the site.
**INFORMATION:** The project file is available for public review. To schedule an appointment call (503) 229-6729. For additional information regarding the site cleanup actions, contact the DEQ project manager, Tom Gainer, at (503) 229-5326.

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

**PROPOSED NO FURTHER ACTION**
**ROSS SALVAGE YARD (FORMER)**
**HERMISTON, OREGON**

**COMMENTS DUE:** March 31, 2006
**PROJECT LOCATION:** 400 West Harper Road in Hermiston, Oregon
Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the proposed no further action (NFA) determination for the former Ross Salvage Yard site located at 400 West Harper Road in Hermiston, Oregon.

The proposed No Further Action determination is documented in the No Further Action Decision Document, dated January 27, 2006. The site was a former automobile wrecking, salvage yard, and machine shop. Approximately 1,283 tons of contaminated soil was excavated and transported off-site for disposal. Groundwater was not encountered in the soil excavations. DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination.
**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by March 31, 2006 and sent to Katie Robertson, Project Manager, at the address listed above.

## 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.

Agencies providing notice request 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 disabilibities are available upon advance request.* Contact the agency Rules Coordinator listed in the notice information.

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### Board of Architect Examiners
### Chapter 806

**Rule Caption:** Recognized Jurisdictions.
**Stat. Auth.:** ORS 671.125
**Stats. Implemented:** ORS 671.010, 671.020, 671.041 & 671.065
**Proposed Adoptions:** 806-010-0033
**Last Date for Comment:** 4-3-06, 4:30 p.m.
**Summary:** There exist multiple statutory references to jurisdictions recognized by the Oregon Board of Architect Examiners. This rule outlines the jurisdictions this Board has recognized by practice, but not before listed within the Oregon Administrative Rules.
**Rules Coordinator:** Carol Halford
**Address:** Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
**Telephone:** (503) 763-0662

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### Board of Chiropractic Examiners
### Chapter 811

**Rule Caption:** Changes Clinical Justification to Rationale, replaces PARTS and evidence-based outcomes management with new criteria; updates Policy Guide reference.

| Date: | Time: | Location: |
|---|---|---|
| 3-16-06 | 9:30 a.m. | Red Lion Inn & Suites<br>Willamette Rm.<br>2535 Cumulus Ave.<br>McMinnville, OR |

**Hearing Officer:** Dave McTeague, OBCE Executive Director
**Stat. Auth.:** ORS 684
**Stats. Implemented:** ORS 684.010 & 684.155
**Proposed Amendments:** 811-010-0093, 811-015-0010
**Last Date for Comment:** 3-16-06, close of hearing
**Summary: OAR 811-015-0010 Clinical Justification**. The proposed amendments change the name to the Clinical **Rationale**, changes "therapeutic" procedures to "chiropractic" procedures and deletes the following:

- PARTS requirement for all chiropractic examinations (treating or examining),
- Evidence-based outcomes measurements for curative chiropractic care (and associated sunset clause), and
- Treatment parameters reference found in the Oregon Chiropractic Practice and Utilization Guidelines.

The amendments propose that criteria or information to support rationale for commencement of or continuing chiropractic care may include but is not limited to:

- past and present research,
- clinical experience,
- appropriate professional guidelines,
- historical records and/or
- commonly used methods or procedures as taught in:

- professional seminars,
- chiropractic colleges and/or
- regionally accredited educational institutions.

**OAR 811-010-0093 Guide to Policy and Practice Questions**: This amendment updates the rule reference to January 19, 2006, recognizing all the policy updates that have been adopted by the Board since July 31, 2003. Policy updates address Electrolysis, Fee Splitting, Independent Examinations, Release Of Patient Records, Medically At-Risk Driver Program, Records Release Policy, Clinical Justification Rule Policy, Continuing Education Credit For Teaching, Collection of Liquidated and Delinquent accounts, Imminent Danger Exception to Patient Confidentiality. (These policies can be found on the OBCE's Web page at http://egov.oregon.gov/obce)
**Rules Coordinator:** Dave McTeague
**Address:** Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311
**Telephone:** (503) 378-5816, ext. 23

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### Board of Medical Examiners
### Chapter 847

**Rule Caption:** Specify requirements regarding podiatry national licensing examination taken on or after January 1, 1987.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.830
**Proposed Amendments:** 847-080-0010, 847-080-0017, 847-080-0018
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rules specify requirements regarding the National Board of Podiatric Medical Examiners (NBPME) examination Part III for applicants for licensure who took the examination on or after January 1, 1987. These requirements were previously established in the rule, but it is now being clarified that the requirements only apply to applicants who took the NBPME examination on or after January 1, 1987. These applicants must submit an official grade certification of Part III, pass all three Parts of the NBPME within a seven-year period, and pass the NBPME examination Part III within three attempts, or complete one additional year of postgraduate training in the United States prior to readmission to the examination for a fourth and final attempt.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Establish procedures resulting from multiple failures of open-book examinations.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.265
**Proposed Amendments:** 847-050-0025
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rule establishes that applicants for physician assistant licensure and the applicant's supervising physician who has not been previously Board-approved as a supervising physician

shall be required to pass an open-book examination on the Medical Practice Act and Oregon Administrative Rules Chapter 847, Division 050. The proposed rule further establishes the consequences and procedures the Board shall follow in the event that the physician assistant applicant or supervising physician applicant fails the open-book examination three times.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Define agent in supervision of physician assistants.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.495
**Proposed Amendments:** 847-050-0010
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rule defines "agent" as a physician designated by the supervising physician who provides supervision of the medical services of a physician assistant for a predetermined period of time.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Describe licensure process for physicians who request a license to volunteer in health clinics.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.120 & 677.265
**Proposed Adoptions:** 847-023-0000, 847-023-0005
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rules describe the licensure process for physicians who request a license to volunteer (Emeritus status) in health clinics.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Identify circumstances under which to accept and/or report requests to withdraw a license application.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.100, 677.190 & 677.265
**Proposed Adoptions:** 847-020-0185
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rule identifies the circumstances under which a request by an applicant to withdraw his/her application for licensure will be considered and under what circumstances the withdrawal will be reported to the Federation of State Medical Boards. The rule specifies that the Board will consider a request to withdrawal the application if the applicant is eligible for licensure and the file contains no evidence of violation of any provision of ORS 677, the Medical Practice Act. The rule further specifies that an applicant may request to withdraw his/her application and the withdrawal will be reported to the Federation of State Medical Boards under the following circumstances: the applicant is eligible for licensure; the application file is complete; and the file contains evidence that the applicant may have violated any provision of ORS 677, the Medical Practice Act, but there appears to be insufficient basis to proceed to formal discipline or another licensing body has imposed discipline for the same conduct and that action has been reported to the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

**Rule Caption:** Allows waivers of licensure and examination requirements for foreign medical graduates.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.100 & 677.265
**Proposed Amendments:** 847-020-0130, 847-020-0170
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rules allow licensure for foreign medical graduate applicants who have obtained four years of practice in another state similar to the Board's Limited License Medical Faculty; allow waiver of the three attempt limit for USMLE Step 3 if the applicant is American Board (ABMS) certified; allow waiver of the 7-year requirements for USMLE Steps 1, 2 and 3 for applicants who are American Board (ABMS) certified or have completed continuous post-graduate training equivalent to an MD/DO/PhD program.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Create new license status of Active - Telemonitoring for physicians who practice outside of Oregon.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.172
**Proposed Adoptions:** 847-008-0023
**Last Date for Comment:** 3-21-06
**Summary:** Proposed rule creates new license status of Active - Telemonitoring to allow a physician who practices in a location outside of Oregon to provide intraoperative monitoring of data collected during surgery in Oregon and electronically transmitted to the out-of-state physician for the purpose of allowing the monitoring physician to notify the Oregon operating team of changes that may have a serious effect on the outcome and/or survival of the patient.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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**Rule Caption:** Specify that licensees in Oregon border towns may register under active status.
**Stat. Auth.:** ORS 677.265
**Stats. Implemented:** ORS 677.172
**Proposed Amendments:** 847-008-0015
**Last Date for Comment:** 3-21-06
**Summary:** The proposed rules specify that licensees whose practice address is within 100 miles of the Oregon border and who intend to practice in Oregon may register under active status.
**Rules Coordinator:** Diana M. Dolstra
**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201
**Telephone:** (503) 229-5873, ext. 223

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## Board of Nursing
## Chapter 851

**Rule Caption:** Date Extended for Clinical hours of Clinical Nurse Specialists to Meet National Requirements.

| Date: | Time: | Location: |
|---|---|---|
| 4-13-06 | 9 a.m. | Samaritan North Lincoln Hosp.<br>3043 N.E. 28th St.<br>Lincoln City, OR 97367 |

**Hearing Officer:** Saundra Theis, Board President
**Stat. Auth.:** ORS 678.050, 678.370 & 678.372
**Stats. Implemented:** ORS 678.050, 678.370 & 678.372
**Proposed Amendments:** 851-054-0040
**Last Date for Comment:** 4-11-06, 5 p.m.
**Summary:** This rule amendment would change the date of requirement for completion of 500 clinical hours within a Clinical Nurse Specialist Program for initial applicants to 2007 to reflect national standards.

**Rules Coordinator:** KC Cotton
**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232
**Telephone:** (971) 673-0638

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**Rule Caption:** Revised Fees and Guidelines for Access to Public Documents.

| Date: | Time: | Location: |
|---|---|---|
| 4-13-06 | 9 a.m. | Samaritan North Lincoln Hosp.<br>3043 NE 28th St.<br>Lincoln City, OR 97367 |

**Hearing Officer:** Saundra Theis, Board President
**Stat. Auth.:** ORS 678.150 & 678.410
**Stats. Implemented:** ORS 678.410
**Proposed Amendments:** 851-002-0060
**Last Date for Comment:** 4-11-06, 5 p.m.
**Summary:** This rule amendment revises the guidelines and fee structure for access to public documents. It also implements portions of House Bill 3238 enacted in the 2005 Legislature.
**Rules Coordinator:** KC Cotton
**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232
**Telephone:** (971) 673-0638

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**Rule Caption:** Clinical Settings Added for Nursing Assistant Training Programs.

| Date: | Time: | Location: |
|---|---|---|
| 4-13-06 | 9 a.m. | Samaritan North Lincoln Hosp.<br>3043 N.E. 28th St.<br>Lincoln City, OR 97367 |

**Hearing Officer:** Saundra Theis, Board President
**Stat. Auth.:** ORS 678.440 & 678.444
**Stats. Implemented:** ORS 678.440 & 678.444
**Proposed Amendments:** 851-061-0030, 851-061-0080, 851-061-0090, 851-061-0100
**Last Date for Comment:** 4-11-06, 5 p.m.
**Summary:** These rules cover standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. This rule amendment would add assisted living facilities, hospitals, and residential care facilities as possible clinical settings for nursing assistant training programs. These proposed changes include support for the Program Director to assure that the training experiences and sites used are appropriate. Language changes refer to types of facilities that can be used for the clinical experience and establishes criteria for the clinical facility. Also, one amendment reflects the current name for the Department of Human Services.
**Rules Coordinator:** KC Cotton
**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232
**Telephone:** (971) 673-0638

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**Rule Caption:** Updating Effective Date of Attorney General's Model Rules of Procedure Under the Administrative Procedures Act.

| Date: | Time: | Location: |
|---|---|---|
| 4-13-06 | 9 a.m. | Samaritan North Lincoln Hosp.<br>3043 NE 28th St.<br>Lincoln City, OR 97367 |

**Hearing Officer:** Saundra Theis, Board President
**Stat. Auth.:** ORS 183.335 & 183.341
**Stats. Implemented:** ORS 183.335 & 183.341
**Proposed Amendments:** 851-001-0000, 851-001-0005
**Last Date for Comment:** 4-11-06, 5 p.m.
**Summary:** ORS 183.341 requires the Attorney General to prepare Uniform and Model Rules of Procedure. Adoption of the Uniform and Model Rules satisfies the Oregon Administrative Procedures Act requirement that agencies adopt rules regulating rulemaking and contested case proceedings. This amendment adopts the effective date of the Attorney General's Model Rules of Procedure under the Administrative Procedures Act to the latest publication's effective date of January 1, 2006.
**Rules Coordinator:** KC Cotton
**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232
**Telephone:** (971) 673-0638

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**Rule Caption:** Nurse Practitioner Formulary Updated.

| Date: | Time: | Location: |
|---|---|---|
| 4-13-06 | 9 a.m. | Samaritan North Lincoln Hosp.<br>3043 NE 28th St.<br>Lincoln City, OR 97367 |

**Hearing Officer:** Saundra Theis, Brd. President
**Stat. Auth.:** ORS 678.385
**Stats. Implemented:** ORS 678.375 & 678.385
**Proposed Amendments:** 851-050-0131
**Last Date for Comment:** 4-11-06, 5 p.m.
**Summary:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be include in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the March and April 2006 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.
**Rules Coordinator:** KC Cotton
**Address:** Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232
**Telephone:** (971) 673-0638

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**Board of Parole and Post-Prison Supervision**
**Chapter 255**

**Rule Caption:** Amendment of sex offender special conditions to comply with statutory changes.
**Stat. Auth.:** ORS 144.050, 144.102, 144.140 & 144.270
**Other Auth.:** HB 2050 (OL 2005), SB 243 (OL 2005) & HB 3419 (OL 2005)
**Stats. Implemented:**
**Proposed Amendments:** 255-070-0001
**Last Date for Comment:** 3-21-06
**Summary:** HB 2050: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits a convicted sex offender or a person convicted of an Assault from living within three miles of the victim of their crimes.

SB 243: This Exhibit is being amended to comply with statutory changes adding a special condition which addresses the extent of contact a convicted sex offender may have with minor children without permission of their supervising officer.

HB 3419: This Exhibit is being amended to comply with statutory changes adding a special condition which prohibits convicted sex offenders from residing with each other without the prior approval of the supervising officer.
**Rules Coordinator:** Michael R. Washington
**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301
**Telephone:** (503) 945-8978

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**Rule Caption:** Extension of the period of time for retention of tape recordings of board hearings.
**Stat. Auth.:** ORS 144.050, 144.140 & 144.335
**Stats. Implemented:**
**Proposed Amendments:** 255-015-0003
**Last Date for Comment:** 3-21-06
**Summary:** The amendment of this rule allows for the retention of the tape recording of Parole Board hearings for four years as opposed to two years. This is necessary to preserve the records for purposes

of protecting the rights of the offender and reducing the liability of the Board in the appellate process.
**Rules Coordinator:** Michael R. Washington
**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301
**Telephone:** (503) 945-8978

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**Rule Caption:** Extension of time to conduct psychological or psychiatric evaluations in dangerous offender cases.
**Stat. Auth.:** ORS 144.050, 144.140 & 144.226
**Other Auth.:** HB 2323 (OL 2005)
**Stats. Implemented:**
**Proposed Amendments:** 255-036-0010, 255-037-0010
**Last Date for Comment:** 3-21-06
**Summary:** Establishes that the Board has 120 days prior to the offender's parole consideration date or the last day of the offender's incarceration term to give the offender a complete mental and psychiatric or psychological examination. These amendments are needed to bring the Board rules into conformity with House Bill 2323 passed into law by the 2005 Oregon Legislature.
**Rules Coordinator:** Michael R. Washington
**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301
**Telephone:** (503) 945-8978

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## Board of Pharmacy
## Chapter 855

**Rule Caption:** Implements new restrictions on sale of some cold medications in response to legislation.

| Date: | Time: | Location: |
|---|---|---|
| 3-23-06 | 9 a.m. | 800 NE Oregon St., #120A Portland, OR 97232 |

**Hearing Officer:** Linda Howrey
**Stat. Auth.:** ORS 689.205
**Stats. Implemented:** ORS 689.645
**Proposed Amendments:** 855-050-0070, 855-080-0022, 855-080-0023, 855-080-0028, 855-080-0031, 855-080-0065, 855-080-0070, 855-080-0075, 855-080-0095, 855-080-0105
**Proposed Repeals:** 855-050-0037, 855-050-0038, 855-050-0039, 855-050-0041, 855-050-0042, 855-050-0043
**Last Date for Comment:** 3-23-06, 5 p.m.
**Summary:** These proposed rules implement legislation passed in the 2005 legislative session that required the Board of Pharmacy to place ephedrine, pseudoephedrine and phenylpropanolamine on Controlled Substances Schedule III. These three drugs will be available by prescription only. In addition, these proposed rules repeal existing rules that require pharmacies to keep a separate log of sales of Pseudoephedrine because pharmacies will now track those sales as sales of prescription drugs. These proposed rules also include some housekeeping revisions.
**Rules Coordinator:** Karen MacLean
**Address:** Board of Pharmacy, 800 NE Oregon St., #150, Portland, OR 97232
**Telephone:** (971) 673-0001

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**Rule Caption:** Changes rules for Pharmacy Technicians, requires technicians to obtain certification by September 2008.

| Date: | Time: | Location: |
|---|---|---|
| 3-23-06 | 9 a.m. | 800 NE Oregon St., #120A Portland, OR 97232 |

**Hearing Officer:** Linda Howrey
**Stat. Auth.:** OL 2005, Ch. 313 & ORS 689.205
**Stats. Implemented:** OL 2005, Ch. 313, ORS 689.486 & 689.490
**Proposed Adoptions:** 855-025-0005, 855-025-0010, 855-025-0015, 855-025-0020, 855-025-0025, 855-025-0030, 855-025-0035, 855-025-0040, 855-025-0060
**Proposed Amendments:** 855-006-0005, 855-025-0001, 855-025-0050, 855-110-0005
**Proposed Repeals:** 855-006-0010, 855-041-0200, 855-041-0203, 855-041-0205, 855-041-0210
**Last Date for Comment:** 3-23-06, 5 p.m.
**Summary:** These proposed rules implement 2005 changes to the laws governing pharmacy technicians and adopt, repeal or amend rules related to virtually all aspects of licensing and employment of pharmacy technicians. The proposed rules require a pharmacy technician to obtain certification by passing a national certification examination by a specified date, unless the pharmacy technician is under the age of 18. The proposed rules set continuing education requirements for technicians; set licensure and renewal requirements for technicians; set recordkeeping responsibilities for technicians; describe how technicians may be used within a pharmacy; establish confidentiality requirements; specify supervision responsibilities for pharmacists who supervise technicians; define "unprofessional conduct" of technicians; and explain how a technician's license may be reinstated after revocation, suspension or limitation.
**Rules Coordinator:** Karen MacLean
**Address:** Board of Pharmacy, 800 NE Oregon St., #150, Portland, OR 97232
**Telephone:** (971) 673-0001

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**Rule Caption:** Amends rules related to pharmacists administering vaccines and immunizations.

| Date: | Time: | Location: |
|---|---|---|
| 3-23-06 | 9 a.m. | 800 NE Oregon St., #120A Portland, OR 97232 |

**Hearing Officer:** Linda Howrey
**Stat. Auth.:** ORS 689.205
**Stats. Implemented:** ORS 689.645
**Proposed Amendments:** 855-041-0500, 855-041-0510, 855-041-0520
**Last Date for Comment:** 3-23-06, 5 p.m.
**Summary:** The proposed amendments incorporate statutory changes allowing pharmacists to administer flu vaccines to people fifteen years of age and older, and the word "immunizations" to reflect statutory language, and reduce reporting requirements related to vaccines and immunizations.
**Rules Coordinator:** Karen MacLean
**Address:** Board of Pharmacy, 800 NE Oregon St., #150, Portland, OR 97232
**Telephone:** (971) 673-0001

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**Rule Caption:** Related to authority to accept returned drugs and devices, allows waiver.

| Date: | Time: | Location: |
|---|---|---|
| 3-23-06 | 9 a.m. | 800 NE Oregon St., #120A Portland, OR 97232 |

**Hearing Officer:** Linda Howrey
**Stat. Auth.:** ORS 689.205
**Stats. Implemented:** ORS 689.155
**Proposed Amendments:** 855-041-0080
**Last Date for Comment:** 3-23-06, 5 p.m.
**Summary:** Pharmacies should be able to accept returned drugs and devices for destruction when public or patient safety concerns make that appropriate. Amends rule to apply to pharmacies, pharmacy technicians and certified pharmacy technicians, in addition, allows Board to waive rule or parts of rule upon request, if public or individual health or safety requires.
**Rules Coordinator:** Karen MacLean
**Address:** Board of Pharmacy, 800 NE Oregon St., #150, Portland, OR 97232
**Telephone:** (971) 673-0001

**Bureau of Labor and Industries**
**Chapter 839**

**Rule Caption:** Approval of New Committees and Standards.

| Date: | Time: | Location: |
|---|---|---|
| 3-16-06 | 10:30 a.m. | Worksource Bend<br>South Conf. Rm.<br>1645 NE Forbes Rd.<br>Bend, OR 97739 |
| 3-21-06 | 10:30 a.m. | Portland State Office Bldg.<br>800 NE Oregon St.<br>Rm. 1004<br>Portland, OR 97232 |

**Hearing Officer:** Stephen Simms
**Stat. Auth.:** ORS 660
**Stats. Implemented:** ORS 660.135(1)
**Proposed Amendments:** 839-011-0084
**Last Date for Comment:** 3-21-06
**Summary:** Amends requirements for approval of new local joint committees and clearly states prerequisites for approval of new standards and committees by the Oregon State Apprenticeship and Training Council. Establishes timelines for objections to applications for new committees. Formally establishes a probation period of three years after approval for new committees. A temporary rule is in effect until February 19, 2006.
**Rules Coordinator:** Marcia Ohlemiller
**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
**Telephone:** (971) 673-0784

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**Rule Caption:** Amendments to conform state Child Labor rules with Federal regulations and update agency contact information.
**Stat. Auth.:** ORS 653.525 & 653.307(1)
**Stats. Implemented:** ORS 653.305 & 653.307(1)
**Proposed Amendments:** 839-021-0102, 839-021-0104, 839-021-0220
**Last Date for Comment:** 4-5-06
**Summary:** OAR 839-021-0102 is amended to conform definitions of work declared hazardous for minors with latest amendments in United States Department of Labor Child Labor regulations.

OAR 839-021-0104 is amended to reflect the updated amendment date in the referenced Code of Federal Regulations.

OAR 839-021-0220 is amended to indicate current contact information for the agency.
**Rules Coordinator:** Marcia Ohlemiller
**Address:** Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
**Telephone:** (971) 673-0784

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**Construction Contractors Board**
**Chapter 812**

**Rule Caption:** Adopt Amended Forms, Conditions to Require Bigger Bond, and Repeal of Increased Bond Requirement.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 11 a.m. | West Salem Roth's IGA<br>1130 Wallace Rd. NW<br>Salem, OR |

**Hearing Officer:** Cliff Harkins
**Stat. Auth.:** ORS 87.093, 670.310, 701.055, 701.085, 701.235, Ch. 533 OL 2005 & Ch. 734 OL 2005
**Other Auth.:** SB 1002 (Ch. 249, OL 2005)
**Stats. Implemented:** ORS 87.093, 183.341, 670.600, 670.605, 701.055, 701.075, 701.085, 701.235, Ch. 533 OL 2005 & Ch. 734 OL 2005
**Proposed Adoptions:** 812-005-0250
**Proposed Amendments:** 812-001-0120, 812-001-0200, 812-003-0240, 812-005-0210
**Last Date for Comment:** 3-28-06, 11 a.m.
**Summary:** OAR 812-001-0120 is amended to adopt the Attorney General's Model Rules of Procedure revised publication dated January 1, 2006. OAR 812-001-0200 is amended to implement SB 1002 (chapter 249, OR Laws 2005) that reduced the requirement to commit a residential construction agreement to a written contract from $2,500 to $2,000 and to update the web address. OAR 812-003-0240 is amended to adopt the revised independent contractor form. 812-005-0210 is amended to add unpaid construction debt that exceeds the amount of the bond to the conditions to require a larger bond. Requiring a larger bond will provide for additional funds available to consumers who are damaged by construction contractors and hopefully reduce the number of unpaid final orders of the Board. 812-005-0250 is adopted to clarify when an applicant/licensee may petition the Board for a reduced bond amount and establish how the agency will grant or deny a petition for a lower bond amount and gives appeal rights.
**Rules Coordinator:** Catherine Dixon
**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310
**Telephone:** (503) 378-4621, ext. 4077

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**Department of Agriculture**
**Chapter 603**

**Rule Caption:** Clarify only basin rules, not plans, enforceable; Local W.Q. Area Advisory Committee meets as needed.

| Date: | Time: | Location: |
|---|---|---|
| 3-24-06 | 10 a.m. | Hearing Rm.,<br>ODA basement<br>635 Capitol NE<br>Salem, OR |

**Hearing Officer:** Stephanie Page
**Stat. Auth.:** ORS 561 & 568.900 - 568.933
**Stats. Implemented:** ORS 568.900 - 568.933
**Proposed Amendments:** 603-090-0000, 603-090-0010, 603-090-0020, 603-090-0030, 603-090-0040, 603-090-0050, 603-090-0080, 603-090-0110, 603-090-0120
**Last Date for Comment:** 4-1-06
**Summary:** The Division 90 rules establish policies, guidelines, and specific requirements for the development and content and review of agricultural water quality management area plans and rules, requirements of agricultural water quality management area plans and rules for applicable geographic areas, the process of landowner appeal of specific required actions, and enforcement procedures to be followed by the department.
**Rules Coordinator:** Sue Gooch
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
**Telephone:** (503) 986-4583

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**Department of Agriculture,**
**Oregon Beef Council**
**Chapter 605**

**Rule Caption:** Implements 2005 law increasing the assessment on cattle.

| Date: | Time: | Location: |
|---|---|---|
| 3-20-06 | 9 a.m. | 1827 NE 44th Ave.<br>Suite 315<br>Portland, OR 97213 |

**Hearing Officer:** Staff
**Stat. Auth.:** ORS 577.125(1)(c)
**Other Auth.:** ORS 576.304(14)
**Stats. Implemented:** HB 2656, ORS 577.532, 577.512, 577.520, 577.290(2), 577.525, 576.355, 576.365 & 576.392
**Proposed Adoptions:** 605-010-0010, 605-010-0020, 605-010-0030, 605-010-0040, 605-010-0050
**Last Date for Comment:** 3-20-06, close of hearing
**Summary:** Increases the assessment on cattle sold in Oregon as authorized by 2005 Legislature through HB 2656. Additional 50 cent

per head assessment funds specific Oregon Beef Council programs as set out in HB 2656. Sets out methods for collecting assessment, lists exemptions from assessment, and procedures for collecting delinquent assessments.
**Rules Coordinator:** Nicole Bechtel
**Address:** Department of Agriculture, Oregon Beef Council, 1827 NE 44th Ave., Suite 315, Portland, OR 97213
**Telephone:** (503) 274-2333

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

**Rule Caption:** Electrical Product Certification Exemptions for certain emergency installations.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 9:30 a.m. | 1535 Edgewater St. NW<br>Salem, OR 97304 |

**Hearing Officer:** Chris S. Huntington
**Stat. Auth.:** ORS 479.540
**Stats. Implemented:** ORS 479.540
**Proposed Adoptions:** 918-261-0034
**Last Date for Comment:** 3-24-06, 5 p.m.
**Summary:** The proposed rule would exempt certain electrical equipment from product certification requirements when that equipment is used in the electrical distribution system exceeding 600 volts. The exemption is restricted to installation made in the event of an emergency repair or replacement.
**Rules Coordinator:** Nicole M. Jantz
**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
**Telephone:** (503) 373-0226

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**Rule Caption:** Plumbing Plan Review requirements for complex structures and definitions.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 10 a.m. | 1535 Edgewater St. NW<br>Salem, OR 97304 |

**Hearing Officer:** Casey T. Hoyer
**Stat. Auth.:** ORS 455.483 & OL Ch. 661
**Stats. Implemented:** ORS 455.483 & OL Ch. 661
**Proposed Amendments:** Rules in 918-780
**Last Date for Comment:** 3-24-06
**Summary:** The purpose of this rulemaking is to set plumbing plan review requirements in building inspection programs, that offer plumbing plan review services. Plumbing plan review would be restricted to complex structures only. Rulemaking also defines a complex structure
**Rules Coordinator:** Nicole M. Jantz
**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
**Telephone:** (503) 373-0226

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**Department of Consumer and Business Services, Director's Office**
**Chapter 440**

**Rule Caption:** Notification of rulemaking by mail, email or delivery.
**Stat. Auth.:** ORS 183.341 & 705.135
**Stats. Implemented:** ORS 183.335
**Proposed Amendments:** 440-001-0000
**Last Date for Comment:** 4-6-06
**Summary:** 440-001-0000: The proposed amendment to OAR 440-001-0000 would allow notice of an intended action to be either delivered, sent by regular mail or sent by electronic mail.

The proposed text of the rules can be found at http://www.oregon.gov/DCBS/DIR/rules.shtml or may be obtained by contacting the rules coordinator.
**Rules Coordinator:** Myrna Curzon
**Address:** Department of Consumer and Business Services, Director's Office, 350 Winter St. NE, Salem, OR 97301
**Telephone:** (503) 378-4100

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**Department of Consumer and Business Services, Insurance Division**
**Chapter 836**

**Rule Caption:** Annual reporting by health insurers relating to members, premiums, costs and other matters.

| Date: | Time: | Location: |
|---|---|---|
| 3-29-06 | 1:30 p.m. | Conference Rm. E<br>(basement)<br>350 Winter St. NE<br>Salem, OR |

**Hearing Officer:** Lewis Littlehales
**Stat. Auth.:** ORS 731.244 & Sec. 2, Ch. 765, OL 2005 (Enrolled SB 501)
**Stats. Implemented:** Sec. 2 - 4, Ch. 765, OL 2005 (Enrolled SB 501)
**Proposed Adoptions:** 836-053-1400
**Last Date for Comment:** 4-5-06
**Summary:** This rulemaking prescribes the format in which and instructions for which carriers offering health benefit plans are required by 2005 legislation to submit an annual report containing specified information for the preceding year that is derived from the carrier's annual statement or report.
**Rules Coordinator:** Sue Munson
**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
**Telephone:** (503) 947-7272

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**Rule Caption:** Change of billing date for DCBS assessment of insurers to support insurance regulation.
**Stat. Auth.:** ORS 731.244 & 731.804
**Stats. Implemented:** ORS 731.804
**Proposed Amendments:** 836-009-0011
**Last Date for Comment:** 3-23-06
**Summary:** This rulemaking proposes to move from September 1 to October 1 the date for billing insurers for the annual assessment that DCBS imposes pursuant to statute to pay for support of the insurance regulatory program of the Insurance Division.
**Rules Coordinator:** Sue Munson
**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301
**Telephone:** (503) 947-7272

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**Department of Consumer and Business Services, Oregon Occupational Safety and Health Division**
**Chapter 437**

**Rule Caption:** Propose to adopt Federal OSHA Revocation of Slip Resistance of Skeletal Structure Steel in Construction.
**Stat. Auth.:** ORS 654.025(2) & 656.726(4)
**Stats. Implemented:** ORS 654.001 - 654.295
**Proposed Amendments:** 437-003-0001
**Last Date for Comment:** 3-27-06
**Summary:** Oregon OSHA proposes to revoke a provision in the Structural Steel Assembly rule in Division 3/R, Construction/Steel Erection. Federal OSHA published in the January 18, 2006 Federal Register, the revocation of this paragraph and appendix. The specific provision is 1926.754(c)(3), Slip resistance of skeletal structural steel, and Appendix B that accompanies this rule. According to Federal OSHA documents, there has been no significant progress regarding the suitability of the test methods referenced in the provision for testing slip resistance or the availability of coatings that would meet the slip resistant requirements of the provision. Most significantly, there is a high probability that the test methods will not be validated by the effective date (July 18, 2006). As a result, employers will be unable to comply with the provision.
**Rules Coordinator:** Sue C. Joye

**Address:** Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
**Telephone:** (503) 947-7449

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**Department of Corrections**
**Chapter 291**

**Rule Caption:** Establishing Rules for State Parole and Probation Officers to Conduct Searches.
**Stat. Auth.:** ORS 144.404, 179.040, 423.020, 423.030 & 423.075
**Stats. Implemented:** ORS 144.404 - 144.409, 179.040, 423.020, 423.030 & 423.075
**Proposed Adoptions:** 291-028-0100 – 291-028-0115
**Last Date for Comment:** 4-5-06, 5 p.m.
**Summary:** The Community Corrections Act gives counties the option to directly operate community corrections rather than the Department of Corrections. Recently some counties have opted to turn operation of community corrections back to the Department of Corrections. These rules are necessary to establish a uniform process for state parole and probation officer to conduct searches as authorized for protection of the public, officer and reformation of the offender.
**Rules Coordinator:** Janet R. Worley
**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
**Telephone:** (503) 945-0933

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**Rule Caption:** Access to Department Facilities, Programs, Inmates and Staff by Media Representatives.
**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075
**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075
**Proposed Adoptions:** 291-204-0010 – 291-204-0080
**Last Date for Comment:** 4-5-06, 5 p.m.
**Summary:** The department recognizes the media's important role to report on matters of public interest concerning the department and the inmates under its supervision. However, the media have no greater right to access prisons than do members of the general public. Because of its policy position, the department relies on a number of different rules to be permissive and allow access of media representatives to its facilities, inmates and staff. The proposed rule adoptions are necessary to formally establish specific policies and procedures governing access by media representatives.

Because of the nature of their work and equipment sometimes used, the presence of media representatives in a department correctional facility is inherently disruptive to normal facility operations. Adoption of these rules will ensure consistency for granting access of media representatives to department facilities, inmates and staff and expedite the approval process while maintaining safety and security.
**Rules Coordinator:** Janet R. Worley
**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
**Telephone:** (503) 945-0933

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**Department of Environmental Quality**
**Chapter 340**

**Rule Caption:** This rule will establish health-based ambient benchmarks for Oregon's air toxics program.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 6–8 p.m. | Portland<br>811 SW Sixth Ave.<br>Rm. 3A |
| 3-29-06 | 6–8 p.m. | Medford<br>10 S Oakdale<br>County Courthouse |
| 3-30-06 | 6–8 p.m. | Bend<br>2146 NE Fourth Ave.<br>DEQ Conference Rm. |

**Hearing Officer:** Audrey O'Brien, John Becker, Dick Nichols
**Stat. Auth.:** ORS 468.035, 468A.010(1) & 468A.015
**Other Auth.:** OAR 340-246-0090
**Stats. Implemented:** ORS 468.035, 468A.010(1) & 468A.015
**Proposed Amendments:** 340-246-0090
**Last Date for Comment:** 4-4-06
**Summary:** The Oregon Department of Environmental Quality (DEQ) is proposing to adopt ambient benchmarks as administrative rules for a specified group of air toxics. OAR 340-246-0090(2)(e) requires that, once ambient benchmarks for air toxics have been established as defined in OAR 340-246-0090(2)(a-d), they be adopted as administrative rules. Ambient benchmarks are concentrations of air toxics that serve as goals in the Oregon Air Toxics Program. As such, they are only a single component of the overall air toxics program.

To submit comments or request additional information, please contact Bruce Hope at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204; toll free in Oregon at (800) 452-4011 or (503) 229-6251, or via fax at (503) 229-5675, by email to hope.bruce@deq.state.or.us, or visit DEQ's website at: http://www.deq.state.or.us/news/publicnotices/
**Rules Coordinator:** Larry McAllister
**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
**Telephone:** (503) 229-6412

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**Rule Caption:** Propose to increase Title V permitting fees by 3.4 percent.

| Date: | Time: | Location: |
|---|---|---|
| 3-20-06 | 3 p.m. | 811 SW Sixth Ave.<br>Rm. 3A<br>Portland, OR |

**Hearing Officer:** Brandy Albertson
**Stat. Auth.:** ORS 468.065 & 468A.040
**Stats. Implemented:** ORS 468A.315
**Proposed Amendments:** 340-220-0030, 340-220-0040, 340-220-0050
**Last Date for Comment:** 3-31-06, 5 p.m.
**Summary:** The proposed rule amendment would increase Title V permitting fees by the 2005 Consumer Price Index, of approximately 3.4%. This increase to Title V permitting fees will affect the Base Fee, Emission Fee, and Special Activity Fees.

All fee increases will become effective upon rule adoption which is scheduled for June, 2006, with invoices reflecting the increases to be mailed in July 2006.

To submit comments or request additional information, please contact Brandy Albertson at the Department of Environmental Quality (DEQ), 811 S.W. Sixth Avenue, Portland, OR 97204, toll free in Oregon at 800-452-4011 or 503-229-5655, email: albertson.brandy@deq.state.or.us, or Fax: 503-229-5675.
**Rules Coordinator:** Larry McAllister
**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
**Telephone:** (503) 229-6412

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**Rule Caption:** Renewal of three (3) general industrial stormwater permits that regulate discharges to surface waters.

| Date: | Time: | Location: |
|---|---|---|
| 3-30-06 | 10 a.m. | DEQ Headquarters<br>811 SW 6th<br>Portland, OR 97204 |
| 4-3-06 | 10 a.m. | Eugene City Council Chambers<br>777 Pearl St.<br>Eugene, OR 97401 |
| 4-4-06 | 1:30 p.m. | Medford City Council Chambers<br>411 W. 8th<br>Medford, OR 97501 |

**Hearing Officer:** Mannette Simpson, Bill Perry, Andy Ullrich
**Stat. Auth.:** ORS 468.020, 468B.020 & 468B.035

**Stats. Implemented:** ORS 468.065, 468B.015, 468B.035 & 468B.050
**Proposed Amendments:** 340-045-0033
**Last Date for Comment:** 4-14-06
**Summary:** In general, the changes proposed in this rulemaking will address the following issues:

• Rule renews the following industrial stormwater general permits: NPDES 1200-A (sand & gravel mining), NPDES 1200-Z (statewide multi-sector industrial), and NPDES 1200 COLS (industrial discharges to the Columbia Slough).

• The proposed rule includes several new permit requirements, as per a lawsuit settlement agreement, including public review and comment on permit applications and stormwater plans, additional stormwater monitoring, an explicit requirement to comply with in-stream water quality standards, and the conversion of numeric discharge benchmarks (goals) to enforceable effluent limitations if benchmark levels are consistently not attained.

• New requirements are proposed for discharges to impaired waterbodies that are on DEQ's "303(d)" list or for which Total Maximum Daily Loads (TMDLs) have been established.

• The general permit rule will also be amended to state that general permits can be issued through a department order or through rule. This change is consistent with legislation that was adopted by the 2005 Legislature.

To submit comments or request additional information, please contact Jenine Camilleri at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, Portland, OR 97204, toll free in Oregon at 800-452-4011 or (503) 229-6775, or at camilleri.jenine@deq.state.or.us, or by fax (503) 229-5804, or visit DEQ's website http://www.deq.state.or.us/news/publicnotices/
**Rules Coordinator:** Larry McAllister
**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
**Telephone:** (503) 229-6412

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**Rule Caption:** This rulemaking will increase fee revenue for water quality National Pollution Discharge Elimination System (NPDES) and Water Pollution Control Facilities (WPCF) permits.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 3 p.m. | DEQ<br>811 SW 6th Ave., Rm. 3A<br>Portland, OR |
| 4-4-06 | 3 p.m. | City Hall Community Rm.<br>501 SW Emigrant Ave.<br>Pendleton, OR |
| 4-5-06 | 3 p.m. | City Council Chambers<br>777 Pearl St.<br>Eugene, OR |
| 4-6-06 | 3 p.m. | Salem Public Library<br>585 Liberty St.<br>Salem, OR |

**Hearing Officer:** DEQ staff
**Stat. Auth.:** ORS 468.065
**Stats. Implemented:** ORS 468B.035
**Proposed Amendments:** 340-045-0070, 340-045-0075
**Last Date for Comment:** 4-14-06
**Summary:** The Oregon Department of Environmental Quality (DEQ) is proposing to amend its rules to revise water quality NPDES and WPCF permitting fees. The fee revisions are based on recommendations from the Blue Ribbon Committee convened by DEQ in 2002 to recommend improvements to the state's wastewater permitting program. In July 2004, the Committee made the following recommendations:

• institute program improvements that promote efficiency, effectiveness and consistency

• implement new accountability standards

• ensure stable, ongoing funding that improves fee predictability for rate payers and revenue for budget management

In 2005, the Oregon Legislature approved an 11 percent increase in wastewater permitting revenue for DEQ. The Legislature also directed DEQ to follow the program improvement recommendations of the Blue Ribbon Committee. As directed, DEQ's proposed rulemaking will:

• consolidate three existing permitting program fees (filing, permit renewal, and annual compliance determination) into one annual fee

• streamline the existing fee table

• increase permitting fee revenue by 11 percent

To submit comments or request additional information, please contact Sonja Biorn-Hansen at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, toll free in Oregon at 800-452-4011 or (503) 229-5257, Biorn-Hansen.Sonja@deq.state.or.us, Fax (503) 229-5408, or visit DEQ's website http://www.deq.state.or.us/wq/WQRules/wqfeesrule.htm
**Rules Coordinator:** Larry McAllister
**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
**Telephone:** (503) 229-6412

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## Department of Forestry
## Chapter 629

**Rule Caption:** Clarification of forest practice rule stream protection policy; changes in forest stream protection standards.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 1:30–4:30 p.m. | Douglas Forest Protective Assoc.<br>1758 NE Airport Rd.<br>Roseburg, OR 97470 |
| 3-22-06 | 1:30–4:30 p.m. | Oregon Dept. of Forestry<br>Tillamook Rm., Bldg. C<br>2600 State St.<br>Salem, OR 97310 |
| 3-23-06 | 1:30–4:30 p.m. | Crook County Library<br>175 NW Meadow Lakes Dr.<br>Prineville, OR 97754 |

**Hearing Officer:** Lanny Quackenbush
**Stat. Auth.:** ORS 527.710
**Other Auth.:** ORS 527.630(3), 527.714 & 526.016(4)
**Stats. Implemented:** ORS 527.676
**Proposed Adoptions:** 629-605-0103, 629-640-0210
**Proposed Amendments:** 629-635-0100, 629-635-0110, 629-635-0200
**Last Date for Comment:** 3-31-06, 5 p.m.
**Summary:** The adoption of OAR 629-605-0103 will help landowners and operators be aware that both regulatory and voluntary measures are part of Oregon's effort to protect, enhance, and restore forest resources, as part of the Oregon Plan for Salmon and Watersheds.

The adoption of OAR 629-640-0210 will require landowners and operators to retain trees along steep, small, nonfish streams that are likely to move wood downstream into fish-use streams through landslides. The rule requires a specific allocation of green trees and snags already required by ORS 527.676 to be retained in harvest type 2 or type 3 units larger than 25 acres, but does not require retention of a greater number of trees.

The amendment of OAR 629-635-0100 reemphasizes the following forest practice stream protection policies:

-The emphasis in riparian management areas (designated areas along certain streams) is on providing water quality and fish and wildlife habitat.

-Landowners are encouraged to manage riparian management areas so that protection goals are met, and so that there is an excess of trees that may be harvested.

-Active management is desired to meet the purpose of the water protection rules.

The amendment of OAR 629-635-0110 eliminates text that was needed for 1994 rule transition, but that is no longer relevant or applicable.

The amendment to OAR 629-635-0200(11) has two major components. First, the amended rule states that the fish use designation will apply to stream segments upstream of artificial fish passage barriers to the first natural barrier to fish passage (a waterfall or lack of flow, for example). Second, the amended rule no longer contains the requirement for the Oregon Department of Forestry to survey all streams; instead, physical fish habitat criteria (stream gradient, drainage size, and other conditions) will be used to determine fish use on all remaining unclassified streams. The rule will allow landowners or others to present data from field surveys for fish use to override determinations based on physical habitat criteria.

Questions specific to the proposed administrative rules may be directed to Brad Knotts at 503-945-7484 or bknotts@odf.state.or.us
**Rules Coordinator:** Gayle Birch
**Address:** Department of Forestry, 2600 State St., Salem, OR 97310
**Telephone:** (503) 945-7210

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**Rule Caption:** Requires a preliminary certificate application fee used to administer the Underproductive Forestland Tax Credit Program.
**Stat. Auth.:** ORS 315 & 526
**Stats. Implemented:** ORS 315.104 & 315.106, HB 2122 (2005)
**Proposed Amendments:** 629-023-0410, 629-023-0420, 629-023-0430, 629-023-0440, 629-023-0450, 629-023-0460, 629-023-0490
**Last Date for Comment:** 3-22-06
**Summary:** Amends the rules for the 50% Underproductive Forestland Conversion Tax Credit consistent with the 2005 Legislative Assembly HB 2122 amending the governing statute 315.106. HB 2122 requires an application fee for filing a written request for a preliminary certificate. Temporary rules effective January 3, 2006, were filed on that date. Fees collected will fund the Oregon Department of Forestry's administration of the reforestation tax credit program. Questions specific to the rules may be directed to Steve Vaught at 503-945-7393 or svaught@odf.state.or.us
**Rules Coordinator:** Gayle Birch
**Address:** Department of Forestry, 2600 State St., Salem, OR 97310
**Telephone:** (503) 945-7210

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.

| Date: | Time: | Location: |
|---|---|---|
| 3-30-06 | 9 a.m. | Rm. 255<br>500 Summer St. NE<br>Salem, OR |

**Hearing Officer:** Annette Tesch
**Stat. Auth.:** ORS 418.005
**Stats. Implemented:** ORS 418.005
**Proposed Amendments:** 413-110-0100, 413-110-0110, 413-110-0120, 413-110-0130
**Last Date for Comment:** 3-30-06
**Summary:** OARs 413-110-0100 to 413-110-0130 are being amended to clarify that the case worker is required to staff sibling planning decisions at a Permanency/Adoption Council Committee to consider sibling separation for the purpose of adoption for children for whom adoption is the plan and there is no adoption selection decision for any sibling members being considered for sibling separation. These amendments clarify the policy to maintain the intended practice that the Department has been training staff to follow. The amendments also emphasize the importance of considering initiation of sibling contact if there has not been previous contact when it is in the best interests of the children (such as in the case of the birth of a new sibling). The amendments are in accord with the current practice of holding sibling planning committee for the purpose of considering only those siblings for whom adoption is the plan and who have no formal adoptive family decision. The amendments clarify that staff are not required to go to sibling planning for children for whom adoption is the plan, but have the option of consulting with sibling planning committees for sibling cases when children have plans other than adoption.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
**Rules Coordinator:** Annette Tesch
**Address:** Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
**Telephone:** (503) 945-6067

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

| Date: | Time: | Location: |
|---|---|---|
| 3-30-06 | 8:30 a.m. | Rm. 255<br>500 Summer St. NE<br>Salem, OR |

**Hearing Officer:** Annette Tesch
**Stat. Auth.:** ORS 418.005 & 418.340
**Other Auth.:** PL 96-272: Adoption Assistance and Child Welfare Act of 1980; PL 99-514: Tax Reform Act of 1986; United States Department of Health and Human Services, Administration for Children and Families, Child Welfare Policy Manual, Section 8.2
**Stats. Implemented:** ORS 418.330 - 418.340
**Proposed Amendments:** 413-130-0010, 413-130-0080, 413-130-0110
**Last Date for Comment:** 3-30-06
**Summary:** OAR 413-130-0010 and 413-130-0080 are being amended to make permanent temporary rule amendments effective on January 1, 2006, that reduced the maximum payment to adoptive families for non-recurring expenses directly related to the adoption process from $2,000 per child to $1,500 per child. Non-recurring expenses are court costs, attorney fees, home study fees, pre-placement visit costs and other expenses that are directly related to the legal adoption of a special needs child. In addition, OAR 413-130-0110 is being amended to use standard formatting.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
**Rules Coordinator:** Annette Tesch
**Address:** Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
**Telephone:** (503) 945-6067

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

**Rule Caption:** FCHP Non-Contracted DRG Hospital Reimbursement Rates, to correct tables

| Date: | Time: | Location: |
|---|---|---|
| 3-17-06 | 10:30 a.m.–12 p.m. | Rm. 137c, HRB<br>500 Summer St. NE<br>Salem, OR |

**Hearing Officer:** Darlene Nelson
**Stat. Auth.:** ORS 409.010, 409.110 & 409.050
**Stats. Implemented:** ORS 414.743
**Proposed Amendments:** 410-120-1295
**Proposed Repeals:** 410-120-1295(T)
**Last Date for Comment:** 3-17-06, 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 permanently amend 410-120-1295, having temporarily amended the rule to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered January 1, 2006 through December 31, 2006. This document is necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and is referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services

rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and OMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents. This is the Notice to permanently amend the Temporary rule.
**Rules Coordinator:** Darlene Nelson
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
**Telephone:** (503) 945-6927

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**Rule Caption:** Prioritized List of Health Services, April 1, 2006 technical changes.

| Date: | Time: | Location: |
|---|---|---|
| 3-16-06 | 10:30 a.m.–12 p.m. | 500 Summer St. NE<br>Rm. 137C<br>Salem, OR |

**Hearing Officer:** Darlene Nelson
**Stat. Auth.:** ORS 409.010, 409.110 & 409.050
**Stats. Implemented:** ORS 414.065
**Proposed Amendments:** 410-141-0520
**Last Date for Comment:** 3-17-06, 12 p.m.
**Summary:** The Oregon Health Plan (OHP-Division 141) Administrative rules govern the Office of Medical Assistance Programs' (OMAP) payments for products and services provided to clients. OMAP will amend 410-141-0520 to incorporate the April 1, 2006 technical changes to the Prioritized List of Health Services.
**Rules Coordinator:** Darlene Nelson
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
**Telephone:** (503) 945-6927

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**Rule Caption:** Participation in Medicaid Drug Rebate Program, update for January 2006.
**Stat. Auth.:** ORS 409.010 & 409.110
**Stats. Implemented:** ORS 414.065
**Proposed Amendments:** 410-121-0157
**Last Date for Comment:** 3-17-06, 12 p.m.
**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP will amend rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Releases and updates are included to ensure a 24-month time period for billing is covered, using the appropriate effective dates in all Releases. The most current changes include information from CMS Release #139 (dated December 1, 2005) and the OMAP Master Pharmaceutical Rebate Lists, updated December 8, 2005.
**Rules Coordinator:** Darlene Nelson
**Address:** Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
**Telephone:** (503) 945-6927

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

**Rule Caption:** Amends rules related to HIV reporting.

| Date: | Time: | Location: |
|---|---|---|
| 3-20-06 | 1 p.m. | Deschutes Co. Health Dept.<br>The Stan Owens Conf. Rm.<br>2577 NE Courtney Dr.<br>Bend, OR |
| 3-22-06 | 9 a.m. | Lane County Mental Health<br>Michael Rogers Rm.<br>2411 Martin Luther King Jr. Blvd.<br>Eugene, OR |
| 3-24-06 | 9 a.m. | Portland State Office Bldg.<br>800 NE Oregon St.,<br>Rm. 120BC<br>Portland, OR |

**Hearing Officer:** Jana Fussell
**Stat. Auth.:** ORS 431, 432 & 433
**Stats. Implemented:** ORS 431, 432 & 433
**Proposed Amendments:** 333-018-0015, 333-019-0031
**Last Date for Comment:** 3-24-06, 5 p.m.
**Summary:** The Department of Human Services is proposing changes to Oregon Administrative Rule, 333-019-0031, that will allow state public health to retain the names of persons reported with HIV. This amendment will make HIV reporting consistent with all other reportable communicable diseases. In addition to retaining Oregon's fair share of federal funds, this amendment is being proposed because: 1) encoding of identifying data within a 90 day window prevents case report data from being appropriately updated; 2) data quality (missing data about mode of transmission, availability of care and current morbidity) has declined with the implementation of encoding HIV case data; and 3) encoding of identifying data prevents efficient use of case report data to direct public health treatment and prevention activities.

Amendments to OAR 333-018-0015 are also being proposed. Presently, this rule directs health care providers to report cases of HIV infection, including those who have not yet progressed to AIDS, to public health authorities. Laboratories must report all tests "indicative of and specific for HIV and AIDS." In addition, laboratories are specifically mandated to report to public health results of tests of HIV viral nucleic acid ("viral load") when detectable, and CD4+ lymphocytes when the count is less than 200 cells/ml3 or 14% of total lymphocytes. The proposed amendment to OAR 333-018-0015 will require laboratories to report results of all CD4+ lymphocyte tests and viral load tests, not just those that are detectable or less than a specific level.
**Rules Coordinator:** Christina Hartman
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
**Telephone:** (971) 673-1291

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**Rule Caption:** Retroactive amendment of 333-064-0060 related to the ORELAP fee schedule.
**Stat. Auth.:** ORS 438.605 - 438.620 & 448.280(1)(b)&(2)
**Stats. Implemented:** ORS 438.605 - 438.620
**Proposed Amendments:** 333-064-0060
**Last Date for Comment:** 3-21-06, 5 p.m.
**Summary:** The Department of Human Services (DHS), Public Health, temporarily and retroactively amended Oregon Administrative Rule (OAR), 333-064-0060, relating to the Oregon Environmental Laboratory Accreditation Program fee schedule to correct rule language that was inadvertently left out of the final rulemaking adopted on October 10, 2002 to specify that accredited laboratories requesting additions to their fields of testing during the accreditation period must pay the difference in cost of the application fee with a minimum fee of $200. This rule change has a retroactive effective date of October 10, 2002. The Department is now proposing to permanently and retroactively adopt this temporary amendment. The proposed retroactive amendments were discussed at a rule hearing on June 24, 2002 and were believed to have been filed with the Secretary of State.
**Rules Coordinator:**Christina Hartman
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232
**Telephone:** (971) 673-1291

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

**Rule Caption:** Amendments to no-show fees/medical records review fees, provider bonuses, and copy service

| Date: | Time: | Location: |
|---|---|---|
| 3-20-06 | 1:00 p.m. | 500 Summer St NE<br>Rm. 137D<br>Salem, OR 97301 |

**Hearing Officer:** Lisa Richards
**Stat. Auth.:** ORS 344.530(2)
**Stats. Implemented:** ORS 344.511 - 344.690
**Proposed Amendments:** 411-200-0010, 411-200-0020, 411-200-0030, 411-200-0040
**Last Date for Comment:** 3-21-06, 12 p.m.
**Summary:** Amends language to reflect when a claimant fails to attend a scheduled consultative exam, the Department will now only pay a $90.00 records review fee.

The days for returning medical records related to the provider bonus has been amended from 15 days to 10 days.

Removed language referring to the copy service that the Department previously contracted with to obtain medical records, as the Department no longer uses this service.
**Rules Coordinator:** Lisa Richards
**Address:** 500 Summer St. NE, E10, Salem, OR 97301-1076
**Telephone:** (503) 945-6398

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**Rule Caption:** Implements SB106 affecting mandatory reporting and reportable types of elder abuse.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 1:30 p.m. | 500 Summer St. NE<br>Rm. 137D<br>Salem, OR 97301 |

**Hearing Officer:** Lisa Richards
**Stat. Auth.:** ORS 411.116, 441.635, 443.500, 443.767 & 410.070
**Other Auth.:** SB 106
**Stats. Implemented:** ORS 124.050 - 124.075
**Proposed Amendments:** 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030
**Last Date for Comment:** 3-21-06, 5 p.m.
**Summary:** • 411-020-0002(1)(c); Addition of language that refers to the "threat of financial exploitation" which means to cause alarm by conveying a threat to wrongfully take or appropriate money or property, which would be expected to cause an older adult to believe the threat would be carried out;

• 411-020-0002(19): Addition of firefighters and emergency medical technicians as mandated reporters for elder abuse;

411-020-0020(2): Addition of language that protects mandatory and non-mandatory reporters of elder abuse from civil liability.

• All other amendments are grammatical and housekeeping in general.
**Rules Coordinator:** Lisa Richards
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
**Telephone:** (503) 945-6398

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**Rule Caption:** Implements SB106 affecting mandatory reporting and reportable types of elder abuse.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 1:30 p.m. | 500 Summer St. NE<br>Rm. 137D<br>Salem, OR 97301 |

**Hearing Officer:** Lisa Richards
**Stat. Auth.:** ORS 411.116, 411.300 & 410.070
**Other Auth.:** SB 106
**Stats. Implemented:** ORS 124.050 - 124.075
**Proposed Amendments:** 411-021-0000, 411-021-0005, 411-021-0010, 411-021-0015, 411-021-0020, 411-021-0025
**Last Date for Comment:** 3-21-06, 5 p.m.
**Summary:** • 411-021-0005(1): Addition of financial exploitation and sexual abuse as definitions of abuse;

• 411-021-0005(5): Addition of language to the definition of "imminent danger" to include resources;

• 411-021-0005(7): Addition of firefighters and emergency medical technicians as mandated reporters;

• 411-021-0010(1): Addition of language that protects mandatory and non-mandatory reporters of elder abuse from civil liability.

• All other amendments are grammatical and housekeeping in general.
**Rules Coordinator:** Lisa Richards
**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
**Telephone:** (503) 945-6398

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**Rule Caption:** Amending rules for housekeeping purposes only.
**Stat. Auth.:** ORS 409.050 & 410.070
**Stats. Implemented:** ORS 427.330 - 427.345
**Proposed Amendments:** 411-310-0010, 411-310-0020, 411-310-0030, 411-310-0040, 411-310-0050, 411-310-0060, 411-310-0070
**Last Date for Comment:** 3-27-06, 12 p.m.
**Summary:** These rules are being amended to correct grammatical errors, housekeeping purposes and to correct an OAR reference only. There are no content or programmatic changes being made to these rules.
**Rules Coordinator:** Lisa Richards
**Address:** 500 Summer St. NE, E10, Salem, OR 97301-1076
**Telephone:** (503) 945-6398

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**Rule Caption:** Amending rules for housekeeping purposes only.
**Stat. Auth.:** ORS 409.050 & 410.070
**Stats. Implemented:** ORS 427.330 - 427.345
**Proposed Amendments:** 411-315-0010, 411-315-0020, 411-315-0030, 411-315-0050, 411-315-0060, 411-315-0070, 411-315-0080, 411-315-0090
**Last Date for Comment:** 3-27-06, 12 p.m.
**Summary:** These rules are being amended to correct grammatical errors, housekeeping purposes and to correct an OAR reference only. There are no content or programmatic changes being made to these rules.
**Rules Coordinator:** Lisa Richards
**Address:** 500 Summer St. NE, E10, Salem, OR 97301-1076
**Telephone:** (503) 945-6398

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**Department of Oregon State Police**
**Chapter 257**

**Rule Caption:** To clarify policy and purpose of Oregon State Police regarding towing needs of the Department for the non-preference tow program.
**Stat. Auth.:** ORS 181.440
**Stats. Implemented:** ORS 181.440
**Proposed Adoptions:** 257-050-0095, 257-050-0155, 257-050-0180
**Proposed Amendments:** 257-050-0050, 257-050-0070, 257-050-0090, 257-050-0100, 257-050-0110, 257-050-0125, 257-050-0140, 257-050-0145, 257-050-0150, 257-050-0157, 257-050-0170, 257-050-0200
**Last Date for Comment:** 3-31-06
**Summary:** ADOPT: OAR 257-050-0095 Letter of Appointment; OAR 257-050-0155 Suspension or Revocation (for violation or crime); OAR 257-050-0180 Judicial Review.

AMEND:OAR 257-050-0050 (3,9,19,24,27): clarifying rule; OAR 257-050-0070 (1-j,3,5): housekeeping; OAR 257-050-0090: clarifying rules; OAR 257-050-0100 (1-4,7,9,11): clarifying rules; OAR 257-050-0110: clarifying rules; OAR 257-050-0125 (1-2a/b, 6) housekeeping; OAR 257-050-0140 (4a): housekeeping; OAR 257-

050-0145: housekeeping; OAR 257-050-0150 (6): housekeeping; OAR 257-050-0157 (1-d,2): clarifying rules; OAR 257-050-0170 (1,2,4,5,7): clarifying rules; OAR 257-050-0200 (1): clarifying rules.
**Rules Coordinator:** Betsy Enos
**Address:** Department of State Police, 255 Capitol St. NE, 400 Public Service Bldg., Salem, OR 97310
**Telephone:** (503) 378-3720

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**Department of Public Safety Standards and Training**
**Chapter 259**

**Rule Caption:** Implementation of SB 61 changes and general housekeeping changes.
**Stat. Auth.:** ORS 181.870, 181.871, 181.873 - 181.878, 181.880, 181.882 & 181.885
**Other Auth.:** SB 61
**Stats. Implemented:** ORS 181.870, 181.871, 181.873 -181.878, 181.880, 181.885, 183.341 & 183.457
**Proposed Amendments:** 259-060-0005, 259-060-0010, 259-060-0015, 259-060-0020, 259-060-0060, 259-060-0065, 259-060-0070, 259-060-0075, 259-060-0080, 259-060-0085, 259-060-0090, 259-060-0095, 259-060-0115, 259-060-0120, 259-060-0130, 259-060-0135, 259-060-0150, 259-060-0300, 259-060-0305, 259-060-0450, 259-060-0500, 259-060-0600
**Last Date for Comment:** 3-24-06, 5 p.m.
**Summary:** The Oregon State Legislature passed Senate Bill 61, which amended portions of Oregon law relating to private security professionals. Rule changes define private security professional and executive and supervisory managers; include certain exemptions for persons employed by OLCC, active duty members of the armed services or an employee of a financial institution; and includes general housekeeping changes relating to grammatical and format changes for readability.
**Rules Coordinator:** Bonnie Salle
**Address:** 550 N. Monmouth Ave., Monmouth OR 97361
**Telephone:** (503) 378-2431

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**Rule Caption:** Requires minimum employment standards for Fire Service Professionals; requires minimum age of 18 for certification.
**Stat. Auth.:** ORS 181.610 & 181.640
**Stats. Implemented:** ORS 181.610 & 181.640
**Proposed Adoptions:** 259-009-0059
**Last Date for Comment:** 3-24-06, 5 p.m.
**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:** 550 N. Monmouth Ave, Monmouth OR 97361
**Telephone:** (503) 378-2431

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

**Rule Caption:** Regarding refunds, fleet and tow business registration and requirements for tow business certificates.

| Date: | Time: | Location: |
|---|---|---|
| 3-30-06 | 11 a.m. | ODOT Bldg.<br>355 Capitol St. NE, Rm. 122<br>Salem, 97301 |

**Hearing Officer:** David Eyerly
**Stat. Auth.:** ORS 184.616, 184.619, 293.445, 802.010, 802.110, 803.405, 803.415, 803.420, 805.120, 822.205 & 822.215
**Stats. Implemented:** ORS 293.445, 802.110, 805.120 & 822.205
**Proposed Adoptions:** 735-001-0100
**Proposed Amendments:** 735-042-0010, 735-042-0020, 735-154-0010
**Proposed Repeals:** 735-154-0020, 735-154-0030
**Last Date for Comment:** 3-31-06
**Summary:** ORS 293.445 authorizes state agencies to establish by rule the minimum dollar amount that an agency will refund when the agency receives money not legally due to the agency. As proposed, OAR 735-001-0100 establishes that any amount over $5 will automatically be refunded by DMV when it determines the money is not legally due to the Division. The rule will supersede DMV's current practice of refunding amounts over $2.

OAR 735-042-0010, 735-042-0020 and 735-154-0010 are amended to remove or correct references to prorated refunds for fleet vehicle registration and tow vehicle business certificates. DMV lacks authority to issue refunds of these registration types.

OAR 735-154-0020 and 735-154-0030 are repealed because amended OAR 735-154-0010 makes the rules unnecessary.

Finally, other non-substantive changes are proposed to clarify and simplify rule language.

Text of proposed and recently adopted ODOT rules can be found at web site http://www.oregon.gov/ODOT/CS/RULES/
**Rules Coordinator:** Brenda Trump
**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314
**Telephone:** (503) 945-5278

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

**Rule Caption:** Clarifies when lift axles must be deployed and revises requirements for lift axle capacity.
**Stat. Auth.:** ORS 184.616, 184.619 & 818.220
**Stats. Implemented:** ORS 818.200 & 818.220
**Proposed Amendments:** 734-074-0010
**Last Date for Comment:** 3-21-06
**Summary:** The use of lift axles allows heavier loads to be transported within allowable vehicle or axle weights. Trucks equipped with lift axles are cited when found not to have the lift axle deployed when deployment was necessary to meet legal vehicle or axle weight limits. Citations are currently written either for failure to use a lift axle, in violation of OAR 734-074-0010 (Class D traffic violation), or for exceeding maximum allowable weight, in violation of ORS 818.020 (usually a more costly violation with fines varying based on weight). Courts have dismissed citations for violations of OAR 734-074-0010 because they do not think the existing rule language clearly requires a lift axle to be used when vehicle or axle weight exceeds allowable limits. Rather than direct enforcement personnel to write all such citations for the higher bail for violating ORS 818.020, it is preferable to allow officer discretion to cite for OAR 734-074-0010. Further the requirement that lift axle assemblies have a weight rating of at least 10,000 pounds is being deleted because lift axle weight rating cannot be enforced.

Text of proposed and recently adopted ODOT rules can be found at web site http://www.oregon.gov/ODOT/CS/RULES/
**Rules Coordinator:** Brenda Trump
**Address:** Department of Transportation, Highway Division, 1905 Lana Ave. NE, Salem, OR 97314
**Telephone:** (503) 945-5278

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**Department of Transportation,**
**Motor Carrier Transportation Division**
**Chapter 740**

**Rule Caption:** This rule defines ODOT staff required to disclose pecuniary interest in a motor carrier business.
**Stat. Auth.:** ORS 184.616, 184.619 & 823.007
**Stats. Implemented:** ORS 823.007
**Proposed Amendments:** 740-020-0010
**Last Date for Comment:** 3-21-06
**Summary:** This rule defines the scope of ORS 823.007. ORS 823.007 requires each ODOT employee who performs functions concerning economic regulation of motor carriers to file a statement with

ODOT regarding holdings of the employee and the employee's spouse or minor children of any pecuniary interest in any business or activity subject to ODOT's economic regulation of motor carriers. The rule currently specifically excludes employees of the Driver and Motor Vehicle Services Division (DMV). Legislative Counsel reviewed the rule and determined that the provision of the rule that excludes DMV employees is not authorized by ORS 823.007 and is not within the scope and intent of the enabling legislation. The proposed amendment repeals the section of the rule that excludes DMV employees from the rule.

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

**Rules Coordinator:** Brenda Trump

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

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

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**Department of Veterans' Affairs**
**Chapter 274**

**Rule Caption:** Oregon Veterans' Home May Deny Admission to Anyone Convicted of a Sex Crime.

**Stat. Auth.:** ORS 406.030, 406.050, 408.510, 408.520 & 408.530

**Other Auth.:** SB 106 OL 2005

**Stats. Implemented:** ORS 406.030, 406.040 & 406.050

**Proposed Amendments:** 274-040-0015

**Last Date for Comment:** 3-21-06

**Summary:** Senate Bill 106 of the 2005 Regular Legislative Session allows the Oregon Veterans' Home (Home), as a licensed Long Term Care Facility, to deny admission to the Home if the applicant has had a sex crime conviction and is a current risk of harm to others.

**Rules Coordinator:** Herbert D. Riley

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

**Telephone:** (503) 373-2055

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**Land Conservation and Development Department**
**Chapter 660**

**Rule Caption:** Amend OAR 660, division 034, particularly OAR 660-034-0035, to clarify state park uses allowed on resource land.

| Date: | Time: | Location: |
|---|---|---|
| 3-23-06 | 9 a.m. | Hotel Oregon<br>310 NE Evans St.<br>McMinnville, OR |

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040

**Other Auth.:** Statewide Planning Goals 3, 4, & 8 (OAR 660-015-0000)

**Stats. Implemented:** ORS 195.120 - 195.125

**Proposed Amendments:** Rules in 660-034, 660-034-0035

**Last Date for Comment:** 3-23-06

**Summary:** Amend administrative rule OAR 660-034-0035 to clarify requirements under regarding park uses allowed in state parks on agriculture and forest land, and make corresponding housekeeping amendments, if necessary, to other rules under OAR chapter 660, division 034. These amendments are intended to make existing requirements more clear and will not amend the intent of existing provisions and will not create new requirements.

The Commission may consider other minor clarifications or technical corrections and amendments to rules under OAR 660, division 34 that may be proposed during the public comment period.

**Rules Coordinator:** Shelia Preston

**Address:** Land Conservation and Development Department, 635 Capitol St. NE, Salem, OR 97301

**Telephone:** (503) 373-0050, ext. 222

**Landscape Contractors Board**
**Chapter 808**

**Rule Caption:** Amends budget, clarifies definition of irrigation systems and individual contractor's employment and supervisory responsibilities.

| Date: | Time: | Location: |
|---|---|---|
| 3-17-06 | 11 a.m. | Roth's IGA<br>Santiam Rm.<br>1130 Wallace Road NW<br>Salem, OR |

**Hearing Officer:** Martin Seibold

**Stat. Auth.:** ORS 671.670

**Stats. Implemented:** ORS 182.462, 671.520 & 671.565

**Proposed Amendments:** 808-001-0008, 808-002-0480, 808-003-0018

**Proposed Repeals:** 808-003-0050

**Last Date for Comment:** 3-21-06, 5 p.m.

**Summary:** 808-001-0008 — Amends budget.

808-002-0480 — Clarifies definition of "Irrigation Systems."

808-003-0018 — Clarifies employment and supervisory responsibilities for individual landscape contractor.

808-003-0050 — Repealed - duplicative - language contained in 808-003-0018.

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** 235 Union Street NE, Salem, OR 97301

**Telephone:** (503) 986-6570

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**Oregon Criminal Justice Commission**
**Chapter 213**

**Rule Caption:** Amending Oregon sentencing guidelines in light of 2005 legislative actions.

| Date: | Time: | Location: |
|---|---|---|
| 3-22-06 | 1:30–2 p.m. | Archives Conference Rm.<br>800 Summer St. NE<br>Salem, OR |

**Hearing Officer:** Craig Prins

**Stat. Auth.:** ORS 137.667 & 475

**Stats. Implemented:** Guidelines amended in light of legislation.

**Proposed Amendments:** 213-001-0000, 213-003-0001, 213-005-0002, 213-013-0001, 213-013-0010, 213-013-0011, 213-017-0004, 213-017-0005, 213-017-0006, 213-017-0007, 213-017-0008, 213-017-0009, 213-017-0010, 213-017-0011, 213-019-0008, 213-019-0010, 213-019-0012, 213-019-0015

**Proposed Repeals:** 213-017-0006(T), 213-017-0008(T), 213-019-0008(T), 213-019-0010(T), 213-019-0012(T), 213-019-0015(T)

**Last Date for Comment:** 3-22-06, 2 p.m.

**Summary:** The Criminal Justice Commission is amending the sentencing guidelines in response to the following 2005 legislative measures:

HB 2485 & SB 907 known as the methamphetamine package.

HB 2322 - Extending the duration of the term of post prison supervision for person convicted of Assault in the First Degree.

HB 3469 - Creating the Crime of Unlawful Contact with a Child and t Unlawfully Being in a Location where Children Regularly Congregate.

HB 3491 - Creating the Crime of Disorderly Conduct in the First Degree.

SB 89 - Creating the Crime of Custodial Misconduct.

SB 124 - Amending how Sentencing Reports are Created.

SB 844 - Creating the Crime of Maintaining a Dangerous Dog.

The Commission shall also consider amendments to notice statutes in light of HB 2204.

**Rules Coordinator:** Craig Prins

**Address:** 635 Capitol Street NE, Suite 350, Salem, OR 97301-2524

**Telephone:** (503) 986-6495

**Oregon Department of Education**
**Chapter 581**

**Rule Caption:** Develop an electronic notification of filing a rule or rule change.

| Date: | Time: | Location: |
|---|---|---|
| 3-15-06 | 1 p.m. | Oregon Dept of Education<br>2nd Flr., 200B<br>Salem, OR |

**Hearing Officer:** Randy Harnisch
**Stat. Auth.:** ORS 183.335 & 183.341(4)
**Stats. Implemented:** ORS 183.335
**Proposed Amendments:** 581-001-0000
**Last Date for Comment:** 3-15-06, 5 p.m.
**Summary:** Updating the rule to provide notice to include electronic mailing and/or united postal mailings. Also will allow ODE to request interested party notification updates within a specific time range.

If you have a question regarding these rules, please contact Paula Merritt at (503) 378-3600 X2223 or email paula.merritt@state.or.us
**Rules Coordinator:** Paula Merritt
**Address:** 255 Capitol St. N.E., Salem, OR 97310
**Telephone:** (503) 378-3600, ext. 2223

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**Rule Caption:** Adoption of the Attorney General's model rules and procedure.

| Date: | Time: | Location: |
|---|---|---|
| 3-15-06 | 1 p.m. | Oregon Dept of Education<br>2nd Flr., 200B<br>Salem, OR |

**Hearing Officer:** Randy Harnisch
**Stat. Auth.:** ORS 183.342
**Stats. Implemented:** ORS 183.341
**Proposed Amendments:** 581-001-0005
**Last Date for Comment:** 3-15-06, 1 p.m.
**Summary:** The proposed amendments will incorporate the most recent version of the Attorney Generals Model Rules of Procedure and will update reference to the most recent version of the federal law, the individuals with Disabilities Education Act.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600 X2350 or email randy.harnisch@state.or.us. For a copy of this rule please contact Paula Merritt at (503) 378-3600 X2223 or email to paula.merritt@state.or.us
**Rules Coordinator:** Paula Merritt
**Address:** 255 Capitol St. N.E., Salem, OR 97310
**Telephone:** (503) 378-3600, ext. 2223

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**Rule Caption:** Provisions for implementation of SB 300, Expanded Options, which promotes opportunities for high school students.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 1 p.m. | Oregon Dept. of Education<br>2nd Flr., 200B<br>Salem, OR |

**Hearing Officer:** Randy Harnisch
**Stat. Auth.:** ORS 340.574
**Stats. Implemented:** ORS 340.574
**Proposed Adoptions:** 581-022-1362, 581-022-1363, 581-022-1364, 581-022-1365, 581-022-1366, 581-022-1367, 581-022-1368, 581-022-1369, 581-022-1370
**Last Date for Comment:** 4-7-06, 5 p.m.
**Summary:** 581-022-1362 - Expanded Options Purpose: Describes the purpose of the Expanded Options Program created by ORS Chapter 340.

581-022-1363 - Expanded Options Definitions: Defines terms to be used in carrying out the components of OAR 581-022-1362 through 581-022-1370.

581-022-1364 - Expanded Options Requirements for Oregon Public School Districts: Outlines the specific requirements for Oregon school districts in carrying out the components of the statute.

581-022-1365 - Expanded Options Annual Notice: Details the components school districts must include in their annual notice to students, parents and guardians regarding the Expanded Options Program.

581-022-1366 - Expanded Options Annual Credit Hour Cap: Sets forth the formal school districts must use in determining the number of credit hours available to eligible students under the Expanded Options Program.

581-022-1367 - Expanded Options Responsibilities of Eligible Students: Outlines the specific responsibilities of eligible students participating in the Expanded Options Program as described in the statute.

581-022-1368 - Expanded Options State School Fund, Expenditures, Request for Waiver: Describes the process for districts to follow in allocating state school funds in support of Expanded Options, specifies the types of qualifying support expenditures, and provides conditions for school districts in requesting a waiver to allocate state school funds in support of Expanded Options.

581-022-1369 - Expanded Options Report to Legislative committees and Joint Boards: Lists required components of the annual report to be provided for the House and Senate committees, and the Joint Boards for Education by the Department of Education.

581-022-1370 - Expanded Options Alternative Programs: Holds harmless any established or new program, agreement or plan that provides access for public high school students to a post-secondary course of the Expanded Options Program requirements.
**Rules Coordinator:** Paula Merritt
**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
**Telephone:** (503) 378-3600, ext. 2223

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

**Rule Caption:** Adopt rule requiring posting of suspension notice where liquor license is suspended due to violations.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 10 a.m.–12 p.m. | 9079 SE McLoughlin Blvd.<br>Portland, OR 97222 |

**Hearing Officer:** Katie Hilton
**Stat. Auth.:** ORS 471, 471.030, 471.040 & 730(1), (2)&(5)
**Stats. Implemented:** ORS 471.315, 471.322 & 471.327
**Proposed Adoptions:** 845-006-0498
**Last Date for Comment:** 4-4-06
**Summary:** The Commission does not currently post signs at licensed businesses notifying the public that the liquor license has been suspended due to liquor law violations. This lack of notice creates confusion about the status of the liquor license for the public, local government, law enforcement, wholesalers delivering alcohol, and agency staff. The Commission intends to adopt a new rule requiring that a Commission-provided notice be posted at entrances to the business when a liquor license at the location has been suspended for liquor law violations(s). The rule will describe the mandatory suspension sign and the circumstances when it must be used. The rule will also describe activities which are allowed or prohibited during the period of license suspension for both wholesale and retail licenses. The sign will give notice to alcohol distributors, to law enforcement, and to the public of the suspended status of the liquor license.
**Rules Coordinator:** Katie Hilton
**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
**Telephone:** (503) 872-5004

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**Oregon Public Employees Retirement System**
**Chapter 459**

**Rule Caption:** Adopt the Attorney General's Model Rules of Procedure.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 2 p.m. | Boardroom<br>PERS Headquarters<br>11410 SW 68th Parkway<br>Tigard, OR |

**Hearing Officer:** David K. Martin
**Stat. Auth.:** ORS 183.341 & 238.650
**Stats. Implemented:** ORS 238.005 - 238.715 & 237.410 - 237.620
**Proposed Amendments:** 459-001-0005
**Last Date for Comment:** 4-28-06
**Summary:** OAR 459-001-0005 adopted the Attorney General's Model Rules of Procedure that became effective January 1, 2004 as the PERS Board's rues of procedure. The Model Rules were updated on January 1, 2006; the proposed rule modification adopts this new version as the Board's rules of procedure.

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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**Rule Caption:** Amend the PERS contested case hearing and petitions for reconsideration rules.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 2 p.m. | Boardroom<br>PERS Headquarters<br>11410 SW 68th Parkway<br>Tigard, OR |

**Hearing Officer:** David K. Martin
**Stat. Auth.:** ORS 237.263 & 183.600 - 238.690
**Stats. Implemented:**
**Proposed Amendments:** 459-001-0035, 459-001-0040
**Last Date for Comment:** 5-26-06
**Summary:** OAR 459-001-0035 and 459-001-0040 are being amended to streamline and simplify the agency's contested case process.

Copies of the proposed rules are available to any person upon request. The rules are also available at www.pers.state.or.us. Public comment may be mailed to the above address or sent via email to David.Martin@state.or.us
**Rules Coordinator:** David K. Martin
**Address:** Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281-3700
**Telephone:** (503) 603-7713

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**Oregon University System,**
**Eastern Oregon University**
**Chapter 579**

**Rule Caption:** Amend Special Student and Course Fees.
**Stat. Auth.:** ORS 351.070
**Stats. Implemented:** ORS 351.070
**Proposed Amendments:** 579-020-0006
**Last Date for Comment:** 3-21-06
**Summary:** Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.
**Rules Coordinator:** Lara Moore
**Address:** Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 114, La Grande, OR 97850
**Telephone:** (541) 962-3368

**Oregon University System,**
**Southern Oregon University**
**Chapter 573**

**Rule Caption:** Special Fees.
**Stat. Auth.:** ORS 351.070
**Stats. Implemented:** ORS 351.070
**Proposed Amendments:** 573-040-0005
**Last Date for Comment:** 3-27-06
**Summary:** The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.
**Rules Coordinator:** Deborah S. Drost
**Address:** Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520
**Telephone:** (541) 552-8550

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

**Rule Caption:** Amend OAR 571-060-0005, Family Housing Rental Rates.

| Date: | Time: | Location: |
|---|---|---|
| 4-10-06 | 4 p.m. | EMU<br>Alsea & Coquille Rms.<br>Eugene, OR |
| 4-11-06 | 4 p.m. | EMU<br>Alsea & Coquille Rms.<br>Eugene, OR |

**Hearing Officer:** Connie Tapp
**Stat. Auth.:** ORS 351.070 & 352
**Stats. Implemented:** ORS 351.070
**Proposed Amendments:** 571-060-0005
**Last Date for Comment:** 4-12-06, 12 p.m.
**Summary:** Increase in family housing rental rates to cover projected operating costs for 2006–2007.
**Rules Coordinator:** Connie Tapp
**Address:** Oregon University System, 1226 University of Oregon, Eugene, OR 97403
**Telephone:** (541) 346-3082

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**Parks and Recreation Department**
**Chapter 736**

**Rule Caption:** Amendment of OAR 736-018-0045 to Adopt the Willamette River Middle Fork State Parks Master Plan.

| Date: | Time: | Location: |
|---|---|---|
| 3-30-06 | 6 p.m. | Washington Park Center<br>Meeting Hall<br>2025 Washington St.<br>Eugene, OR |

**Hearing Officer:** Ron Campbell
**Stat. Auth.:** ORS 390.180(1)(c)
**Stats. Implemented:** ORS 390.180(1)(c)
**Proposed Amendments:** 736-018-0045
**Last Date for Comment:** 4-29-06
**Summary:** ORS 390.180(1)(c) authorizes the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a master plan for 15 state parks located on the Middle Fork Willamette River and Dexter and Fall Creek reservoirs. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a state rule.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to these parks. The plan was formulated through OPRD's mandated master planning process involving meetings with the general public,

an advisory committee, recreation user groups, and affected state and federal agencies and local governments.
**Rules Coordinator:** Pamela Berger
**Address:** Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301
**Telephone:** (503) 986-0719

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**Rule Caption:** Amends rule to conform to changes made to the statute in the 05–07 legislative session.
**Stat. Auth.:** ORS 358.545
**Stats. Implemented:** ORS 358.475 - 358.543
**Proposed Amendments:** 736-050-0100 – 736-050-0150
**Last Date for Comment:** 4-15-06
**Summary:** HB 2776 (05-07 Session) revised the Special Assessment for Historic Property Program to allow residential historic property owners a second 15-year period of special assessment as a local government option. The rule amendments have been drafted to respond to the legislative changes.
**Rules Coordinator:** Pamela Berger
**Address:** Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301
**Telephone:** (503) 986-0719

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**Physical Therapist Licensing Board**
**Chapter 848**

**Rule Caption:** Adoption of new mandatory continuing education requirements for renewal of a physical therapy license.

| Date: | Time: | Location: |
|---|---|---|
| 3-17-06 | 8:30 a.m. | 800 NE Oregon St.<br>Ste. 445<br>Portland, OR |

**Hearing Officer:** Jim Heider
**Stat. Auth.:** ORS 688.160
**Stats. Implemented:** ORS 688.160(6)(g)
**Proposed Adoptions:** Rules in 848-035
**Last Date for Comment:** 3-17-06
**Summary:** • Adoption of Division 35 requires completion of mandatory continuing education for the renewal of a physical therapy practice license.

• The certification period will be a 24- month period measured from April 1 through March 31 of each even numbered calendar year.

• The first certification period will actually be January 1, 2006 through March 31, 2008. The subsequent certification period will be from April 1, 2008 through March 31, 2010.

• A PT will have to complete 24 hours of continuing education during any 24-month certification period.

• A PTA will have to complete 12 hours of continuing education during any 24-month certification period.

• The Board will randomly audit PTs and PTAs upon renewal of their practice license in even numbered years.

• If randomly selected for audit, a Licensee will have to provide proof, to the Board, they have met the CE requirements for the period audited.

• Failure to meet the CE requirements will be a violation, of Board Rule, and will be subject to Board discipline.
**Rules Coordinator:** James Heider
**Address:** Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232
**Telephone:** (971) 673-0203

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**Public Utility Commission**
**Chapter 860**

**Rule Caption:** Amend 860-011-0001(1)(b) to Provide Notice to Persons of Permanent Rules Only.
**Stat. Auth.:** ORS 183, 756, 757 & 759
**Stats. Implemented:** ORS 183.335, 756.040 & 756.500 - 756.575
**Proposed Amendments:** 860-011-0001
**Last Date for Comment:** 4-11-06
**Summary:** The amendment would add the word "permanent" to OAR 860-011-0001(1)(b) so that persons on a mailing list would receive notice only of permanent rulemaking proceedings.
**Rules Coordinator:** Diane Davis
**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551
**Telephone:** (503) 378-4372

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

**Rule Caption:** Revisions to Educational Service Districts, School Districts and Schools Records Retention Schedule.

| Date: | Time: | Location: |
|---|---|---|
| 3-17-06 | 10 a.m. | 800 Summer St.<br>Salem, OR 97310 |

**Hearing Officer:** Mary Beth Herkert
**Stat. Auth.:** ORS 192 & 357
**Other Auth.:** Code of Federal Regulation Title 34
**Stats. Implemented:** ORS 192 & 357
**Proposed Amendments:** Rules in 166-400, 166-405, 166-406, 166-407, 166-408, 166-409, 166-410, 166-411, 166-412, 166-413, 166-414, 166-415
**Proposed Repeals:** 166-400-0005
**Last Date for Comment:** 3-17-06
**Summary:** The rule, OAR 166-400, updates and revises existing rule relating to the retention of records generated by Schools, School Districts and Educational Service Districts.
**Rules Coordinator:** Julie Yamaka
**Address:** Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310
**Telephone:** (503) 373-0701

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

**Rule Caption:** Amends voters' pamphlet rules to reflect current state law and current policies.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 9–10 a.m. | 900 Court St. NE<br>Rm. 257<br>Salem, OR 97301 |

**Hearing Officer:** Fred Neal
**Stat. Auth.:** ORS 246.150, 251, 251.055, 251.087, 251.305 & 251.325
**Stats. Implemented:** ORS 251.046, 251.049, 251.055, 251.065, 251.075, 251.085, 251.087, 251.095, 251.115, 251.255, 251.285, 251.305, 251.325, 251.335, 251.345 & 251.355
**Proposed Amendments:** 165-016-0040, 165-016-0045, 165-016-0050, 165-016-0055, 165-016-0060, 165-016-0070, 165-016-0080, 165-016-0095, 165-022-0000, 165-022-0030, 165-022-0040, 165-022-0050, 165-022-0060
**Last Date for Comment:** 3-28-06, 5 p.m.
**Summary:** **165-016-0040 and 165-016-0055** are proposed for amendment to remove language allowing for candidates, submitting a candidate statement, or statements of arguments filed by a political party or assembly of electors to be included in the state voters' pamphlet, to use other computer generated forms other than the SEL 430.

**165-016-0045** designates the format of photographs that candidates submit to be included in the state voters' pamphlet. This rule is proposed for amendment to incorporate recent changes to state law that allow the candidate photograph to be less than 4 years old, rather than 2 years old.

**165-016-0050** designates the forms to be used when filing a measure argument for inclusion in the state voters' pamphlet. This rule is proposed for amendment to incorporate form SEL 406, the petition sheet for filing a petition for an argument for or against a ballot meas-

ure. This was previously adopted in OAR 165-016-0015 which is proposed for repeal.

**165-016-0060** designates form SEL 400 as the form to be used when submitting a statement of endorsement. The proposed amendment provides further direction on what must be included from form SEL 400 in the statement or argument.

**165-016-0070** sets forth the procedures for the Secretary of State to reject any statement argument or other material filed for publication in the state voters' pamphlet that violates the provisions of ORS 251.055. This proposed amendment make non-substantive changes to rule language and grammar.

**165-016-0080** sets forth the timeline for when the Secretary of State will attempt to contact candidates whose statements or portraits filed for publication in the state voters' pamphlet are not in compliance with ORS 251.049. The proposed amendment removes language that restricts the Secretary in contacting attempts.

**165-016-0095** designates the fees required for a county or metropolitan service district measure to be included in the state voters' pamphlet. The proposed amendment further clarifies the fee or number of signatures required for a petition as required by statute.

**165-022-0000** provides the schedule, filing fees and procedures for preparing, printing and distributing a county voters' pamphlet. The section of this rule proposed for amendment is being incorporated into 165-022-0030 and 165-022-0050 to improve clarity of these rules.

**165-022-0030** provides the format for a statement or portrait to be submitted by any local candidate for inclusion in a county voters' pamphlet. The proposed amendment incorporates the specifications that were removed from 165-022-0000.

**165-022-0040** requires the filing of an explanatory statement for any measure referred by any local government or any initiative or referendum petition. The proposed amendment requires the county clerk to reject any referred measure submitted without an explanatory statement.

**165-022-0050** provides the format for an argument supporting or opposing a measure submitted for inclusion in a county voters' pamphlet. The proposed amendment incorporates the specifications that were removed from 165-022-0000 and incorporates the fees that were in 165-022-0020.

**165-022-0060** provides the printing specifications and distribution schedule for a county that produces a county voters' pamphlet. This proposed amendment incorporates new statutory requirements and specifications previously contained in 165-022-0030.

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

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**Rule Caption:** Prescribes when a residence address disclosure exemption may be granted by the county elections official.

| Date: | Time: | Location: |
|---|---|---|
| 3-28-06 | 9–10 a.m. | 900 Court St. NE<br>Rm. 257<br>Salem, OR 97301 |

**Hearing Officer:** Fred Neal
**Stat. Auth.:** ORS 246.150 & 247.969
**Stats. Implemented:** ORS 247.965
**Proposed Amendments:** 165-005-0130
**Last Date for Comment:** 3-28-06, 5 p.m.
**Summary:** This rule is being revised as part of the Division's regular review process and to add the current information applicable to disclosure of an elector's residence address information.
**Rules Coordinator:** Brenda Bayes
**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
**Telephone:** (503) 986-1518

**Rule Caption:** Clarifies filing deadline of permanent certificates with Legislative Counsel.
**Stat. Auth.:** ORS 183
**Stats. Implemented:** ORS 183.335 & 183.341
**Proposed Amendments:** 165-001-0000
**Last Date for Comment:** 3-28-06, 5 p.m.
**Summary:** The proposed amendment of this rule clarifies language that requires the permanent certificate to be submitted to Legislative Counsel within 10 days after the adoption, amendment or repeal of any temporary or permanent administrative rule.
**Rules Coordinator:** Brenda Bayes
**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
**Telephone:** (503) 986-1518

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**Rule Caption:** Designating Ballot Request Forms.
**Stat. Auth.:** ORS 246.150, 254.465 & 254.470
**Other Auth.:** Help America Vote Act P.L. 107-252
**Stats. Implemented:** ORS 247, 253.030 & 254
**Proposed Adoptions:** 165-007-0035
**Last Date for Comment:** 3-28-06, 5 p.m.
**Summary:** This proposed rules designates the SEL 111, Absentee Ballot Request form, as the form an elector who will be away during an election, may submit to a county elections official to request an absentee ballot, and designates the SEL 113, Provisional Ballot Request Form, as the form an individual whose eligibility as a voter is in question may use to request a ballot.
**Rules Coordinator:** Brenda Bayes
**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
**Telephone:** (503) 986-1518

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**Rule Caption:** Repeal voters' pamphlet rules that have been incorporated into existing rules or are redundant.
**Stat. Auth.:** ORS 246.150, 251 & 251.055
**Stats. Implemented:** ORS 251, 251.145, 251.255, 251.325, 251.335 & 251.355
**Proposed Repeals:** 165-016-0015, 165-016-0035, 165-016-0065, 165-022-0020
**Last Date for Comment:** 3-28-06, 5 p.m.
**Summary: 165-016-0015** designated form SEL 406 as the required form for filing a petition for argument for or against a ballot measure to be published in the state voters' pamphlet. This rule is proposed for incorporation into OAR 165-016-0050.

**165-016-0035** is proposed for repeal because it is redundant. Other rules within this division set forth the policies and procedures to comply with ORS Chapter 251.

**165-016-0065** is proposed for repeal because the content of this rule is fully contained within state law.

**165-022-0020** set forth the filing fees for statements and arguments to be included in county voters' pamphlets. This rule is proposed for incorporation into OAR 165-022-0050.
**Rules Coordinator:** Brenda Bayes
**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722
**Telephone:** (503) 986-1518

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## Teacher Standards and Practices Commission
## Chapter 584

**Rule Caption:** Adopts and amends rules regarding educator licensing, authorizations, school district reporting, program completion and NCLB.

| Date: | Time: | Location: |
|---|---|---|
| 4-12-06 | 1–2:30 p.m. | TSPC Office<br>465 Commercial St. NE<br>Salem, OR 97301 |

**Hearing Officer:** Victoria Chamberlain
**Stat. Auth.:** ORS 342 & 342.165

**Stats. Implemented:** ORS 338.135, 342.120 - 342.200 & 342.223 - 342.232
**Proposed Adoptions:** 584-010-0090, 584-017-0441, 584-017-0451, 584-036-0070, 584-065-0300, 584-065-0320, 584-100-0038
**Proposed Amendments:** 584-017-0070, 584-017-0100, 584-017-0175, 584-020-0041, 584-023-0005, 584-023-0015, 584-023-0020, 584-023-0025, 584-040-0005, 584-048-0020, 584-052-0030, 584-052-0031, 584-052-0032, 584-052-0033, 584-060-0052, 584-060-0081, 584-070-0011, 584-100-0002, 584-100-0006, 584-100-0011, 584-100-0016, 584-100-0021, 584-100-0026, 584-100-0031, 584-100-0036, 584-100-0041, 584-100-0051, 584-100-0056, 584-100-0061, 584-100-0066, 584-100-0071, 584-100-0091, 584-100-0096, 584-100-0101, 584-100-0106
**Last Date for Comment:** 4-12-06, 5 p.m.
**Summary:** 584-010-0090 — *Program Completion — Field Operation Audit*: The "C-2 Fast Track" is a concept that was developed last winter to allow Oregon graduates to receive their licenses within one week to ten days after the TSPC office has received verification from the university that they have completed their program. The "C-2" form verifies program completion.

584-017-0070 — *School-Based Personnel for the Program*: The Commission approved the filing of an amendment to this administrative rule to allow teachers with only two (instead of three) years of experience to supervise students placed in their classrooms by universities.

584-017-0100 — *Objectives for Initial Teaching License*: Oregon Association of Colleges for Teacher Education (OACTE) established a cultural competency sub-committee to review and recommend changes to Division 017-0100 as it related to cultural competency. The sub-committee is making recommendations that apply only to those indicators that directly reference diverse students.

584-017-0175 — *Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses*: The language in this rule is inconsistent with 584-060-0052. These rules should be mirror images of each other. This amendment makes the language identical.

584-017-0441 — *Knowledge Skills and Abilities for Initial School Counselor License*: This rule would replace the current Division 17 standards for program approval for Initial School Counseling Programs. These actions would effectively replace the current Division 17 "objectives" with the newly adopted "standards."

584-017-0451 — *Knowledge, Skills and Abilities for Continuing School Counselor License*: The Counseling community has proposed new standards for adoption relating to the Continuing School Counseling License. This rule would replace the current Division 17 standards for program approval for Continuing School Counseling Programs."

584-020-0041 — *Reporting Requirements*: This rule governs school district reports to the Commission regarding substantial deviations from ethical standards in 584-020-0010 through 584-020-0035.

584-023-0005 — *Registry of Charter School Teachers*: This amends the requirements for a Public Charter School Registry. Additionally, it corrects a typographical error that was found in the reference to statutory authority.

584-023-0015 — *Standards of Competency and Ethics*: This amends the standards of competence and ethics and corrects a typographical error that was found in the reference to statutory authority.

584-023-0020 — *Renewal of Registration*: Amends rule and corrects a typographical error that was found in the reference to statutory authority.

584-023-0025 — *Fees*: This amends the rules for charter school fees and corrects a typographical error that was found in the reference to statutory authority.

584-036-0070 — *Expedited Service*: An employer and an applicant may jointly request an emergency license or other eligible license by expedited service by submitting a license application which must include the C-1 and C-3 forms, accompanied by the regular application fee and an expedited service fee.

584-040-0005 — *Standard Teaching License Requirements*: This amendment retains the requirement that holders of Basic Teaching Licenses with Basic Special Education endorsements are required to complete additional graduate work in special education in order to obtain the Standard Teaching License with a Standard Special Education Endorsement.

584-048-0020 — *Renewal of Teaching Licenses — Special Provisions*: This rule requires the signature of an educator that is either licensed or registered with TSPC to verify charter school experiences being used to renew a Five-Year, Basic, Standard, Initial or Continuing Teaching License. Also, it includes provisions that allow for any charter school employment experience as germane to the underlying license for which the educator is seeking to renew.

584-052-0030 — *Eligibility for Alternative Assessmen*t: Amends the eligibility requirements and the fee for alternative assessment.

584-052-0031 — *Evidence Needed for Alternative Assessment*: Amends the evidence needed for Alternative Assessment.

584-052-0032 — *Procedure for Alternative Assessment*: Amends the procedure for Alternative Assessment.

584-052-0033 — *Appeals of Commission Denials of Alternative Assessment*: Amends the appeals process of Alternative Assessment.

584-060-0052 — *Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses*: The language in this rule is inconsistent with 584-017-0175. These rules should be mirror images of each other. This amendment makes the language identical.

584-060-0081 — *Conditional Assignment Permits*: Amends Conditional Assignment Permits. This temporary supplemental permit is issued for three years and is not renewable. It is not eligible for a 120 day extension beyond its expiration date.

584-065-0300 — *Knowledge Skills and Abilities for Initial School Counselor License*: The Division 65 rule would reflect the standards for an Initial School Counseling License.

584-065-0320 — *Knowledge, Skills and Abilities for Continuing School Counselor License*: New standards were proposed for adoption relating to the Continuing School Counseling License. This rule would reflect the standards for an Initial School Counseling License.

584-070-0011 — *Initial School Counselor License*: This temporary rule will "grandfather" experienced Child Development Specialists who are willing to pass the requisite subject-matter tests and other licensure requirements to obtain an Initial School Counselor License.

584-100-0002 — *Purpose*: These rules establish requirements and procedures under the federal NCLB act.

584-100-0006 — *Definitions*: Definitions apply only to Division 100.

584-100-0011 — *Highly Qualified Elementary Teacher New to the Profession*: Teachers new to the profession teaching multiple subjects in grades K-8 must meet certain criteria in order to meet the federal definition of HQT.

584-100-0016 — *Highly Qualified Elementary Teacher Not New to the Profession*: Teachers not new to the profession teaching multiple subjects in grades K-8 must meet certain criteria in order to meet the federal definition of HQT.

584-100-0021 — *Highly Qualified Middle Level Teacher New to the Profession*: Teachers new to the profession teaching core academic subjects in grades seven and eight in a middle or junior high school must meet certain criteria in order to meet the federal definition of HQT.

584-100-0026 — *Highly Qualified Middle Level Teacher Not New to the Profession*: Teachers not new to the profession teaching core academic subjects in grades seven and eight in a middle or junior high school must meet the following criteria in order to meet the federal definition of HQT.

584-100-0031 — *Highly Qualified Secondary (grades 9–12) Teacher New to the Profession*: Teachers new to the profession teaching core academic subjects in grades nine through twelve in a high school must meet certain criteria in order to meet the federal definition of HQT.

584-100-0036 — *Highly Qualified Secondary (grades 9–12) Teacher Not New to the Profession*: Teachers not new to the profession teaching core academic subjects in grades nine through twelve in a high school must meet certain criteria in order to meet the federal definition of HQT.

584-100-0038 — *HOUSSE for Middle and High School Teachers*: Teachers may use a combination of coursework, professional development and experience to meet the federal definition of Highly Qualified Teacher (HQT) through Oregon's HOUSSE standard.

584-100-0041 — *Approved NCLB Alternative Route Teaching License*: Upon filing a complete and correct application a qualified applicant shall be granted an Approved NCLB Alternative Route Teaching License.

584-100-0051 — *Highly Qualified Professional Technical Teacher*: All professional technical teachers who teach professional technical courses that contain core academic subjects must meet the federal definition for HQ secondary teachers.

584-100-0056 — *Highly Qualified Substitute Teacher*: Teachers substituting more than four continuous weeks in a core academic subject must meet the federal definition for HQ teachers.

584-100-0061 — *Special Education Teachers Generally*: Special Education teachers who are providing instruction in core academic subjects must meet the federal definition for HQ teachers.

584-100-0066 — Highly Qualified Elementary Special Education Teacher(K-8): Special Education teachers who are new or not new to the profession and who produce direct instruction in core academic subjects in grades K-8 to students identified as special education students are HQ under specified conditions.

584-100-0071 — *Highly Qualified Middle-Level or Secondary Special Education Teacher*: Special Education teachers who are new or not new to the profession and who produce direct instruction in core academic subjects in grades 9-12 to students identified as special education students are HQ under specified conditions.

584-100-0091 — *Licensed and Registered Elementary Charter School Teacher*: Licensed and registered elementary charter school teachers teaching in pre-primary through grade eight self-contained classrooms must meet the HQ teacher definition for new or not new elementary teachers.

584-100-0096 — *Licensed and Registered Middle-Level or Secondary Charter School Teacher*: Licensed middle-level or secondary charter school teachers teaching in grades seven through twelve must meet the HQ teacher definition for new or not new middle-level or secondary teachers.

584-100-0101 — *Licenses considered "Full State Certification"*: List of Oregon Teaching Licenses that are considered to meet full state certification under the NCLB federal act.

584-100-0106 — *Licenses Not Considered to be "Full State Certification"*: List of Oregon Teaching Licenses that are not considered to meet full state certification under the NCLB federal act.

**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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**Rule Caption:** Changes definitions, clarifies and repeals outdated Professional Technical Teaching Licesnse rules.

| Date: | Time: | Location: |
|---|---|---|
| 4-12-06 | 1–2:30 p.m. | TSPC Office<br>465 Commercial St. NE<br>Salem, OR 97301 |

**Hearing Officer:** Victoria Chamberlain
**Stat. Auth.:** ORS 342
**Stats. Implemented:** ORS 342.120 - 342.430 & 342.455 - 342.495
**Proposed Amendments:** 584-005-0005, 584-042-0006, 584-042-0008, 584-042-0009
**Proposed Repeals:** 584-042-0005, 584-042-0007
**Last Date for Comment:** 4-12-06, 5 p.m.
**Summary:** 584-005-0005: *Definitions (29)*: "Instructor Appraisal Committee:" A seven-member committee appointed by a school board to evaluate applicants and make recommendations to the Commission and the employing superintendent or school board relative to their licensure and assignment as professional technical teachers.

584-042-0005: *Requirements for a Three-Year Professional Technical Teaching License*: A Three-Year Professional Technical Teaching License is valid for any professional technical assignment in an Oregon Department of Education-approved professional technical education program for which the employing district's Instructor Appraisal Committee has recommended employment.

584-042-0006: *Requirements for a Three-Year Professional Technical Teaching License (Rev. 2003)*: Effective January 15, 2003 this rule will supersede 584-042-0005. Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Three-Year Professional Technical License for one or more Professional Technical endorsements.

584-042-0007: *Five-Year Professional Technical Teaching License*: A Professional Technical Teaching License, valid for five years of teaching in an approved professional technical education program, will be issued upon receipt of a joint application of the prospective teacher and the school board or school superintendent who is seeking to employ the applicant. The applicant must meet the requirements for the Tree-Year Professional Technical Teaching License as set forth in OAR 584-042-0005(2)(b).

584-042-0008: *Five-Year Professional Technical Teaching License (Rev. 2003)*: Effective January 15, 2003 this rule will supersede 584-042-0007. A Professional Technical Teaching License, valid for five years of teaching in an approved processional technical education program, will be issued upon receipt of a joint application of the prospective teacher and the school board or school superintendent who is seeking to employ the applicant.

584-042-0009: *Adding Professional-Technical Endorsements*: Professional technical endorsements may be added to initial, continuing, basic, standard, and five-year regular licenses. Eligibility for the endorsement is determined by meeting specific criteria.

**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**

**Rule Caption:** Update and incorporate Rules Committee and public recommendations from June, 2005 rules hearing.

| Date: | Time: | Location: |
|---|---|---|
| 3-21-06 | 10 a.m.–12 p.m. | 800 NE Oregon<br>PSOB Rm. 445<br>Portland, OR 97232 |

**Hearing Officer:** Lori Makinen
**Stat. Auth.:** ORS 686.210
**Stats. Implemented:** ORS 686.020, 686.045 & 686.065
**Proposed Amendments:** 875-001-0005, 875-005-0005, 875-005-0010, 875-010-0000, 875-010-0006, 875-010-0065, 875-010-0090, 875-015-0030, 875-020-0010, 875-020-0025, 875-030-0010, 875-030-0040
**Last Date for Comment:** 3-21-06
**Summary:** Update and incorporate Rules Committee and public recommendations from June, 2005 rules hearing.
**Rules Coordinator:** Lori V. Makinen
**Address:** Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
**Telephone:** (971) 673-0224

**Board of Chiropractic Examiners**
**Chapter 811**

**Rule Caption:** Implements national criminal background checks and fee.
**Adm. Order No.:** BCE 1-2006(Temp)
**Filed with Sec. of State:** 2-9-2006
**Certified to be Effective:** 2-9-06 thru 8-1-06
**Notice Publication Date:**
**Rules Adopted:** 811-010-0084
**Subject:** OAR 811-010-0084 **Fitness Determinations for Licensure. State and Nationwide Criminal Background Checks**. This is a proposed new rule that implements the HB 2157 requirements for state and national criminal background checks for all Doctor of Chiropractic applicants.
**Rules Coordinator:** Dave McTeague—(503) 378-5816

**811-010-0084**
**Fitness Determinations for Licensure; State and Nationwide Criminal Background Checks**

(1) Purpose. The purpose of this rule is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to be granted a license or certificate, registration, permit in occupations, or professions covered by Oregon Laws 2005, chapter 730.

(2) These rules are to be applied when evaluating the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee the granting of a license, certification, registration, or permit.

(3) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board of Chiropractic Examiners to request a state or nationwide criminal records check. Under this chapter, subject individual means applicants for doctor of chiropractic license and any licensee under investigation as ordered by the Board.

(4) The Board may request that the Department of State Police conduct a Criminal History Check and a National Criminal History Check, using fingerprint identification, of subject individuals. The Board may conduct criminal records checks on subject individuals and any licensee/certificate holder under investigation through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS Chapter 181 and OAR chapter 257, division 15.

(5) Additional Information Required. In order to conduct an Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the subject individual as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(6) The Board shall determine whether an applicant is fit to be granted a license or certification, based on the criminal records background check, on any false statements made by the individual regarding the criminal history of the individual, on any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If a subject individual is determined to be unfit, then the individual may not be granted a license or certification. The Board may make a fitness determination conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(7) Except as otherwise provided in section 6 in making the fitness determination the Board shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(8) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(9) Criminal offender information is confidential. Dissemination of information received under ORS (HB 2157) is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant, licensee and certificate holder and as such is confidential pursuant to ORS 676.175(1). All original fingerprint cards will be destroyed per ORS (HB 2157)

(10) The Board will permit the subject individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(11) The Board may consider any felony or misdemeanor conviction involving moral turpitude.

(12) If an applicant, licensee or certificate holder is determined not to be fit for a license and/or certificate, they are entitled to a contested case process pursuant to ORS 183.413-470. Challenges to the accuracy or completeness of information provided by the Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process pursuant to ORS 183.

(13) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(14) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.155
Hist.: BCE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-1-06

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**Rule Caption:** Increases initial license period; recognizes other health professionals in chiropractic; updates rule references; clarifies record retention.
**Adm. Order No.:** BCE 2-2006
**Filed with Sec. of State:** 2-9-2006
**Certified to be Effective:** 2-9-06
**Notice Publication Date:** 1-1-06
**Rules Adopted:** 811-010-0130
**Rules Amended:** 811-010-0085, 811-015-0005, 811-021-0005
**Subject:** OAR 811-010-0085 **Application and Examination of Applicants**. This amendment provides that a Doctor of Chiropractic initial license will be valid for a minimum of 180 days. Currently, an initial license may be valid for as little as 120 days. This also establishes a fee for the criminal history background checks.

OAR 811-015-0005(1) **Records**. The amendment clarifies that chiropractors must keep patient records for the last seven years from the date of last treatment; and chiropractic clinic owners must maintain original records for all patients.

OAR 811-021-0005 **Educational Standards for Chiropractic Colleges**. This amendment updates the rule reference to the most recent addition of the educational standards for chiropractic colleges adopted by the Council on Chiropractic Education.

OAR 811-010-0130 **Other Licensed Health Care Providers**. The proposed new rule recognizes the accepted practice that a chiropractic physician may employ or appropriately contract for the services of other licensed health professionals as part of the provision of chiropractic health care.
**Rules Coordinator:** Dave McTeague—(503) 378-5816

**811-010-0085**
**Application and Examination of Applicants**

(1) Applicants shall be examined according to ORS 684.050 or 684.052.

(2) The Board shall issue a Candidate's Guide, which contains all necessary examination information. The Guide shall be mailed to each applicant, along with other examination information for a fee of $10.

(3) Fee and application deadlines are as follows:

(a) Application and $150 fee for chiropractic exams must be postmarked no later than 30 days prior to the first exam day.

(b) Request for retake of any section of the exam must be submitted in writing with a $100 reexamination fee postmarked no later than 30 days prior to the first exam day.

(c) Supporting documentation must be postmarked no later than 30 days prior to the first exam day.

(d) Deadlines may be waived by the Board for good cause.

(e) A complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board.

(f) Criminal background check fee of $52 must be postmarked no later than 30 days prior to the first exam day.

(4) Documents to be submitted prior to approval to take the Oregon Specifics Examination:

(a) A completed, official application including a recent photograph and fingerprints;

(b) Evidence of the applicant's good moral character on the letterhead stationary of a Chiropractic physician;

(c) Original transcripts of grades from all colleges attended showing successful completion of at least two years of liberal arts and sciences study in an accredited college; and

(d) A transcript certified by the registrar, from an approved chiropractic college, including transcripts of coursework as required by OAR 811-020-0006 (minimum Educational Requirements for physiotherapy and minor surgery/proctology). A transcript of grades is necessary from each chiropractic college attended.

(e) An official transcript of passing grades from the National Board of Chiropractic Examiners on Part I, II and III and physiotherapy.

(5) Documents and fee to be submitted prior to licensure include:

(a) $100 initial license fee.

(b) A diploma or other evidence of graduation certified by the registrar from an approved Chiropractic college.

(c) An official transcript of passing grades from the National Board of Chiropractic Examiners Part IV.

(6) All applicants must take and pass the Oregon Specifics Examination consisting of written examination in ethics and jurisprudence, obstetrics and gynecology, minor surgery and proctology. Applicants who have previously taken and passed obstetrics and gynecology, and/or minor surgery and proctology within the last five years from the date of application as received by the Board are not required to retake these tests, however all applicants must take and pass ethics and jurisprudence.

(7) Oregon Specifics Examination Grades:

(a) The Board shall determine the passing scores. Each section of the examination shall be graded separately using the Angoff Method, a criterion referenced model. Passing scores may fluctuate between sections and between examinations. All examinations are designed to test minimal competency to protect the public health and safety.

(b) Examination grades will be released within seven working days following approval.

(8) Regrades: any request for regrade must be submitted in writing to the Board no later than 45 days after the date of the examination. A regrade involves a manual tally of points earned for the specific examination requested.

(9) An applicant failing to achieve a passing grade, as determined by the Board for each examination section, may make application to the Board for a re-examination in the failed sections.

(10) An applicant must take at least one of the failed section(s) within 13 months following the date when the applicant took the entire examination. If the applicant fails to re-test on at least one failed section within 13 months of the last examination, the file shall become inactive and the applicant must re-apply and take the entire examination.

(11) An applicant attempting to give aid or accepting aid from another while examinations are in progress shall fail the examination and will not be allowed to take the examination for a period of five (5) years.

(12) Refunds:

(a) The application fee is non-refundable; and

(b) The retake fee can be refunded until 10 days prior to the test date.

(c) The background check fee is non-refundable.

(13) The Board may reject applications for good cause, including evidence of unprofessional behavior.

(14) Effective June 1, 2001 applicants who have completed all requirements for licensure, including passage of all required examinations, must submit the initial license fee to obtain license within one year from the date they completed all the requirements. An applicant's initial license will be valid for a minimum of 180 days. However, if the applicant's next birth date is within the 180 days, the initial license will be valid for an additional 12 months beyond the applicant's birth date.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.050 & 684.052
Hist.: 2CE 3, f. 10-9-59; 2CE 7, f. 7-9-68; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 6-1993(Temp), f. 9-29-93, cert. ef. 11-3-93; CE 1-1994, f. & cert. ef. 7-26-94; CE 4-1995, f. & cert. ef. 12-6-95; CE 2-1997, f. & cert. ef. 7-29-97; CE 3-1997(Temp), f. & cert. ef. 9-25-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2004, f. & cert. ef. 6-7-04; BCE 2-2006, f. & cert. ef. 2-9-06

**811-010-0130**
**Other Licensed Health Care Providers**

A chiropractic business entity or chiropractic physician, in accordance with decades long accepted scope of practice, may employ or contract for the services of other health care providers as part of their chiropractic practice for the purpose of providing care to patients, to the extent this does not conflict with other applicable state or federal laws. Other health care providers may include, but are not limited to, licensed massage therapists, physical therapists, athletic trainers, nurses, acupuncturists, naturopathic physicians, and physicians licensed under ORS 677.

Stat. Auth.: ORS 684.155(1)(b)
Stats. Implemented:
Hist.: BCE 2-2006, f. & cert. ef. 2-9-06

**811-015-0005**
**Records**

(1) It will be considered unprofessional conduct not to keep complete and accurate records on all patients, including but not limited to case histories, examinations, diagnostic and therapeutic services, treatment plan, instructions in home treatment and supplements, work status information and referral recommendations.

(a) Each patient shall have exclusive records which shall be sufficiently detailed and legible as to allow any other Chiropractic physician to understand the nature of that patient's case and to be able to follow up with the care of that patient if necessary.

(b) Every page of chart notes will identify the patient by name, and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service and author of the record.

(2) Practitioners with dual licenses shall indicate on each patient's records under which license the services were rendered.

(3) A patient's original records shall be kept by the Chiropractic physician a minimum of seven years from the date of last treatment. There is no requirement to keep any patient records older than seven years; except if the patient is a minor, the records shall be kept seven years or until the patient is 18 years of age, whichever is longer. If the treating chiropractic physician is an employee or associate, the duty to maintain original records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.

(4) If a chiropractic physician releases original radiographic films to a patient or another party, upon the patient's written request, he/she should create an expectation that the films will be returned, and a notation shall be made in the patient's file or in an office log where the films are located (either permanently or temporarily). If a chiropractic physician has radiographic films stored outside his/her clinic, a notation shall be made in the patient's file or in an office log where the films are located and chiropractic physician must ensure those films are available for release if requested by the patient.

(5) The responsibility for maintaining original patient records may be transferred to another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.155
Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 5-1995, f. & cert. ef. 12-6-95; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2006, f. & cert. ef. 2-9-06

**811-021-0005**
**Educational Standards for Chiropractic Colleges**

The educational standards for Chiropractic colleges published by the Council on Chiropractic Education, adopted January 2005, is hereby adopted and prescribed.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.155(5)
Hist.: 2CE 8, f. 12-10-68; 2CE 9, f. 10-1-70; CE 5-1997, f. & cert. ef. 12-19-97; BCE 3-2000, cert. ef. 8-23-00; BCE 2-2006, f. & cert. ef. 2-9-06

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## Board of Medical Examiners
## Chapter 847

**Rule Caption:** Create new license status of Active - Telemonitoring for physicians who practice outside of Oregon.
**Adm. Order No.:** BME 1-2006(Temp)
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06 thru 7-7-06
**Notice Publication Date:**
**Rules Adopted:** 847-008-0023
**Subject:** Temporary rules create new license status of Active - Telemonitoring to allow a physician who practices in a location outside of Oregon to provide intraoperative monitoring of data collected during surgery in Oregon and electronically transmitted to the out-of-state physician for the purpose of allowing the monitoring physician to notify the Oregon operating team of changes that may have a serious effect on the outcome and/or survival of the patient.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-008-0023**
**Telemonitoring Registration**

(1) Telemonitoring is the intraoperative monitoring of data collected during surgery and electronically transmitted to a physician who practices in a location outside of Oregon via a telemedicine link for the purpose of allowing the monitoring physician to notify the operating team of changes that may have a serious effect on the outcome and/or survival of the patient. The monitoring physician is in communication with the operation team through a technician in the operating room.

(2) The facility where the surgery is to be performed must be a licensed hospital or ambulatory surgical center licensed by the Department of Human Services, must grant medical staff membership and/or clinical privileges to the monitoring physician, and must request the Board of Medical Examiners grant Active — Telemonitoring status to the monitoring physician to perform intraoperative telemonitoring on patients during surgery.

(3) Physicians granted Active — Telemonitoring status may register and pay a biennial active registration fee. The licensee must file an Affidavit of Reactivation before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172
Hist.: BME 1-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06

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**Rule Caption:** Correct citation to another rule.
**Adm. Order No.:** BME 2-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 847-010-0052
**Subject:** The adopted rules change makes a correction to the citation of another rule. The rule that is cited was previously renumbered and the rule number that had been cited no longer exists.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-010-0052**
**Limited License, Visiting Professor**

(1) Any physician qualifying under OAR 847-020-0140(2) who has received a teaching position in an approved medical school or affiliated teaching institution in this state may be issued a Limited License, Visiting Professor. This license shall allow the physician to practice medicine only to the extent that such practice is incident to and a necessary part of the applicant's duties as approved by the Board in connection with such faculty position.

(2) The Limited License, Visiting Professor shall be granted for a period of one year, and upon written request may be renewed for one additional year. The two years must be consecutive, and any unused portion of time can not be requested at a later date.

(3) Every physician who is issued a Limited License, Visiting Professor to practice in this state shall pay the limited license application fee as of the beginning of his appointment, and 30 days before the end of the first year must submit a new limited license application and fee for the second year.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132
Hist.: ME 21-1987, f. & ef. 10-29-87; ME 11-1988, f. & cert. ef. 8-5-88; ME 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; ME 2-1991, f. & cert. ef. 4-19-91; ME 4-1993, f. & cert. ef. 4-22-93; BME 2-2002, f. & cert. ef. 1-28-02; BME 4-2003, f. & cert. ef. 1-27-03; BME 2-2006, f. & cert. ef. 2-8-06

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**Rule Caption:** Clarify requirements regarding NPDB/HIPDB self-query and open-book exams for applicants for licensure.
**Adm. Order No.:** BME 3-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 847-020-0140, 847-020-0150, 847-020-0170, 847-020-0180
**Subject:** The adopted rules changes correct the citation of a rule number in OAR 847-020-0140; add to OAR 847-020-0150 that results of the Self-Query of the National Practitioner Data Bank and the Health Integrity and Protection Data Bank must be submitted to the Board by the applicant; add to OAR 847-020-0170 the procedure for an applicant who fails one or both of the MPA and DEA open-book examinations three times; and correct the name of the Oregon Health and Science University.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-020-0140**
**Limited License, Visiting Professor, and Limited License, Medical Faculty**

(1)(a) Any physician who does not qualify for a medical license under any of the provisions of this chapter and who is offered by the Dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Board at a quarterly meeting of the Board, be granted a Limited License, Medical Faculty to engage in the practice of medicine only to the extent that such practice is incident to and a necessary part of the applicant's duties as approved by the Board in connection with such faculty position.

(b) To qualify for a Limited License, Medical Faculty an applicant shall meet all the following requirements:

(A) Furnish documentary evidence satisfactory to the Board that the applicant is a United States citizen or is legally admitted to the United States.

(B) Furnish documentary evidence satisfactory to the Board that the applicant has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the Board, or has been engaged in the practice of medicine in the United States for at least four years in approved hospitals, or has completed a combination of such licensure and training.

(C) The dean of the medical school shall certify in writing to the Board that the applicant has been appointed to a full-time faculty position; that a position is available; and that because the applicant has unique expertise in a specific field of medicine, the medical school considers the applicant to be a valuable member of the faculty.

(D) The head of the department in which the applicant is to be appointed shall certify in writing to the Board that the applicant will be under the direction of the head of the department and will not be permitted to practice medicine unless as a necessary part of the applicant's duties as approved by the Board in subsection (a) of this section.

(E) The applicant may be required to take and pass an examination by the Board.

(c) A Limited License, Medical Faculty is valid for one year after issuance. The limited license may be renewed annually for three succeeding years during which time the applicant must pass USMLE Steps 1, 2 and 3, or have previously passed the FLEX, or National Board of Medical Examiners Examination or a combination of all three per OAR 847-020-0170(1). Having completed four years of practice under a Limited License, Medical Faculty and successfully passed either the FLEX examination, the National Board of Medical Examiners Examination, or USMLE Steps 1, 2

and 3, the applicant is eligible for licensure regardless of any other requirements of this Chapter.

(2)(a) Any physician who does not qualify for a medical license under any of the provisions of this Chapter and who is offered a teaching fellowship at an approved medical school or affiliated teaching institution in this state may, after application to and approval by the Board, be granted a Limited License, Visiting Professor for two years to practice medicine only to the extent that such practice is incident to and a necessary part of the duties as approved by the Board in connection with such faculty position.

(b) To qualify for a Limited License, Visiting Professor, an applicant shall furnish documentary evidence satisfactory to the Board of graduation from a school of medicine, and a curriculum vitae;

(c) The head of the department in which the applicant is to be appointed shall certify in writing to the Board that the applicant has been offered a teaching position which will be under the direction of the head of the department and will not be permitted to practice medicine unless as a necessary part of the applicant's duties as approved by the Board in subsection (a) of this section.

(d) The Limited License, Visiting Professor shall be granted for a period of one year, and upon written request, may be renewed for one additional year. The two years must be consecutive, and any unused portion of time can not be requested at a later date.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 2-2002, f. & cert. ef. 1-28-02; BME 5-2002, f. & cert. ef. 4-23-02; BME 3-2006, f. & cert. ef. 2-8-06

**847-020-0150**
**Documents and Forms to be Submitted for Licensure**

The documents submitted must be no larger than 8 1/2" x by 11". All documents and photographs will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 1/2" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. The application form, photographs and the results of the Practitioner Request for Information Disclosure (Self-Query) from the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank must be originals, and all other documents must be legible copies. The following documents are required for an applicant who is a graduate of an approved school of medicine or a foreign medical school as indicated:

(1) Application Form: Completed formal application form provided by the Board. Each and every question must be answered with full dates, showing month, day, and year.

(2) Birth Certificate: A copy of birth certificate for proof of name and birthdate.

(3) Medical school Diploma: A copy of a diploma showing graduation from an approved school of medicine or a foreign school of medicine. Foreign medical graduate must have graduated after attendance of at least four full terms of instruction of eight months each.

(4) Fifth Pathway Certificate: A copy of Fifth Pathway Certificate if such program has been completed.

(5) Internship, Residency and Fellowship Certificates: A copy of official internship, residency and fellowship certificates showing completion of all postgraduate training;

(6) LMCC Certificate: A copy of LMCC Certificate issued by the Medical Council of Canada, if the applicant has been issued that certificate.

(7) ECFMG Certificate: A copy of the Standard ECFMG Certificate issued by the Educational Commission for Foreign Medical Graduates or, if Fifth Pathway applicant, proof of passing examination by submitting a copy of the ECFMG Interim Letter (Result Letter).

(8) American Specialty Board Certificate: A copy of the certificate issued by the American Specialty Board in the applicant's specialty, if applicable.

(9) American Specialty Board Recertification Certificate: A copy of the certificate of recertification issued by the American Specialty Board in the applicant's specialty, if applicable.

(10) Military Separation Paper: A copy of Separation Paper (showing beginning and ending dates) for each term of Active Duty in the Armed Forces (Report of Separation — Form DD-214 or equivalent; Statement of Service, Verification of Status for USPHS), for the past ten (10) years only. A Discharge Certificate is not acceptable.

(11) Photograph: A close-up, finished, original photograph (passport quality), no smaller than 2" x 2" and no larger than 2 1/2" x 3", front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application with the applicant's signature in ink and date taken on the photograph side.

(12) The results of the Practitioner Request for Information Disclosure (Self-Query) from the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank sent to the Board by the applicant.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.110
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 3-2006, f. & cert. ef. 2-8-06

**847-020-0170**
**Written Examination, SPEX Examination and Personal Interview**

(1) After complying with OAR 847-020-0110 through 847-020-0200 the applicant applying for licensure must have passed one of the following examinations or combinations of examinations:

(a) Federation Licensing Examination (FLEX) Component I and FLEX Component 2.

(b) National Board of Medical Examiners (NBME) Part I and Part II and Part III.

(c) National Board of Medical Examiners (NBME) Part I or United States Medical Licensing Examination (USMLE) Step 1, and NBME Part II or USMLE Step 2 and NBME Part III or USMLE Step 3.

(d) NBME Part I or USMLE Step 1, and NBME Part II or USMLE Step 2, and FLEX Component 2.

(e) FLEX Component 1 and USMLE Step 3. A score of 75 or above must be achieved on FLEX Component 1 and the score achieved on USMLE Step 3 must be equal to or exceed the figure established by the Federation as a recommended passing score.

(f) The score achieved on each Step, Part or Component must equal or exceed the figure established by the USMLE Program, the National Board of Medical Examiners or the Federation of State Medical Boards as a passing score. All Steps, Parts or Components listed in OAR 847-020-0170(1)(a)-(f) must be administered prior to January 2000, except for applicants who participated in and completed a combined MD/DO/PhD program; or

(g) The National Board of Osteopathic Medical Examiners (NBOME) examination or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) or any combination of their parts; or

(h) USMLE Steps 1, 2, and 3. All three Steps of USMLE, or all three Levels of the NBOME examination or COMLEX or any combination of the two, must be passed within a seven-year period which begins when the first Step or Level, either Step 1 or Step 2 or Level 1 or Level 2, is passed. The score achieved on each Step must equal or exceed the figure established by the Federation as a recommended passing score, and the score achieved on each Level must equal or exceed the figure established by the National Board of Osteopathic Medical Examiners.

(A) An applicant who has not passed all three Steps or Levels within the seven-year period may request an exception to the seven-year requirement if he/she suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's medical or osteopathic study, or the applicant has participated in a combined MD/DO/PhD program.

(B) Effective April 23, 2004, to be eligible for licensure, an applicant must have passed USMLE Step 3 or NBOME's COMLEX Level 3 within four attempts whether for Oregon or any other state. After the third failed attempt, the applicant must have completed one additional year of postgraduate training in the United States or Canada prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed USMLE Step 3 or COMLEX Level 3 on their fourth and final attempt. If the fourth attempt of USMLE Step 3 is failed, the applicant is not eligible for Oregon licensure. If the applicant did not complete a year of training approved by the Board between the third and fourth attempt to pass USMLE Step 3 or COMLEX Level 3, the applicant is not eligible for licensure.

(2) USMLE Step 3 may be taken during the first year of postgraduate training, or after the first year of postgraduate training has been completed. A Limited License, Postgraduate will be required for training beyond the postgraduate 1 level if the USMLE is not yet passed.

(3) The applicant will not be allowed to take the USMLE for this state nor apply for licensure in this state if the FLEX has been previously failed four or more times.

(4) The applicant must have passed the written examination (FLEX) under the following conditions:

(a) The applicant who has taken the FLEX examination (Day I, II, and III) administered between June 1968 and December 1984 must have taken the entire examination at one sitting. The applicant who has taken the FLEX examination (Component 1 and Component 2), first administered in

June 1985, was not required to take both Components 1 and 2 of the FLEX examination at one sitting. Both must have been passed within seven years of the first attempt.

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of approved training in the United State or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt.

(c) Only the applicant's scores on the most recently taken FLEX examination will be considered to determine eligibility.

(5) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved one year clinical fellowship;

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health and Science University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency; or

(B) Completed an accredited or Board approved one year clinical fellowship; or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(D) Obtained continuing medical education to the Board's satisfaction.

(6) The applicant, who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency or an accredited or approved one-year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(7) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(8) An applicant shall be required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and an open-book examination on the Drug Enforcement Administration Pharmacist Manual. If an applicant fails one or both examinations three times, the applicant's application will be reviewed by the Administrative Affairs Committee of the Board of Medical Examiners. An applicant who has failed one or both open-book examinations three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination(s), before being given a fourth and final attempt to pass the examination(s). If the applicant does not pass the examination(s) on the fourth attempt, the applicant may be denied licensure.

(9) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the (application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(10) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.110
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04; BME 7-2004, f. & cert. ef. 4-22-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 3-2006, f. & cert. ef. 2-8-06

**847-020-0180**

**Endorsement or Reciprocity, SPEX Examination and Personal Interview**

(1) After complying with OAR 847-020-0110 through 847-020-0200, the applicant may base an application upon certification by the National Board of Medical Examiners of the United States of America, the National Board of Osteopathic Medical Examiners, the Medical Council of Canada, or upon reciprocity with a license obtained by FLEX examination, USMLE examination, or written examination from a sister state. The FLEX and USMLE examination must have been taken in accordance with OAR 847-020-0170. The examination grades must meet Oregon standards pursuant to ORS 677.110(1). In order to reciprocate with a lapsed license, such license must have been in good standing while registered in that state and that board must furnish a current, original certification of grades to the Oregon Board.

(2) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved clinical fellowship; or

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health and Science University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency; or

(B) Completed an accredited or Board approved one year clinical fellowship; or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(D) Obtained continuing medical education to the Board's satisfaction.

(3) The applicant who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency, or an accredited or approved one year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(4) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available, and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(5) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(6) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.110
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 10-2003, f. & cert. ef. 5-2-03; BME 3-2004, f. & cert. ef. 1-27-04; BME 3-2006, f. & cert. ef. 2-8-06

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**Rule Caption:** Allow waivers of licensure and examination requirements for foreign medical graduates.
**Adm. Order No.:** BME 4-2006(Temp)
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06 thru 7-7-06
**Notice Publication Date:**
**Rules Amended:** 847-020-0130, 847-020-0170
**Subject:** Temporary rules allow licensure for foreign medical graduate applicants who have obtained four years of practice in another state similar to the Board's Limited License Medical Faculty; allow waiver of the three attempt limit for USMLE Step 3 if the applicant is American Board certified (ABMS); allow waiver of the 7-year requirements for USMLE Steps 1, 2 and 3 for applicants who are American Board certified (ABMS) or have completed continuous post-graduate training equivalent to an MD/DO/PhD program.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-020-0130**
**Basic Requirements for Licensure of a Foreign Medical School Graduate**

(1) The following requirements must be met in lieu of graduation from a school of medicine approved by the Liaison Committee on Medical Education or the Committee on the Accreditation of the Canadian Medical Schools of the Canadian Medical Association in order to qualify under ORS 677.100.

(2) The requirements for licensure of the foreign medical school graduate are as follows:

(a) Must speak English fluently and write English legibly.

(b) Must have graduated from a foreign school of medicine that is chartered in the country in which the school is located, after attendance of at least four full terms of instruction of eight months each, with all courses having been completed by physical on-site attendance in the country in which the school is chartered. This requirement may be waived for any applicant for licensure who has graduated from a foreign school of medicine, and has substantially complied with the attendance requirements provided herein, and has been certified by a specialty board recognized by the American Board of Medical Specialties. If any of the clinical clerkships were taken in an institution in a country other than that in which the school is licensed, the institutions in which the clerkships were served must provide a certificate to prove the time spent and the satisfactory completion of the clerkships. After June 30, 1988, clinical clerkships served in the U.S. or Canada shall be taken only in institutions which conduct residencies approved by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association in the specific subject of the clerkship. The foreign school of medicine must be listed in the World Directory of Medical Schools published by the World Health Organization or any other such foreign school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040.

(c) Must have obtained the Standard Educational Commission for Foreign Medical Graduates Certificate issued by the Educational Commission for Foreign Medical Graduates. This requirement may be waived if accredited postgraduate training was completed in Canada, or prior to the enforcement of the ECFMG certification, or if the applicant has been certified by a specialty board recognized by the American Board of Medical Specialties. In lieu of the ECFMG certificate, Fifth Pathway applicants shall show evidence of passing the examination pursuant to Oregon standards.

(d) Must have satisfactorily completed an approved internship and/or residency (or clinical fellowship) in the United States or Canada of not less than three years of progressive training in not more than two specialties in not more than two training programs accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association. The following may be used in lieu of the three years of post graduate training:

(A) A valid certificate issued by a specialty board recognized by the American Board of Medical Specialties; or

(B) Successful completion of four years of practice in Oregon under a Limited License, Medical Faculty, in accordance with OAR 847-020-0140(1)(b)–(c); or

(C) Successful completion of four years of practice in another state or the District of Columbia under a license substantially similar to the Board's Limited License, Medical Faculty.

(e) A graduate of a school of medicine approved by the Oregon Board of Medical Examiners pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040 must have satisfactorily completed not less than one year of approved training in the United States or Canada in not more than one hospital accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada.

(f) Must pass a written licensure examination as provided in ORS 677.110 and OAR 847-020-0170.

(3) If a foreign medical graduate has met the basic requirements for licensure and wishes to pursue further postgraduate training beyond the postgraduate level (3) three year, or wishes to practice medicine in this state, an unlimited license must be applied for and obtained.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.265
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2002, f. & cert. ef. 7-17-02; BME 10-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 4-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06

**847-020-0170**
**Written Examination, SPEX Examination and Personal Interview**

(1) After complying with OAR 847-020-0110 through 847-020-0200 the applicant applying for licensure must have passed one of the following examinations or combinations of examinations:

(a) Federation Licensing Examination (FLEX) Component I and FLEX Component 2.

(b) National Board of Medical Examiners (NBME) Part I and Part II and Part III.

(c) National Board of Medical Examiners (NBME) Part I or United States Medical Licensing Examination (USMLE) Step 1, and NBME Part II or USMLE Step 2 and NBME Part III or USMLE Step 3.

(d) NBME Part I or USMLE Step 1, and NBME Part II or USMLE Step 2, and FLEX Component 2.

(e) FLEX Component 1 and USMLE Step 3. A score of 75 or above must be achieved on FLEX Component 1 and the score achieved on USMLE Step 3 must be equal to or exceed the figure established by the Federation as a recommended passing score.

(f) The score achieved on each Step, Part or Component must equal or exceed the figure established by the USMLE Program, the National Board of Medical Examiners or the Federation of State Medical Boards as a passing score. All Steps, Parts or Components listed in OAR 847-020-0170(1)(a)–(f) must be administered prior to January 2000, except for applicants who participated in and completed a combined MD/DO/PhD program; or

(g) The National Board of Osteopathic Medical Examiners (NBOME) examination or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) or any combination of their parts; or

(h) USMLE Steps 1, 2, and 3. All three Steps of USMLE, or all three Levels of the NBOME examination or COMLEX or any combination of the two, must be passed within a seven-year period which begins when the first Step or Level, either Step 1 or Step 2 or Level 1 or Level 2, is passed. The score achieved on each Step must equal or exceed the figure established by the Federation as a recommended passing score, and the score achieved on each Level must equal or exceed the figure established by the National Board of Osteopathic Medical Examiners.

(A) An applicant who has not passed all three Steps or Levels within the seven-year period may request an exception to the seven-year requirement if he/she:

(a) Has current certification by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists; or

(b) Suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's medical or osteopathic study; or

(c) The applicant has participated in a combined MD/DO/PhD program; or

(d) Completed continuous post-graduate training with the equivalent number of years to an MD/DO/PhD program.

(B) Effective April 23, 2004, to be eligible for licensure, an applicant must have passed USMLE Step 3 or NBOME's COMLEX Level 3 within four attempts whether for Oregon or any other state. After the third failed attempt, the applicant must have completed one additional year of post-graduate training in the United States or Canada prior to readmission to the examination. The Board must approve the additional year of training to determine whether the applicant is eligible for licensure. The applicant, after completion of the required year of training, must have passed USMLE Step 3 or COMLEX Level 3 on their fourth and final attempt. If the fourth attempt of USMLE Step 3 is failed, the applicant is not eligible for Oregon licensure. If the applicant did not complete a year of training approved by the Board between the third and fourth attempt to pass USMLE Step 3 or COMLEX Level 3, the applicant is not eligible for licensure.

(C) An applicant who has passed USMLE Step 3 or COMLEX Level 3, but not within the four attempts required by OAR 847-020-0170(1)(h)(B), may request a waiver of this requirement if he/she has current certification by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists.

(2) USMLE Step 3 may be taken during the first year of postgraduate training, or after the first year of postgraduate training has been completed. A Limited License, Postgraduate will be required for training beyond the postgraduate 1 level if the USMLE is not yet passed.

(3) The applicant will not be allowed to take the USMLE for this state nor apply for licensure in this state if the FLEX has been previously failed four or more times.

(4) The applicant must have passed the written examination (FLEX) under the following conditions:

(a) The applicant who has taken the FLEX examination (Day I, II, and III) administered between June 1968 and December 1984 must have taken the entire examination at one sitting. The applicant who has taken the FLEX examination (Component 1 and Component 2), first administered in June 1985, was not required to take both Components 1 and 2 of the FLEX examination at one sitting. Both must have been passed within seven years of the first attempt.

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of approved training in the United State or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt.

(c) Only the applicant's scores on the most recently taken FLEX examination will be considered to determine eligibility.

(5) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved one year clinical fellowship;

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health and Science University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency; or

(B) Completed an accredited or Board approved one year clinical fellowship; or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(D) Obtained continuing medical education to the Board's satisfaction.

(6) The applicant, who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency or an accredited or approved one-year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(7) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(8) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the (application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(9) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.110, 677.265
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04; BME 7-2004, f. & cert. ef. 4-22-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 3-2006, f. & cert. ef. 2-8-06; BME 4-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06

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**Rule Caption:** Make minor correction to the rules text by removing unnecessary text.
**Adm. Order No.:** BME 5-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 847-031-0020
**Subject:** The adopted rules change makes a minor correction to the rules text by removing unnecessary text.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-031-0020**
**Protocol for Evaluation of Foreign Schools of Medicine**

(1) Any foreign school of medicine desiring to be evaluated by the Oregon Board shall complete the medical evaluation form prepared by the

Federation of State Medical Boards. This form may be submitted directly to the Oregon Board through the Federation.

(2) Any foreign school of medicine desiring to be evaluated by the Oregon Board shall post a bond of $20,000 in U.S. Funds with the Oregon Board to cover costs of this evaluation. The Board shall give an accounting of the expenditure of these funds at the conclusion of the evaluation and any excess funds shall be returned to the foreign school of medicine.

(3) The completed evaluation form will be reviewed by an evaluation panel appointed by the Board. This panel may consist of a member or members of the Board and as many non-Board members as the Board may deem necessary.

(4) As part of the evaluation, the panel may decide an on-site visit is necessary.

(5) Sixty days after submitting the initial report, the panel shall submit to the Board its final recommendations and any additional information provided by the school. The Board at its next meeting shall accept, reject or modify the recommendations.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2006, f. & cert. ef. 2-8-06

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**Rule Caption:** Add requirements regarding chronic/intractable pain management utilizing Schedule II medications for physician assistants
**Adm. Order No.:** BME 6-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 847-050-0026, 847-050-0041, 847-050-0065
**Subject:** The adopted rules changes make a correction to the rules text regarding the duration the Limited License, Special is valid, add requirements regarding chronic/intractable pain management authority utilizing Schedule II medications, change the term "certification" to "licensure" for consistency in the rules, and add Schedule II controlled substances to the formulary for prescriptive privileges upon which the committee makes recommendations under duties of the committee.
**Rules Coordinator:** Diana M. Dolstra—(503) 229-5873, ext. 223

**847-050-0026**
**Limited License, Special**

(1) Under the authority of the Board of Medical Examiners, the Physician Assistant Committee may grant a Limited License, Special to physician assistants not previously licensed in the state, subject to final Board approval.

(2) A Limited License, Special is valid until the next regularly scheduled Board meeting for which the applicant is eligible, and may be granted only if the following criteria are met:

(a) The applicant meets the qualifications of OAR 857-050-0020(1) and (2);

(b) The application file is complete;

(c) The supervising physician has completed a practice description under ORS 677.510 to the satisfaction of the Board;

(d) The supervising physician is in good standing with the Board; and

(e) The applicant has submitted the appropriate form and fee for a Limited License, Special.

(3) Prescription privileges, including emergency dispensing and emergency administration, and remote supervision in a medically disadvantaged, underserved, or health professional shortage area may be granted with a Limited License, Special if requested by the supervising physician in the practice description.

(4) Prior to being granted a Limited License, Special, a new applicant and the supervising physician may be required to appear for an interview at the next regularly scheduled committee meeting if there are questions concerning the application or the practice description.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.535
Hist.: ME 21-1989, f. & cert. ef. 10-20-89; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1993, f. & cert. ef. 4-22-93; ME 5-1994, f. & cert. ef. 1-24-94; ME 9-1995, f. & cert. ef. 7-28-95; BME 1-1998, f. & cert. ef. 1-30-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 6-2006, f. & cert. ef. 2-8-06

**847-050-0041**
**Prescription Privileges**

(1) An Oregon grandfathered physician assistant may issue written or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribed commensurate with the practice description and approved by the Board if the physician assistant has passed a specialty examination approved by the Board prior to July 12, 1984, and the conditions in (2)(a) and (b) are met.

(2) A physician assistant may issue written or oral prescriptions for medications, Schedule II-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice description and approved by the Board if the following conditions are met:

(a) The physician assistant has met the requirements of OAR 847-050-0020(1); or is an Oregon grandfathered physician assistant who has passed the Physician Assistant National Certifying Examination (PANCE).

(b) The applicant must document adequate training and/or experience in pharmacology commensurate with the practice description;

(c) The Board may require the applicant to pass a pharmacological examination which may be written, oral, practical, or any combination thereof based on the practice description.

(d) Schedule II. An application for Schedule II controlled substances prescription privileges must be submitted to the Board by the physician assistant's supervising physician and must be accompanied by the practice description of the physician assistant. The Schedule II controlled substances prescription privileges of a physician assistant shall be limited by the practice description approved by the board and may be restricted further by the supervising physician at any time. To be eligible for Schedule II controlled substances prescription privileges, a physician assistant must be certified by the National Commission for the Certification of Physician Assistants and must complete all required continuing medical education coursework.

(3) The prescribing physician assistant, to be authorized to issue prescriptions for Schedules II through V controlled substances, must be registered with the Federal Drug Enforcement Administration.

(4) Written prescriptions shall be on a blank which includes the printed or handwritten name, office address, and telephone number of the supervising physician and the printed or handwritten name of the physician assistant. The prescription shall also bear the name of the patient and the date on which the prescription was written. The physician assistant shall sign the prescription and the signature shall be followed by the letter "P.A." Also the physician assistant's Federal Drug Enforcement Administration number shall be shown on prescriptions for controlled substances.

(5) Emergency administration and emergency dispensing. A licensed physician assistant may make application to the Board for emergency administering and dispensing authority. The application must be submitted in writing to the Board by the supervising physician and must explain the need for the request, as follows:

(a) Location of the practice site;

(b) Accessibility to the nearest pharmacy; and

(c) Medical necessity for emergency administering or dispensing.

(6) The dispensed medication must be pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689 and the physician assistant shall maintain records of receipt and distribution.

(7) A physician who supervises a physician assistant who is applying for emergency dispensing privileges must be registered with the Board of Medical Examiners as a dispensing physician.

(8) Chronic/intractable pain management authority utilizing Schedule II medications.

(a) Physician assistants and their supervising physicians must meet the following requirements in order for physician assistants to be granted chronic/intractable pain management authority, under general supervision:

(A) The physician assistant must have completed six (6) hours of accredited training in chronic/intractable pain management and a one (1) hour pain management course specific to the State of Oregon provided by the Pain Management Commission;

(B) The supervising physician must have DEA certification for Schedule II medications;

(b) Supervising physicians must review a minimum of ten (10) percent of physician assistant patient charts regarding chronic/intractable pain management with Schedule II medications for one year following approval of physician assistant chronic/intractable pain management authority.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 409.560, 677.470
Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-

2003, f. & cert. ef. 7-15-03; BME 8-2004, f. & cert. ef. 4-22-04; BME 3-2005, f. & cert. ef. 1-27-05; BME 6-2006, f. & cert. ef. 2-8-06

**847-050-0065**
**Duties of the Committee**

The Physician Assistant Committee shall:

(1) Review all applications for physician assistants' licensure and for renewal thereof.

(2) Review applications of physician assistants for dispensing privileges.

(3) Recommend approval or disapproval of applications submitted under subsection (1) or (2) of this section to the Board of Medical Examiners for the State of Oregon.

(4) Recommend criteria to be used in granting dispensing privileges under ORS 677.515.

(5) Recommend the formulary for prescriptive privileges which may include all or parts of Schedules II, III, IV and V controlled substances and the procedures for physician assistants and supervising physicians to follow in exercising the prescriptive privileges.

(6) Recommend the approval, disapproval, or modification of the application for prescriptive privileges for any physician assistant.

(7) All actions of the physician assistant committee shall be subject to review and approval by the Board.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.540 & 677.545
Hist.: ME 23(Temp), f. & ef. 10-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 2-1990, f. & cert. ef. 1-29-90; BME 15-1999, f. & cert. ef. 10-28-99; BME 6-2006, f. & cert. ef. 2-8-06

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## Board of Radiologic Technology
## Chapter 337

**Rule Caption:** Allows ARRT to proctor LP exam; increases curriculum hours.
**Adm. Order No.:** BRT 1-2006
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 337-010-0030
**Subject:** The rule change amends Chapter 337 of Administrative Rules to allow the Oregon Board of Radiologic Technology (OBRT) to move the Limited Permit (LP) test to the American Registry of Radiologic Technology (ARRT) and the ARRT Limited Scope Examination. At the request of LP School, the rule change also increases the curriculum hours to cover additional material include on the ARRT Limited Scope exam. The move helps insulate the Board against charges of liability and uses ARRT's resources to provide a needed update of the Limited Permit test.

With the change OBRT can better serve its examinees in areas outside Portland with remote testing and the change provides many other benefits to the licensee, including proof of competency against a national standard.
**Rules Coordinator:** Linda Russell—(971) 673-0216

**337-010-0030**
**Limited Permits**

(1) Applicants for Limited Permits in Diagnostic Radiologic Technology. Qualifications:

(a)(A) An applicant for a limited permit in diagnostic radiologic technology shall be at least 18 years of age, pay an application fee, and, effective January 1, 2007, have successfully passed a course of instruction in radiation use and safety specific to diagnostic radiologic technology consisting of not less than 52 hours of instruction approved by the Board in the following subjects:

(i) Nature of x-rays;
(ii) Interaction of x-rays with matter;
(iii) Radiation units;
(iv) Principle of the x-ray machine;
(v) Biological effects of x-ray;
(vi) Principles of radiation protection;
(vii) Low-dose technique;
(viii) Applicable Federal and State radiation regulations;
(ix) Darkroom and film processing;
(x) Film critique;
(xi) Patient Care.

(B) Otherwise meeting the requirements stated in the Board's publication "Radiation Use/Safety" dated January 1, 1988, which is incorporated by reference and made a part of this rule.

(b) Have received a course of instruction in laboratory practice approved by the Board meeting the requirements stated in the Board's publication "Behavioral Objectives and Teaching Guides" dated January 1, 1990, which is incorporated by reference and made a part of this rule and taught by a licensed registered technologist specific to each category for which a limited permit is sought and have received the instructor's certification that the applicant has demonstrated all the positions/projections described in the Behavioral Objectives for each category. Effective January 1, 2007, the minimum hours in each category is as follows:

(A) Skull/Sinus, 18 hours;
(B) Spine, 30 hours;
(C) Chest, 12 hours;
(D) Extremities, 60 hours;
(E) Podiatric 10 hours.

(c) Have successfully completed a practical experience program approved by the Board specific to each category for which the applicant seeks a limited permit. The practical experience component shall consist of experience with live patients during which radiographs are exposed and the developed radiographs made by the students are evaluated and critiqued by an ARRT-registered, Oregon-licensed radiologic technologist Practical Experience Evaluator. If the Practical Experience Evaluator is not present to observe the student perform the radiographic examination, the following protocol must be used:

(A) Peer positioning must be used to demonstrate the positioning used to achieve the radiographs being evaluated;

(B) The student must provide the radiographic exposure factors used to achieve the radiographs being evaluated.

(d) The student may be evaluated using the Practical Experience Evaluation Form developed by the Board. If the Practical Experience Evaluator chooses to use a method for evaluation other than the Practical Experience Evaluation Form, that method must receive prior approval from the Board. The Practical Experience Evaluator must provide the student with a certificate of completion in the categories in which the student has successfully completed practical experience;

(e) Student status shall begin when an individual has successfully passed a Board-approved course in radiation use/safety and has successfully completed the didactic portion of a positioning/techniques class relative to the anatomical area the student wishes to radiograph. If a student fails the limited scope examination, student status shall continue for one year from the date of completion of the didactic portion of the corresponding positioning/techniques course. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in Board-approved courses in radiation use/safety and positioning/techniques.

(2) Applicants for Limited Permits in X-ray Bone Densitometry: Qualifications:

(a) An applicant for a limited permit in x-ray bone densitometry shall be at least 18 years of age, pay an application fee set by the Board, and have successfully passed a Board approved 24 hour course of instruction which includes not less than 20 hours of radiation use and safety specific to x-ray bone densitometry, and meets the didactic and practical experience requirements stated in the Board's publication "Behavioral Objectives and Teaching Guide: X-Ray Bone Densitometry," dated September 16, 1997 which is incorporated by reference and made a part of this rule.

(b) Student status shall begin when the individual has successfully passed a Board-approved course in x-ray bone densitometry. If a student fails the x-ray bone densitometry limited permit examination, his student status shall continue for one year from the date of course completion. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit in x-ray bone densitometry. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in a Board-approved course in x-ray bone densitometry;

(c) Applications for a "grandfathered" limited permit in x-ray bone densitometry will be accepted through June 30, 1992, and must be accompanied by certification of successful completion of a minimum 24 hour training course in x-ray bone densitometry by a manufacturer's application specialist and certification that the applicant has one year of experience operating an x-ray bone densitometer with a minimum of 200 patient hours.

(3) Limited Scope Examination Fees:

(a) Students can sit for the examination throughout the year. The examination fee is $20 for each examination category for which the student is tested, combined with a $75 administration fee for the American Registry of Radiologic Technologists (ARRT). These fees, together with the necessary certifications and verifications that the applicant has completed Board-approved courses in radiation use/safety, laboratory practice (positioning and techniques), and a practical experience program must be submitted to the Board office. On submission and acceptance of the application materials, OBRT shall register the applicant with the ARRT, after which the applicant has 90 days in which to sit for the exam.

(b) The examination shall consist of two sections:

(A) Core Section (Radiation Use and Safety & Patient Care), which all applicants are required to pass; and

(B) Specific Radiographic Procedures (positioning and techniques) in the category or categories for which a limited permit is desired to be obtained. At least one category must be passed to obtain a permanent Limited Permit (ORS 688.515(h)). The Limited Permit may be issued only in those categories that are passed.

(c) A score of 75 percent constitutes a minimum passing score for each section of the limited scope examination;

(d) Limited scope examinations will be administered at sites chosen by ARRT. The student is subject to rules regarding test administration at the testing site;

(e) The application fee for the limited permit examination is non-refundable.

(4) Time Frame for Completing Requirements for a Limited Permit: An applicant has a maximum of one year from the time of completion of a limited permit didactic class term to make application for a limited permit or add categories to an existing limited permit.

(5) Limited Permit students who wish to sit for the ARRT Limited Scope Examination must have successfully completed a course of instruction both approved by the board and licensed by the Oregon Department of Education, Private Career School Section or otherwise approved or accredited by the Oregon Department of Higher Education.

(6) After January 1, 2007, the limited permit examination administered by the OBRT for abdomen will no longer be available. Applications for a "grandfathered" limited permit in abdomen will be accepted provided the applicant has met the requirements and applied for permanent licensure within the one year (student status) time frame.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 388.555(1)
Stats. Implemented: ORS 688.515(4) & 688.515(8)
Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 3-1982, f. & ef. 9-30-82; RT 2-1985, f. & ef. 7-1-85; RT 2-1986, f. 4-29-86, ef. 7-1-86; RT 1-1987, f. & ef. 1-27-87; RT 3-1987, f. & ef. 4-16-87; RT 5-1987, f. & ef. 10-19-87; RT 1-1988, f. & cert. ef. 4-13-88; RT 2-1988, f. & cert. ef. 11-9-88; RT 3-1988, f. & cert. ef. 11-9-88; RT 1-1989, f. & cert. ef. 1-24-89; RT 3-1990, f. & cert. ef. 11-7-90; RT 4-1990, f. & cert. ef. 11-7-90; RT 1-1991, f. & cert. ef. 1-30-91; RT 1-1992, f. & cert. ef. 1-15-92; BRT 4-1998, f. & cert. ef. 7-15-98; BRT 2-2002, f. & cert. ef. 11-18-02; BRT 1-2006, f. & cert. ef. 2-6-06

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## Bureau of Labor and Industries
## Chapter 839

**Rule Caption:** Amendment to January 1, 2006 State PWR/Davis Bacon Wage Rates Publication.
**Adm. Order No.:** BLI 1-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-25-06
**Notice Publication Date:**
**Rules Amended:** 839-025-0700
**Subject:** The amended rule amends the January 1, 2006 PWR rates for public works contracts in Oregon subject to both state PWR law and the federal Davis-Bacon Act, reflecting changes to Davis-Bacon rates effective January 20, 2006.
**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

**839-025-0700**
**Prevailing Wage Rate Determination/Amendments to Determination**

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2006, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2006, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective September 20, 2005).

(b) Amendments/Corrections to January 1, 2006 PWR Rates for Public Works Contracts in Oregon Subject to BOTH State PWR Law and the Federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 20, 2006).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2006, and the determinations and amendments referenced in subsection (1)(a) and (b) 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 are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279C.815
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06

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**Rule Caption:** Amendment to January 1, 2006 PWR/Davis Bacon Wage Rates Publication.
**Adm. Order No.:** BLI 2-2006
**Filed with Sec. of State:** 2-9-2006
**Certified to be Effective:** 2-9-06
**Notice Publication Date:**
**Rules Amended:** 839-025-0700
**Subject:** The amended rule amends the January 1, 2006 PWR rates for public works contracts in Oregon subject to both state PWR law and the federal Davis-Bacon Act, reflecting changes to Davis-Bacon rates effective January 27, 2006.
**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

**839-025-0700**
**Prevailing Wage Rate Determination/Amendments to Determination**

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act dated January 1, 2006, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2006, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective September 20, 2005).

(b) Amendments/Corrections to January 1, 2006 PWR Rates for Public Works Contracts in Oregon Subject to BOTH State PWR Law and the Federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 20, 2006).

(c) Amendments/Corrections to January 1, 2006 PWR Rates for Public Works Contracts in Oregon Subject to BOTH State PWR Law and the Federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 27, 2006).

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act dated January 1, 2006, and the determinations and amendments referenced in subsection

(1)(a) and (b) 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 are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 279C.815
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06

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## Construction Contractors Board
## Chapter 812

**Rule Caption:** Rules add civil penalties and amend CEU requirements for home inspectors.
**Adm. Order No.:** CCB 2-2006
**Filed with Sec. of State:** 1-26-2006
**Certified to be Effective:** 1-26-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 812-005-0800, 812-008-0070, 812-008-0072
**Rules Repealed:** 812-008-0078
**Subject:** 812-005-0800 is amended to add penalties for failure to maintain a list of subcontractors and for knowingly providing false information to the Board. 812-008-0070 is amended to remove the requirement to submit completed continuing education on agency form and will now require copies of completion certificates to be submitted with the renewal form. 812-008-0072 is amended to remove the requirement that at least 20 continuing education units (CEUs) are instructor led and adds one continuing education credit for each meeting attended by CCB and HIAC members. 812-008-0078 is repealed; it is no longer necessary due to amendments to 812-008-0072.
**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

**812-005-0800**
**Schedule of Penalties**

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) $600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, which may be reduced to $200 if the respondent becomes licensed or to $50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) $700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) $1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to $700 if the respondent becomes licensed within a specified time; and

(4) $5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to $700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) $5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) $500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) $1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, $200 for the first offense, $400 for the second offense, $600 for the third offense, $1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, $1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense $100, second offense $200, subsequent offenses $400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense $50, second offense $100, subsequent offenses $200.

(11) Failure to use a written contract as required by ORS 701.055(14), $200; when a claim has been filed, $400; second and subsequent offenses, $1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; $100 first offense; $500 second offense; $1,000 third offense; and $5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below $100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(4), issuance of a $1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, $1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035, 701.075 or section 3, chapter 432, Oregon Laws 2005, as authorized by ORS 701.100, $1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), $1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, $1,000 for the first offense; $2,000 and suspension of CCB license for three (3) months for the second offense; $5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, $500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, $1,000, suspension of the license or both; second and subsequent offenses, $5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

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

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840: $1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: $5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: $1,000 for the first offense, $2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): $5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): $5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: $750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)–(8): $750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: $5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): $400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; $5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to $1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: $1,000 for the first offense, $2,000 for the second offense, and $5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.055(11)(a), failure to maintain the list of subcontractors: $1,000 for the first offense; $2,000 for the second offense, and $5,000 for the third and subsequent offenses.

(33) Violation of ORS 701.135(1)(f), knowingly providing false information to the Board: $1,000 and suspension of the license for up to three months for the first offense; $2,000 and suspension of the license for up to one year for the second offense; and $5,000 and permanent revocation of license for the third offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.100, 701.135, 701.175, 701.227, 701.992 & Sec. 3, Ch. 432, OL 2005
Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f.& ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98 ; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06

**812-008-0070**
**Requirements for Renewal of Certification**

For all certifications due to renew on or after July 1, 2006, and for all certification renewal applications received on or after July 1, 2006, the Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(1) A properly completed renewal application on an agency form; and

(2) The renewal fee of $150 (listed in OAR 812-008-0110); and

(3) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06

**812-008-0072**
**Approved Continuing Education Units**

(1) The following continuing education units (CEUs) are approved.

(a) One CEU for each completed clock hour of instruction of approved courses. All required CEU's per renewal may be from this category.

(b) Courses in approved subject areas in OAR 812-008-0074(1) that provide for college credit given by institutions of higher learning (community colleges or state universities) are approved for hours in home inspector continuing education.

(c) Courses in approved subject areas in OAR 812-008-0074(1) given by federal, state or local government agencies.

(d) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

(e) One CEU for each year completed for serving as an officer of an Oregon or national home inspector professional trade association.

(2) Members of the Construction Contractors Board and Home Inspector Advisory Committee may earn one continuing education credit (CEU) for each Home Inspector Advisory Committee meeting attended after February 1, 2006.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06

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## Department of Administrative Services
## Chapter 125

**Rule Caption:** Adoption of rules setting standards and policies for internal audit functions within state government.
**Adm. Order No.:** DAS 1-2006
**Filed with Sec. of State:** 1-30-2006
**Certified to be Effective:** 1-30-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 125-700-0010, 125-700-0012, 125-700-0015, 125-700-0020, 125-700-0025, 125-700-0030, 125-700-0035, 125-700-0040, 125-700-0045, 125-700-0050, 125-700-0055, 125-700-0060
**Subject:** The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. Rules 125-700-0010 through 125-700-0060 establish the standards and policies for internal audit functions within state government.
**Rules Coordinator:** Kristin Keith—(503) 378-2349, ext. 325

**125-700-0010**
**Purpose**

The Oregon Department of Administrative Services is responsible for adopting rules setting standards and policies for internal audit functions within state government according to 2005 Oregon Law, Chapter 373. The rules include, but are not limited to:

(1) Standards for internal audits that are consistent with and incorporate commonly recognized industry standards and practices; and

(2) Policies and procedures that ensure the integrity of the internal audit process.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0012**
**Statewide Audit Advisory Committee**

(1) The Statewide Audit Advisory Committee is created to promote excellence and professional, standards-based internal auditing services in state government. The Statewide Audit Advisory Committee serves in an advisory capacity to the Director of the Oregon Department of Administrative Services.

(a) The Statewide Audit Advisory Committee shall be comprised of the Director of the Oregon Department of Administrative Services, who will serve as Chair; the Director of the Secretary of State Division of Audits, the Legislative Fiscal Officer or designee, the State Court Administrator or designee, at least one Chief Audit Executive from an agency other than the Department of Administrative Services, and not more than nine other persons appointed by the Director of the Oregon Department of Administrative Services representing state, local, non-profit and private sector internal auditing expertise. Members of the Statewide Audit Advisory Committee shall serve two-year terms, and may be reappointed at the discretion of the Director. The Statewide Audit Advisory Committee shall meet regularly to discuss statewide audit matters and issues of interest. The Statewide Audit Advisory Committee shall:

(b) Draft proposed rules for consideration for adoption by the Department of Administrative Services;

(2) Develop a model charter for use by agency internal audit organizations;

(3) Provide statewide guidance and support to promote the conduct of internal audit activity in accordance with professional auditing standards.

(4) Make recommendations to help assure that the independence and objectivity of the internal audit functions within state government.

(5) Review the following agency internal audit documents to determine statewide issues:

(a) Agencies' risk assessments of program and administrative risks;

(b) Agencies' annual internal audit plans;

(c) Summaries of agencies' internal audit reports, including follow-up status reports;

(d) Agencies' external peer review of internal audit functions; and

(e) Agencies' internal audit criteria for determining materiality.

(6) Where appropriate, make recommendations to improve statewide management in areas that involve recurring or material findings that impact multiple agencies.

(7) Make recommendations on areas of statewide risk-based concerns.

(8) Periodically, members of the Statewide Audit Advisory Committee may appear before legislative committees, including the annual reporting on statewide audit activity to the Joint Legislative Audit Committee or Legislative Emergency Board.

(9) The Statewide Audit Advisory Committee shall document its full mission, responsibilities and organization in a formal charter.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0015**
**Definitions**

(1) Audit: The examination of documents, records, reports, systems of internal control, accounting and financial procedures, and other evidence for one or more of the following purposes:

(a) To ascertain whether the financial statements present fairly the financial position and the results of financial operations of the fund types and account groups in accordance with Generally Accepted Accounting Principles and federal and state rules and regulations;

(b) To determine compliance with applicable laws, rules, regulations and contract provisions;

(c) To review the efficiency and economy with which operations are carried out; and

(d) To review effectiveness in achieving results.

(2) Chief Audit Executive: An employee designated by the agency to manage the internal audit function.

(3) External Peer Review: A peer review conducted pursuant to industry standards by person(s) not currently employed as an Oregon state employee.

(4) Internal audit function: Staff employed or contractors hired to conduct audits and risk assessments in accordance with professional auditing standards within a state agency.

(5) Internal Auditing: Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management control, and governance processes.

(6) Professional Auditing Standards: Standards for internal audits that are consistent with and incorporate commonly recognized industry standards and practices.

(7) Risk: The possibility that an event will occur and adversely effect the achievement of objectives. Risk is measured in terms of impact (the effect) and probability (the likelihood the event will occur).

(8) Risk Assessment: A process of identifying, analyzing and prioritizing risks to activities of an agency.

(9) Risk Management: A process to identify, assess, manage, and control potential events or situations, to provide reasonable assurance regarding the achievement of the organization's objectives.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0020**
**Internal Auditing Requirements**

(1) In every agency that meets one or more of the criteria below, the agency head shall establish, maintain, and fully support a full-time internal audit function. Exceptions may be requested in writing by agencies to the Director of the Department of Administrative Services to allow for a part-time staff or limited contractor should it be determined this level of staffing or services allow the requesting agency to maintain compliance with all applicable rules.

(2) For agencies that meet the criteria below, an internal audit function will be established within existing resources or the agency must develop contract alternatives. For agencies not meeting the criteria below, an internal audit function is encouraged.

(a) Total biennial expenditures exceed $100 million.

(b) Number of full-time equivalent employees exceeds 400.

(c) Dollar value of cash items received and processed annually exceeds $10 million.

(3) The agency's internal audit function's purpose, authority, and responsibilities shall be formally defined in the agency's Internal Audit Charter. The agency's charter should be modeled after the audit charter developed by the Statewide Audit Advisory Committee that is consistent with professional auditing standards. The agency's charter should be approved by the audit committee or board as well as accepted by senior management. The internal audit staff shall have unrestricted access to all systems, processes, operations, functions, and activities within an agency as needed to perform job responsibilities.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0025**
**Internal Auditing Standards**

(1) Standards applicable to internal audit functions and internal auditors may include:

(a) *Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors;

(b) *Generally Accepted Government Auditing Standards* (GAGAS) promulgated by the United States Government Accountability Office (GAO);

(c) *Information Technology Guidelines* (such as COBIT) promulgated by the Information Systems Audit and Control Association (ISACA);

(d) *Generally Accepted Auditing Standards* (GAAS) promulgated by the American Institute of Certified Public Accountants.

(2) Internal Auditor(s) shall follow professional auditing standards as appropriate for their agency or program. At a minimum, Internal Auditor(s) will follow the *Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors.

(3) In instances where full compliance with audit standards is not achieved and non-compliance impacts the overall scope or operation of the internal audit function, the agency's Chief Audit Executive will disclose to the Oregon Department of Administrative Services Director the nature of the variance.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0030**
**Agency Internal Auditor Qualifications**

(1) The agency's Chief Audit Executive should be a person qualified to manage the internal audit function in accordance with professional auditing standards. The Chief Audit Executive shall coordinate with the agency head, the audit committee, appropriate state or federal oversight boards or commissions (as applicable), and the Oregon Audits Division and serve as the agency representative on audit matters.

(2) At a minimum, the agency's Chief Audit Executive should have a bachelor's degree in business or public administration, finance, economics, computer science or accounting, or a field specific to the agency's mission. Prior auditing experience is preferred for placement in Internal Auditor positions except entry level. Credentials such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA), or Certified Government Audit Professional (CGAP) may be preferred for higher levels. The state position classification system should be consulted for additional qualifications.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0035**
**Internal Auditing Leadership**

(1) Each agency having an internal audit function shall establish and maintain an audit committee. An audit committee provides oversight of auditing and internal control for the agency and helps ensure the independence of the internal audit function. The purpose of an audit committee is to assist agency management in carrying out its oversight responsibilities as they relate to:

(a) Financial and other reporting practices;

(b) Internal control;

(c) Compliance with laws, regulations, and ethics; and

(d) Economy and efficiency of operations.

(2) If the agency has a governing board or commission, the audit committee should include one or more board or commission members. If there is no board or commission, the committee should include senior management officials not directly responsible for the internal audit function.

(3) If possible, agencies are encouraged to include individuals from outside their agency on their audit committees, to enhance public accountability and transparency of the audit function for the agency. Any audit committee members from outside the agency should have qualifications that the agency determines will allow those individuals to effectively serve as an audit committee member.

(4) The role and function of the audit committee shall be stated in a formal, written charter or equivalent document that is approved by the full board or governing body or director of the agency, as appropriate. The charter should describe the authority, responsibilities, and structure of the audit committee.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0040**
**Agency Internal Audit Functions**

(1) The internal audit function shall report to the agency head, agency management and the audit committee on activities and results of their work, including the following:

(a) Governance of agency's processes and organizational structures implemented by the governing board, commission, and management in order to inform, direct, manage, and monitor the activities of the agency toward the achievement of its objectives.

(b) Performance responsibilities for carrying out the activities of the agency.

(c) Information Technology processes, information criteria, and resource activities, including but not limited to planning and organization, acquisition and implementation, delivery and support, and monitoring. Information criteria should include effectiveness, efficiency, confidentiality, integrity, availability, compliance, and reliability.

(d) Internal controls and compliance with laws and regulations. The areas selected for review may include financial, compliance, economy and efficiency, privacy, information systems, or program based audits.

(e) Economy and efficiency audits to determine whether the entity makes efficient use of resources.

(f) Program audits to determine the effectiveness and measure the achievement of a program.

(g) Periodic risk analysis to gain an understanding of the organization-wide risks and key areas of vulnerability: Monitor and evaluate the effectiveness of the agency's risk management function.

(2) During audits, address risk consistent with the engagement objectives and be alert to the existence of other significant risks.

(3) Review agency externally reported performance measure outcomes as part of the risk assessment.

(4) Incorporate sustainability plan criteria into standards used for conducting agency internal audits, where appropriate.

(5) Establish a follow-up process to monitor agency management's implementation of recommendations and help ensure that management actions have been implemented, or that management has accepted the risk of not taking action.

(6) Provide the Oregon Department of Administrative Services Director with a copy of the annual risk assessment within 30 days of presentation to the agency's audit committee.

(7) Operation and program reviews to ascertain the extent to which results are consistent with established goals and objectives to determine whether operations and programs are being implemented or performed as intended.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0045**
**Internal Audit Status in the Agency**

(1) The agency's Chief Audit Executive reporting position must be at an administrative level that will maximize objectivity. In most cases, the Chief Audit Executive should report administratively to the agency head or designee, and functionally to the audit committee.

(2) The Chief Audit Executive should have unrestricted access to decision-makers and decision-making bodies and to the information needed to perform internal audit duties and responsibilities.

(3) The internal auditor(s) should be free of undue influence to limit the audit scope and audit assignment schedule. The Chief Audit Executive should be free to obtain advice and information from sources inside and outside the agency. These sources may include, but should not be limited to professional colleagues, the Audits Division, and the Oregon Department of Administrative Services.

(4) The internal audit staff should be free of any responsibilities that would impair their ability to make independent reviews of all aspects of the agency's operations.

(5) The agency's Chief Audit Executive should periodically assess whether the purpose, authority, and responsibility, as defined in their audit charter, and resources required to accomplish the work continues to be adequate to enable the internal auditing staff to accomplish their objectives. The result of this periodic assessment should be communicated to the audit committee and, if applicable, senior management.

(6) A scope limitation placed upon internal auditing staff that precludes them from meeting objectives and executing plans should be communicated in writing to the audit committee and, if applicable, agency management, along with its potential effect. The agency's Chief Audit Executive should periodically inform the committee regarding scope limitations that were previously communicated and accepted.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0050**
**Planning and Performance Responsibilities**

(1) Each agency's Chief Audit Executive shall prepare an annual audit plan. The plan should be risk-based to determine priorities of the internal audit activity that are consistent with the organization's goals. The plan should include significant risks and exposures within the organization. The audit plan and its updates are reviewed and approved by the agency head and audit committee, if applicable. A copy of the plan, along with any updates through the year, shall be submitted to the Oregon Department of Administrative Services for review by the Statewide Audit Advisory Committee. In addition, a copy of the plan, along with any updates through the year, may be submitted to the Secretary of State Audits Division and appropriate state or federal oversight authorities so that work of the internal audit function may be considered in their audit planning.

(2) The agency's Chief Audit Executive shall issue signed, written reports on a timely basis after audit work is completed. Internal audit reports should be presented to the appropriate managers in the agency and summarized for the agency head and audit committee. The Chief Audit Executive shall provide a summary of all internal audit reports in a format approved by the Department of Administrative Services, along with a summary of plans to mitigate identified risks to the Oregon Department of Administrative Services within 30 days of publication to the agency's audit

committee. The Chief Audit Executive shall provide specific internal audit reports to the Oregon Department of Administrative Services upon request. The final version of internal audit reports may be distributed outside the agency at the discretion of the agency head or upon demand to the extent provided by public records law. The Oregon Department of Administrative Services will refer public records request for agency internal audit reports to the individual agencies for response.

(3) The responsible manager for each audit should prepare a written response to all internal audit reports. The response should state whether the manager agrees or disagrees with the findings and recommendations, what corrective action will be taken, when the corrective action will be completed, and who will be responsible for completing the corrective action. The response should be given to the agency's Chief Audit Executive within a reasonable time of the initial audit report. The Chief Audit Executive is required to follow up on all internal audit reports to determine whether proper corrective action has been completed or that senior management has assumed the risk of not taking the recommended corrective action.

(4) The agency's Chief Audit Executive shall prepare an annual report in a format approved by the Department of Administrative Services summarizing audit activity, including follow-up on audit findings reported by the Internal Auditor, the Secretary of State Audits Division, as well as other state and federal oversight authorities, as of June 30th each year. The report should be submitted to the agency head and audit committee. A copy of the report shall be submitted to the Internal Audit unit of the Oregon Department of Administrative Services no later than October 31st of each year to assist in preparation of the overall annual report to the Legislature regarding statewide internal audit activities.

(5) The agency's Chief Audit Executive shall annually assess the agency's performance measurement system integrity and provide such report to the Director of the Oregon Department of Administrative Services, as part of the risk assessment. The Chief Audit Executive shall perform the assessment by interviewing agency management for assurance controls are in place that ensure accuracy of reporting.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0055**
**External Peer Review**

(1) State internal audit functions should have an external peer review at least every five years to determine compliance with professional auditing standards in performing audit assurance and consulting engagements. The Oregon Department of Administrative Services shall provide a qualified vendors list of approved organizations to conduct such reviews upon request.

(2) A copy of the external peer review will be provided to the Director of the Oregon Department of Administrative Services when issued.

Stat. Auth.: OL 2005, Ch. 373
Stats. Implemented:
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

**125-700-0060**
**Audit Records and Retention**

(1) The agency's Chief Audit Executive and internal audit staff, if any, should maintain adequate files of work papers, reports, and related audit correspondence. These files should be kept until an external peer review has been performed. Refer to State Archive requirements and OAR 166-300-0025 for record retention schedules. Records should be kept so they can be retrieved, if necessary.

(2) The agency's Chief Audit Executive must monitor and control confidential internal audit files. Confidential documents are those designated as confidential by agency policy or covered by ORS 192.496 through 192.505.

Stat. Auth.:
Stats. Implemented: OL 2005, Ch. 373
Hist.: DAS 1-2006, f. & cert. ef. 1-30-06

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## Department of Administrative Services, Human Resource Services Division
## Chapter 105

**Rule Caption:** Updating effective date of Attorney General's Model Rules of Procedure under the Administrative Procedures Act.
**Adm. Order No.:** HRSD 1-2006
**Filed with Sec. of State:** 1-30-2006
**Certified to be Effective:** 1-30-06
**Notice Publication Date:**
**Rules Amended:** 105-001-0005
**Subject:** Minor administrative changes which make no substantive change to or significant impact on the rule:

- Add clarifying language.
- Update the effective date of Attorney General's Model Rules of Procedure under the Administrative Procedures Act to the latest publication's effective date of January 1, 2006.

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

**105-001-0005**
**Model Rules of Procedure**

Pursuant to ORS 183.341, the Division adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2006.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Attorney General or the Department of Administrative Services, Personnel Division.]

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: PD 5-1981, f. & ef. 12-1-81; PD 3-1983, f. & ef. 10-14-83; PD 1-1986, f. & ef. 2-11-86; PD 3-1988, f. & cert. ef. 4-8-88; PD 5-1990, f. & cert. ef. 12-21-90; PD 3-1992, f. & cert. ef. 3-17-92; PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 1-2006, f. & cert. ef. 1-30-06

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## Department of Agriculture
## Chapter 603

**Rule Caption:** Postpones review of the Jefferson County Bentgrass control area regulation until 2007; corrects citation errors.
**Adm. Order No.:** DOA 2-2006
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 603-052-1240
**Subject:** The amendment will postpone the review date of the bentgrass control area in Jefferson County from 2005 to 2007. This will keep the control area in place until USDA has completed their environmental impact study (EIS) and their review of the petition for deregulation of genetically engineered glyphosate-tolerant creeping bentgrass. Errors in the authorizing statute citation are also being corrected: ORS 561.196 should be ORS 561.190 and 570.405-535 should be 570.405.
**Rules Coordinator:** Sue Gooch—(503) 986-4583

**603-052-1240**
**Bentgrass Control Area in Jefferson County**

(1) Definitions: As used in this rule:

(a) "Modern biotechnology" means genetic modification of organisms by recombinant DNA techniques.

(b) "Conventionally bred" means traditional plant breeding not involving genetic modification of organisms by recombinant DNA techniques.

(c) "Willamette Valley counties" include: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties in Oregon.

(2) As authorized in ORS 570.405, a control area is established in Jefferson County to regulate the production of bentgrass. This control area is designed to provide physical separation between varieties of bentgrass produced using techniques of modern biotechnology and conventionally bred varieties with which they might cross-pollinate.

(3) Extent of Control Area: The control area consists of all of the following parcels in central Jefferson County, Oregon:

(a) In T10S, R13E, W.M.: sections 2, 3, 4, 5, 11, 13, 14, and 24 in their entirety; the portions of sections 10, 15, 22, 23, 26, and 35 lying east of U.S. Hwy 26; the portion of section 25 lying west of Adams Drive; the NW, SE, SW, quarter sections and the western half of the NE quarter section of section 12; the western half of the SW and NW quarter sections of section 1; the NW quarter corner of the NW quarter section of section 36, plus;

(b) In T9S, R13E W.M.: sections 28, 33, 34, and 35 in their entirety; the portions of sections 16, 20, 21, and 29 lying on the Agency Plains and above the canyon rim; the southern half of section 32 and the eastern half of the NE quarter section of section 32.

(4) Commodities Covered: bentgrass (all *Agrostis spp.*). All other crops, plants, and commodities are exempt from provisions of this regula-

tion except processing of other grass seed crops as regulated in section (5)(c) below.

(5) Prohibited Acts:

(a) Only varieties of bentgrass that have been developed using the techniques of modern biotechnology may be planted, grown, cleaned, conditioned or handled in the control area. Conventionally bred bentgrass varieties may not be planted, grown, cleaned, conditioned or handled within the control area. This regulation applies only to bentgrass.

(b) Bentgrass fields within the control area must not be located closer than one-quarter mile from fields of conventionally bred bentgrass varieties located outside the control area. All field borders, ditch banks, and roadsides within 165 feet of the bentgrass fields must be kept free of *Agrostis spp*. Waterways leaving bentgrass fields must be kept free of *Agrostis spp*. for a distance of 165 feet.

(c) The bentgrass seed produced within the control area must be processed at a seed cleaning and packaging facility located within the control area. No conventionally bred varieties of grass seed of any type shall be cleaned or packaged at this facility.

(d) Bentgrass seed produced in the control area must be transported from the field to the cleaning and packaging facility in enclosed containers. Processed bentgrass seed produced in the control area may not leave the control area except in sealed commercial containers.

(e) Combine(s) used to harvest bentgrass in the control area must not be used for any other crop. Dedicated combine(s) no longer being used to harvest bentgrass in the control area must be fumigated to devitalize all bentgrass seeds and thouroughly cleaned. Other equipment used in the harvesting and transporting of unprocessed bentgrass seed must be thoroughly cleaned before leaving the control area. Containers such as poly bags used to transport unprocessed bentgrass seed and straw must not be used for other agricultural commodities or must be thoroughly cleaned before being used for other agricultural commodities to avoid cross-contamination.

(f) All bentgrass straw produced in the control area must be burned within the control area or processed in a way that devitalizes bentgrass seeds, e.g. pelletizing. If processing occurs outside the area, the straw must travel to the processing plant in enclosed containers.

(g) Stand removal following final harvest will include the following steps: watering to promote regrowth, application of an effective herbicide (such as fluazifop or glufosinate), and shallow tillage (not plowing). The next crop must tolerate a selective herbicide that kills bentgrass and roguing or such herbicide must be used to control bentgrass volunteers. Other methods of stand removal, e.g. fumigation, may be acceptable. Growers should send a written request for approval of alternative methods to: Administrator, Plant Division, Oregon Department of Agriculture, 635 Capitol St., Salem, OR, 97301.

(h) Varieties of bentgrass that have been developed using the techniques of modern biotechnology may not be planted in Willamette Valley counties in order to prevent cross-pollination with traditionally bred varieties. This includes both seed production fields and all non-production plantings such as sod farms, golf course putting greens, tees, and fairways. Research plots are allowed in Willamette Valley counties under permit/notification from the United States Department of Agriculture.

(6) The continued necessity for this control area and its effectiveness will be reviewed by the department and other interested parties in 2007.

(7) Violations: Any bentgrass or other grass seed not in compliance with the provisions of this rule is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents. Violators of this control area are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to $10,000.

Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405
Hist.: DOA 19-2002, f. & cert. ef. 7-23-02; DOA 2-2006, f. & cert. ef. 2-6-06

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## Department of Agriculture, Oregon Wheat Commission
## Chapter 678

**Rule Caption:** Updating of commission administrative rules based on 2003 changes to commission statute.
**Adm. Order No.:** WHEAT 1-2006
**Filed with Sec. of State:** 1-27-2006
**Certified to be Effective:** 1-27-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 678-010-0010, 678-010-0020, 678-010-0030, 678-010-0040, 678-010-0050

**Subject:** The proposed amendment to 678-010-0010 will update rule to the correct statute as 578.021 was repealed in 2003 legislation.

The proposed amendments to 678-010-0020 repeals the definitions of "producer" and "casual sales." The revisions also add the definition of "independent third party" and "irregular" as they are added to the rule in the revised text.

The proposed amendment to 678-010-0030 further defines the process the commissioners may use in determining whether to change the assessment rate by allowing for a survey of growers and/or a county by county educational effort in conjunction with the Oregon Wheat Growers League.

The proposed amendment to 678-010-0040 allows low volume handlers to report annually should they so choose.

The proposed amendments to 678-010-0050 increases the late reporting penalty to 10 percent in the first month and 1 1/2 percent every month thereafter and allows the commission to waive a penalty for good cause.

**Rules Coordinator:** Tana Simpson—(503) 229-6665

**678-010-0010**
**Applications of Assessment Rate to Wheat Mixtures**

Any person who is a first purchaser or lien holder as defined by ORS 578.010, shall deduct and withhold the assessment as required by ORS 678-010-0030 on the gross weight of all grain mixtures that contain wheat that was grown in this state and sold through commercial channels, unless the grain mixture has been certified by the Federal Grain Inspection Service. If the grain mixture has been certified to contain a percentage of wheat, then the first purchaser or lien holder shall deduct and withhold the assessment as required by OAR 678-010-0030 on the percentage by weight of wheat that was grown in this state and sold through commercial channels.

Stat. Auth.: ORS 578
Stats. Implemented:
Hist.: 1WC 3, f. 6-15-62; 1WC 8, f. & ef. 3-4-77; WHEAT 1-2001, f. & cert. ef. 3-1-01; WHEAT 1-2006, f. & cert. ef. 1-27-06

**678-010-0020**
**Definitions**

(1) "Commercial Channels" means the sale of wheat for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or product produced from wheat.

(2) "Commission" means the Oregon Wheat Commission.

(3) "Director" means the Director of the Oregon Department of Agriculture.

(4) "First Purchaser" means any person, corporation, association or partnership that buys wheat from the grower in the first instance, or any lienholder, public or private, who may possess wheat from the grower under any lien, or any handler who receives wheat in the first instance from the grower for resale or processing.

(5) "Grower" means any landowner personally engaged in growing wheat; a tenant of the landowner personally engaged in growing wheat; and both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices and arrangements.

(6) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private.

(7) "Person" means any individual, corporation, association, partnership or joint stock company.

(8) "Handler" means a person or other legal entity handling, marketing, or dealing wheat, whether as owner, agent, employee, broker, or otherwise.

(9) "Net Paid for Weight" means all sales or bartered bushels paid for.

(10) "Independent Third Party" refers to any organization other than the Commission and the Oregon Wheat Growers League.

(11) "Irregular" means less than two quarters per crop year.

Stat. Auth.: ORS 576
Stats. Implemented:
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06

**678-010-0030**
**Assessments**

(1) Any first purchaser shall deduct and withhold from the grower an assessment of the following amounts for all wheat grown in Oregon as follows:

(a) 1991 crop and thereafter — 3 cents per bushel.

(b) 1981 through 1990 crops — 2 cents per bushel.

(c) 1975 through 1980 crops — 1 cent per bushel.

(d) 1974 and prior years — 1/2 cent per bushel.

(2) Any change in the above assessment rate requires approval by the Commission. In determining whether to impose a change in the above assessment rate, the Commission may:

(a) Work jointly with the Oregon Wheat Growers League to educate growers on a county-by-county basis, of the need for a change in the assessment rate;

(b) Work with an independent third party experienced in survey work to poll the growers of the state to determine whether the growers support a proposed change in the assessment rate;

(c) Consider the results of the poll when determining whether to raise the assessment rate.

Stat. Auth.: ORS 576
Stats. Implemented:
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06

**678-010-0040**
**Reports and Payment of Assessment Monies**

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser or handler of wheat (net paid weight). Assessment collections that total $100 or more per month must be reported monthly. Assessments of less than $100 per month must be reported quarterly. Monthly assessment reports are due in the commission office postmarked on or before the 20th day of the month following the calendar month in which the reported wheat was sold. Quarterly assessment reports are due in the commission office postmarked on or before the 20th day of the reporting month specified below. Quarterly assessments shall be reported as follows:

(a) January, February, March assessments of less than $100 reported on or before April 20th;

(b) April, May, June assessments of less than $100 reported on or before July 20th;

(c) July, August, September assessments of less than $100 reported on or before October 20th; and

(d) October, November, December assessments of less than $100 reported on or before January 20th.

(2)(a) Notwithstanding section (1) of this rule, a first purchaser or handler who purchases or handles wheat on an irregular basis is not required to report assessments on a quarterly or monthly basis provided such person indicates in the space provided on the assessment their next purchase or handling of wheat subject to these assessments and reporting requirements. Such person will not be required to report or pay assessments until the 20th of the month following the calendar month in which the indicated date falls;

(b) However, if a person who purchases or handles wheat on an irregular basis purchases or handles wheat before the date indicated on the assessment report, that person must comply with the requirements of section (1) of this rule.

(3) When a first purchaser or handler has completed, signed, and forwarded a report covering the final purchase of wheat for the crop season, the filer may mark the box on the report that says "FINAL REPORT FOR THIS CROP SEASON." No further reports are necessary by such first purchaser or handler unless or until additional purchases are made.

(4) When a first purchaser lives or has his/her office in another state, or is a federal or governmental agency, the grower shall report to this Commission all sales made to such purchaser as required by section (1) of this rule and shall pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(5) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler shall attach and forward payment to the Commission for the assessment due as set forth in each such report. The forms shall be signed by the first purchaser or handler and completely filled out, and shall include, in addition to all other required information and figures, the name and complete mailing address of each grower, the crop year, the bushels and amount of assessment deducted and withheld.

(6) Any grower who performs the handling or processing functions on all or part of his/her production of the wheat, which normally would be performed by another person as the first purchaser thereof, shall report his/her sales of such wheat of his/her own production on forms provided by, and pay the assessment monies directly to the Commission, unless the first purchaser from such grower voluntarily makes proper deduction and remits the proceeds to the Commission. Examples would be the sale by a grower direct to another grower or feed lot. The assessment does not apply where growers using their own production for personal use (ie. seeding, feeding livestock, destruction).

Stat. Auth.: ORS 576
Stats. Implemented: ORS 578
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2001, f. & cert. ef. 3-1-01; WHEAT 1-2002, f. & cert. ef. 12-30-02; WHEAT 1-2006, f. & cert. ef. 1-27-06

**678-010-0050**
**Penalties**

(1) Pursuant to ORS 576.355, any first purchaser or other person who delays transmittal of funds beyond the time set by the Commission shall pay ten percent of the amount due for the first month of delay and one and one half percent of the amount due for each month of delay thereafter.

(2) Pursuant to ORS 576.355 the commission may by majority vote waive penalties for good cause.

(3) Pursuant to ORS 576.365, if any first purchaser or other person responsible for transmittal of the assessment monies to the Commission willfully refuses to turn over assessment monies to be collected, the first purchaser or other person shall pay an additional fine equal to twice the amount of the assessment monies so withheld.

(4) Pursuant to ORS 578.990, violation of any of the provisions of this chapter is punishable, upon conviction, by a fine of not less than $25 nor more than $500, or by imprisonment in the county jail for not less than 90 days, or by both. District and Justice courts have concurrent jurisdiction with Circuit courts in all prosecutions under this chapter.

Stat. Auth.: ORS 576
Stats. Implemented:
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06

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

**Rule Caption:** 2004 OSSC mid-cycle amendments resolve problems for design, inspection and construction communitites.
**Adm. Order No.:** BCD 1-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 918-460-0015
**Subject:** This rulemaking defines and clarifies when fire sprinkler systems are required in parking garages, piers and wharves; updates the adopted standards for sprinkler system installations; correlates certain fire, life-safety provisions within the codes; changes certain exits hardware requirements; and modifies various occupancy separation requirements.
**Rules Coordinator:** Nicole M. Jantz—(503) 373-0226

**918-460-0015**
**Amendments to the Structural Specialty Code**

(1) The Structural Specialty Code is generally readopted every three years coinciding with the national adoption of a nationally recognized Building Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8.

(2) Effective October 1, 2004, delete Section 2406.1.2 Wired glass.

(3) Effective July 1, 2005, the following sections of the 2004 OSSC are amended to adjust building code provisions which are in conflict with federal standards.

(a) Amend Section 1109.16 bringing code into compliance with the American Disabilities Act.

(b) Amend Section 1110.5.2 bringing code into compliance with the Fair Housing Act.

(c) Amend Section 1110.6.4.1.2 bringing code into compliance with the Fair Housing Act.

(d) Add new Section 1313.4.2.1 to adjust lighting power density for retail occupancies.

(4) Effective October 1, 2005, remove Chapter 29 of the 2004 Oregon Structural Specialty Code and replace with Chapter 29 of the 1998 Oregon Structural Specialty Code amended by the division as follows:

(a) Add Exception to Section 2902.3 clarifying unisex bathrooms may be provided in satisfying the total number of required fixtures.

(b) Include M and E Occupancies in Section 2904.2.

(c) Add Assembly Uses to Table 29-A.

(5) Effective October 1, 2005, the following sections of the 2004 OSSC are amended to adjust construction standards, materials, practices or provisions regarding wineries.

(a) Amend Chapter 2, add definition of Winery.

(b) Amend Section 306.2, 306.3 and Section 311.3, alcohol content percentage.

(c) Add to Section 306.3, additional materials.

(d) Add to Section 302.3.2, Exception 2.

(6) Effective February 1, 2006, the following sections of the 2004 OSSC are amended to adjust several aspects of the code which need resolution or updating prior to the adoption of the 2007 OSSC.

(a) Amend Section 903.2.9, revises sprinkler system requirements in Group S-2 parking garages.

(b) Amend Section 419.2 and 903.2.10.4, clarifies that piers and wharves must comply with NFPA 307.

(c) Adopt 2002 Editions of NFPA 13, NFPA 13R and NFPA 13D.

(d) Amend Section 907.9.1.3, to correlate with OSSC chapter 11 and NFPA 72.

(e) Amend Section 907.9.1.4, to correlate with OSSC chapter 11.

(f) Amend Section 907.9.2, Audible Alarms, to correlate with OSSC chapter 11.

(g) Amend Section 1008.1.8.6, Delete unnecessary Oregon amendment.

(h) Amend Section 3202.3.1, Delete all references to "marquees".

(i) Amend Section 715.3, Add "Smoke Barriers" to table 715.3.

(j) Amend Section 1008.1.9, revises requirement for panic and fire exit hardware.

(k) Revise table 302.3.2, occupancy separations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112
Stats. Implemented: ORS 447.247, 455.110 & 455.112
Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004,f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06

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**Rule Caption:** Adopts the Attorney General's Model Rules for Rulemaking effective January 1, 2006.
**Adm. Order No.:** BCD 2-2006
**Filed with Sec. of State:** 2-13-2006
**Certified to be Effective:** 2-13-06
**Notice Publication Date:**
**Rules Amended:** 918-001-0010
**Subject:** This rulemaking adopts the current edition of the Attorney General's Model Rules for rulemaking without change.
**Rules Coordinator:** Nicole M. Jantz—(503) 373-0226

**918-001-0010**
**Model Rules of Procedure**

The Director adopts by reference the Attorney General's Model Rules for rulemaking, OAR 137-001-0005 through 137-001-0100, effective January 1, 2006.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Building Codes Division.]
Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341
Hist.: BCA 20-1989, f. & cert. ef. 8-1-89; BCA 32-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 12-1994, f. & cert. ef. 4-29-94; BCD 5-1996, f. & cert. ef. 3-29-96; BCD 8-1998, f. & cert. ef. 6-2-98; BCD 21-2000, f. & cert. ef. 9-19-00; BCD 32-2002, f. 12-20-02 cert. ef. 1-1-03; BCD 18-2004, f. 9-30-04, cert. ef. 10-1-04; BCD 2-2006, f. & cert. ef. 2-13-06

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## Department of Consumer and Business Services, Director's Office
## Chapter 440

**Rule Caption:** Adopt Attorney General's Model Rules of Procedure.
**Adm. Order No.:** DO 1-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:**
**Rules Amended:** 440-001-0005
**Subject:** The amendment to OAR 440-001-0005 adopts model rules of procedure as published in the most recent version of the Oregon Attorney General's Administrative Law Manual bearing the effective date of January 1, 2006. ORS 183.341 gives agencies the authority to adopt all or part of the AG model rules for rulemaking without using the rulemaking procedures in ORS 183.335.
**Rules Coordinator:** Myrna Curzon—(503) 371-7239

**440-001-0005**
**Model Rules of Procedure**

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2006, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act are adopted as the rules of procedure for rulemaking actions of the Department of Consumer and Business Services except the Workers' Compensation Board and except as otherwise adopted by an administrative division or staff office of the Department created under ORS 705.115.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedures is available from the Office of the Attorney General or the Department of Consumer and Business Services.]
Stat. Auth.: ORS 183.341 & 705.135
Stats. Implemented: ORS 183.341
Hist.: IF 6-1989, f. & cert. ef. 9-1-89; IF 1-1992, f. & cert. ef. 2-13-92; DCBS 1-1994, f. & cert. ef. 3-23-94; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 2-2004, f. & cert. ef. 11-8-04; DO 1-2006, f. & cert. ef. 2-14-06

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## Department of Consumer and Business Services, Insurance Division
## Chapter 836

**Rule Caption:** Adoption of blanks and instructions for annual statements and supplements for 2005 and 2006.
**Adm. Order No.:** ID 1-2006
**Filed with Sec. of State:** 1-23-2006
**Certified to be Effective:** 1-23-06
**Notice Publication Date:** 9-1-05
**Rules Amended:** 836-011-0000
**Subject:** This rulemaking adopts the blanks and instructions established by the NAIC for annual statements and supplements for reporting years 2005 and 2006.
**Rules Coordinator:** Sue Munson—(503) 947-7272

**836-011-0000**
**Annual Statement Blank and Instructions**

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor, shall file its financial statement required by ORS 731.574:

(a) For the 2005 reporting year on the annual statement blank approved for the 2005 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(b) For the 2006 reporting year on the annual statement blank approved for the 2006 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule as follows:

(a) For the 2005 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(b) For the 2006 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement as follows:

(a) For the 2005 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(b) For the 2006 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance

Commissioners, and shall complete the supplement according to those instructions.

(4) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210
Stats. Implemented: ORS 731.574 & 733.210
Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16 -1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06

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**Rule Caption:** Relating to Requirements for Preexamination Training for Insurance Producers.
**Adm. Order No.:** ID 2-2006
**Filed with Sec. of State:** 1-31-2006
**Certified to be Effective:** 1-31-06
**Notice Publication Date:** 12-05
**Rules Amended:** 836-071-0180
**Subject:** This rulemaking allows applicants for insurance producer licenses to qualify for the license examination by completing a verifiable online self-study program.
**Rules Coordinator:** Sue Munson—(503) 947-7272

**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 any 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; or

(c) Completion of a verifiable online self-study program.

(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) Except as authorized in section (2) of this rule for an online self-study program, 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;

(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; ID 2-2006, f. & cert. ef. 1-31-06

**Rule Caption:** Standards for custodial arrangements used by insurers for holding securities.
**Adm. Order No.:** ID 3-2006
**Filed with Sec. of State:** 2-13-2006
**Certified to be Effective:** 2-13-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 836-027-0200
**Subject:** This rulemaking amends the Insurance Division's rule that establishes standards for custodial arrangements used by insurers for holding their securities, to add standards in order to strengthen protection and oversight of the custodial arrangement.
**Rules Coordinator:** Sue Munson—(503) 947-7272

**836-027-0200**
**Custodial Arrangements**

(1) This rule is adopted pursuant to the rulemaking authority in ORS 731.244 and 732.245 for the purpose of implementing ORS 732.245.

(2) As used in this rule:

(a) "Agent" means:

(A) A national bank;

(B) A state bank; or

(C) A trust company with an account in a clearing corporation or a member of the Federal Reserve System.

(b) "Bank" has the meaning given that term in ORS 706.008;

(c) "Clearing corporation" means a corporation as defined in Article 8 of the Uniform Commercial Code (published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, 2003), that is organized for the purpose of effecting transactions in securities by computerized book-entry, except those securities issued under the laws of a foreign country;

(d) "Custodian" means a bank or trust company licensed by the United States or by any state thereof and regularly examined by its licensing authority;

(e) "National bank" has the meaning given that term in ORS 706.008;

(f) "Securities" has the meaning given "security" in ORS 59.015;

(g) "Securities depository" means a company that provides securities clearance or settlement services for member banks and other member institutions and that is regulated by the Securities and Exchange Commission, a Federal Reserve Bank and the appropriate banking authorities in its state of domicile;

(h) "State bank" has the meaning given that term in ORS 706.008; and

(i) "Trust company" means a trust company as that term is defined in ORS 706.008 or a company that is authorized under the laws of a state other than Oregon to transact trust business, and includes the trust department of a bank.

(3) A domestic insurer may enter into a custodial or safekeeping arrangement with a custodian for the purpose of holding securities owned by the insurer, either in or outside this state, as provided in this section and section (4) of this rule. Such an arrangement must be made by written agreement between the domestic insurer and the custodian, must meet the requirements and standards of section (4) of this rule and must provide that the securities be held by the custodian or its agent.

(4) A custodial or safekeeping arrangement to which section (3) of this rule applies must account for and safeguard the securities of the domestic insurer, must facilitate examination of the insurer and the records of the insurer's custody account maintained by the custodian and must be in accordance with the following standards established in the Examiners Handbook, published by the National Association of Insurance Commissioners:

(a) The custodian must agree to indemnify the insurer for any loss of the insurer's securities as a result of the negligence or dishonesty of the officers or employees of the custodian, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction;

(b) The custodian must agree that, in the event of a loss of the insurer's securities for which the custodian is obligated to indemnify the insurer, the custodian shall promptly replace the securities or the value of any loss of rights or privileges resulting from the loss of the securities;

(c) The insurer's securities or a certified listing of the insurer's securities through a securities depository or a Federal Reserve book entry system shall be subject to inquiry and examination by the Director of the Department of Consumer and Business Services, either at the custodian's premises or elsewhere, as provided by ORS 731.296 and 731.308;

(d) The national bank, state bank or trust company as custodian shall not be liable for any failure to take any action required to be taken under this rule in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including a war in progress), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosions, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control;

(e) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be a written agreement between the custodian and the agent that the agent shall be subjected to the same liability for loss of securities as the custodian. If the agent is governed by laws that differ from laws regulating the custodian, the Director may accept a standard of liability applicable to the agent that is different from the standard liability;

(f) The custodian must agree to provide written notification to the Director, within three business days of receipt by the custodian of the insurer's written notice of termination or withdrawal, if the custodial agreement has been terminated or if 100 percent of the account assets in any one custody account have been withdrawn;

(g) The custodian must agree that during regular business hours, and upon reasonable notice, an officer or employee of the insurer, an independent accountant selected by the insurer or a representative of an appropriate regulatory body, or any combination thereof, shall be entitled to examine, on the premises of the custodian, its records relating to securities, if the custodian is given written instructions to that effect from an authorized officer of the insurer;

(h) The custodian and its agents, upon reasonable request, must agree to send all reports that they receive from a clearing corporation or the Federal Reserve book-entry system that the clearing corporation or the Federal Reserve permits to be redistributed and reports prepared by the custodian's outside auditors, to the insurer on the custodian's or agent's respective systems of internal control;

(i) To the extent that certain information maintained by the custodian is relied upon by the insurer in preparation of its annual statement and supporting schedules, the custodian must agree to maintain records sufficient to determine and verify such information;

(j) The custodian must agree to provide, upon written request from a regulator or an authorized officer of the insurer, the appropriate affidavits, with respect to the insurer's securities held by the custodian;

(k) The custodian must agree to secure and maintain insurance protection in an adequate amount; and

(l) The custodian that is a foreign bank, or a U.S. custodian's foreign agent, or a foreign clearing corporation must agree to only hold foreign securities or securities required by the foreign country in order for the insurer to do business in that country. A U.S. custodian must hold all other securities.

(5) A domestic insurer may enter into a custodial or safekeeping arrangement directly with a securities depository for the purpose of holding securities owned by the insurer, either in or outside this state, as provided in this section. Such an arrangement must be made by written agreement between the domestic insurer and the securities depository and must provide that the securities be held by the securities depository.

(6) A domestic insurer must obtain the approval of the Director for any material change to a custodial or safekeeping arrangement established under ORS 732.245. A change is material for purposes of this section:

(a) When the arrangement is with a custodian, if the purpose or effect of the change is to revise or omit any standard set forth in section (4) of this rule;

(b) When the arrangement is with a securities depository, if the purpose or effect of the change is to reduce the safety of the securities.

Stat. Auth.: ORS 731.244 & 732.245
Stats. Implemented: ORS 732.245
Hist.: ID 18-1998, f. & cert. ef. 11-20-98; ID 3-2006, f. & cert. ef. 2-13-06

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## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division
## Chapter 437

**Rule Caption:** Adoption of Department of Justice's Model Rules for Rulemaking in effect on January 1, 2006
**Adm. Order No.:** OSHA 1-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:**
**Rules Amended:** 437-001-0001

**Subject:** Oregon OSHA amended OAR 437-001-0001, Model Rules of Procedure, in Division 1, General Administrative Rules. This amendment adopts the most recent version, in effect January 1, 2006, of the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act, which is the model and guide for agency rulemaking.

Please visit OR-OSHA's web site at www.orosha.org

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

**437-001-0001**

**Model Rules of Procedure**

The Model Rules of Procedure, OAR 137-001-0005 through 137-001-0100, in effect on January 1, 2006, as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act, are adopted as the rules of procedure for rulemaking actions of the Oregon Occupational Safety and Health Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 3-1991, f. & cert. ef. 2-25-91; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 2-1994, f. & cert. ef. 5-19-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-2000, f. & cert. ef. 12-12-00; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 6-2004, f. & cert. ef. 12-30-04; OSHA 1-2006, f. & cert. ef. 2-14-06

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

**Rule Caption:** Clarify when the department may issue Failure to File Notice or Notice of Audit Findings.

**Adm. Order No.:** WCD 2-2006(Temp)

**Filed with Sec. of State:** 1-27-2006

**Certified to be Effective:** 1-27-06 thru 7-23-06

**Notice Publication Date:**

**Rules Amended:** 436-070-0020

**Subject:** Under permanent OAR 436-070-0020(5), the director may issue a Failure to File Notice or Notice of Audit Findings if an employer "fails to file a report and remit assessments due timely and accurately." This wording may not allow the director to issue a Notice of Audit Findings if the employer files a report, but appears to understate the assessment. This temporary rule is necessary to enable the director to immediately take appropriate enforcement action in such cases.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

**436-070-0020**

**Assessments: Manner and Intervals for Filing and Payment**

(1) Every employer must compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 by the number of hours or parts of an hour the employee worked in the pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or come up with a reasonable method for calculating hours worked. If the flat rate method is used, the calculation must be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) The employer will retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer will be assessed an amount equal to the amount retained from each employee.

(2) Every employer must file a report of employee hours worked and remit amounts due upon a combined tax and assessment report form prescribed by the Department of Revenue. The report must be filed with the Department of Revenue:

(a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

(3) For employers required to report quarterly, reports and payments are due on or before the last day of the first month after the close of each calendar quarter. For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year.

(4) Employers who fail to timely and accurately file and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

(5)(a) If an employer fails to file a report or files a report where the assessments appear to be understated, the director may send to the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a warning that failure to timely and accurately resolve all issues addressed in the written notice may result in the imposition of a civil penalty. The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.

(b) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. If an employer fails to comply with the notice, the director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

(c) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(d) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

(6) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

(7) When the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than $20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat. Auth.: ORS 656.506 & 82.010

Stats. Implemented: ORS 656.506 & 293.445

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0125, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 2-2006(Temp), f. & cert. ef. 1-27-06 thru 7-23-06

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## Department of Corrections
## Chapter 291

**Rule Caption:** Issuance of Monetary Performance Awards and Other Incentives to Inmates

**Adm. Order No.:** DOC 1-2006

**Filed with Sec. of State:** 2-15-2006

**Certified to be Effective:** 2-15-06

**Notice Publication Date:** 7-1-05

**Rules Amended:** 291-077-0020, 291-077-0030, 291-077-0033, 291-077-0035

**Subject:** These rule amendments are necessary to more clearly define how and what non-monetary incentives that encourage position 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—(503) 945-0933

**291-077-0020**

**Definitions**

(1) Approved Programming: Inmate program assignments which are in compliance with the inmate's Oregon Corrections Plan or Article I, Section 41 of the Oregon Constitution.

(2) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director, or administrator and has responsibility for delivery of program services or coordination of program operations. In a correctional facility, the superintendent is the functional unit manager.

(3) General Population: For the purposes of these rules, any housing assignment that is not special housing as described in section (8) below

including general population inmates out to court or out of the facility for medical or other reasons.

(4) Non-Monetary Incentive Program (also called Non-Cash Incentives Program): A program developed to enhance PRAS. This system will utilize "non-cash" items or activities to recognize inmates for their past and continued successful performance in approved programming and good institutional conduct.

(5) Performance Awards: Monthly monetary awards made to inmates at the discretion of the department to support the development of good performance and behavior and provide inmates with incentives to fully participate in programs that address criminal thinking, workforce development needs, substance abuse problems, and other contributors to their criminal behavior.

(6) Program Failure: Removal from a program for failure to satisfactorily perform in a program assignment or refusal to participate in a recommended or required program.

(7) Qualifying Programs: Any qualifying inmate assignment, including work, training, treatment and workforce development. Qualifying programs may include, but are not limited to the following:

(a) Work based education (WBE) program assignments in which inmates perform a service or produce a product. Many of the programs may include both training and production components.

(b) Treatment assignments that address diagnosed mental or behavioral problems that are barriers to successful employment, including but not limited to, alcohol and drug treatment or mental health day treatment; and

(c) Workforce development assignments intended to remove educational barriers (e.g., Adult Basic Education (ABE) or English as a Second Language (ESL)) or address personal deficits (e.g., Anger Management or Basic Living Skills) that impede employment.

(8) Special Housing: For purposes of these rules, special housing includes inmates housed in the following:

(a) Administrative Segregation;

(b) Disciplinary Segregation;

(c) Death Row;

(d) Intensive Management Unit; and

(e) Special Management Unit.

(9) Special Meritorious Awards: Monetary awards made to inmates at the discretion of the department to reward exceptional acts or behaviors that contribute to the safe and orderly operation of the facility, result in reductions in the cost of government, or recognize achievements in meeting team goals in a work or training assignment.

(10) Visitation Enhancements: Additional options over and above those mandated in the rule on Visiting (OAR 291-127). (Examples may include extra visiting points or different visiting hours.

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.440, 423.020, 423.030 & 423.075
Hist.: CD 21-1996(Temp), f. & cert. ef. 12-3-96; CD 7-1997, f. 5-19-97, cert. ef. 6-1-97; DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06

**291-077-0030**
**Inmate Performance Awards**

(1) All inmates housed in a Department of Corrections facility, except inmates who are provided compensation by the department or Oregon Corrections Enterprises for their daily full-time participation in a Prison Industries Enhancement (PIE) certified inmate work program, may be considered at the discretion of the department for a monthly performance award in accordance with these rules.

(2) The awards will be made based on three primary considerations: the level of responsibility associated with an inmate's program assignments; the level of performance demonstrated by the inmate in his/her program assignments; and the inmate's institutional conduct. Individual performance awards will be determined based on each eligible inmate's total monthly performance points.

(3) Evaluation Period: Each inmate will undergo a 120-day evaluation period. During this period, the department will assess an inmate's willingness, attitude, and aptitude to perform in his or her particular program assignment(s). Inmates will not earn PRAS points for program assignments during this evaluation period. The 120 days begin accumulating on the inmate's admission date to the department.

(a) Inmates housed in minimum security facilities are exempt from the 120-day evaluation period. All inmates returning to a department facility, even a minimum security facility, as a consequence of failing their transitional leave will be subject to the 120-day evaluation period.

(b) Minimum security inmates reassigned to a medium security facility as a consequence of misconduct must complete the 120-day evaluation period upon their transfer.

(4) Daily Points: After the 120-day evaluation period, and for each day of satisfactory performance in a qualifying program assignment(s), the department will credit each eligible inmate with points equal to the value of the responsibility level for the inmate's program assignment. Satisfactory level of performance will be determined on a pass/fail basis. The total points credited to the inmate for each day equals the inmate's daily points.

(5) Monthly Performance Points:

(a) Each month the department will add together the inmate's daily points for that month to determine the inmate's monthly performance points. The monetary awards associated with specific ranges of accrued points earned during the month are set forth in **Appendix A**.

(b) The department will deduct a fixed percentage of each performance award made to inmates under these rules, to be credited to a general victims assistance fund. The department will credit the remainder of any monetary award to each recipient inmate's trust account.

(6) Responsibility Level: The department will assign a level of responsibility for each qualifying program assignment. The Assistant Director of Operations or designee will determine a specific responsibility level for each qualifying program.

(a) Qualifying program assignments will be assigned a responsibility level determined from a job description from the Department of Labor, Dictionary of Occupational Trades (DOT) that best describes the duties of the assignment. Each DOT job description includes skill level rating for specific vocational preparation (SV), reasoning, language and math.

(b) The Assistant Director for of Operations or designee may assign a qualifying program assignment a responsibility level that differs from the DOT job description when deemed appropriate to more accurately reflect the level of responsibility associated with a particular program assignment in a correctional setting. However, in no case will the responsibility level be assigned based on the monetary value of the inmate's work to the facility or any public agency or private enterprise.

(7) Satisfactory Performance: Program supervisors will submit to the functional unit manager or designee, their daily pass/fail assessment for each inmate's performance in each qualifying program. The daily assessment will be based on the inmate's attendance, performance quality, performance effort, interpersonal communications with staff and fellow inmates, self-improvement effort, and ability to follow directions.

(8) Multiple Program Assignments: Inmates will be credited with points from only one assignment in the work program category and one assignment in the work-based education/treatment category in any given day. Inmates will be credited with points from the highest responsibility level in each of the two categories in a specific day. A failing level of performance in any of the program assignment category will result in no points being awarded in that category for that day.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 21-1996(Temp), f. & cert. ef. 12-3-96; CD 1-1997(Temp), f. & cert. ef. 2-1-97; CD 7-1997, f. 5-19-97, cert. ef. 6-1-97; CD 31-1997(Temp), f. 12-24-97, cert. ef. 1-1-98; DOC 15-1998, f. 6-24-98, cert. ef. 6-29-98; DOC 22-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 3-29-01; DOC 1-2001, f. & cert. ef. 1-11-01; DOC 4-2003(Temp) f. 2-20-03, cert. ef. 2-28-03 thru 8-24-03; DOC 13-2003, f. & cert. ef. 8-22-03; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06

**291-077-0033**
**Behavioral Adjustments, Unsatisfactory Performance and Program Failures**

(1) Daily Fail: Program supervisors may submit a fail assessment of an inmate's daily performance in any qualifying program.

(a) When a daily fail assessment is submitted, it is the supervisor's responsibility to complete a Record of Inmate Daily Performance Failure (CD 118a).

(b) One copy will be given directly to the inmate, one copy attached to the daily attendance roster, and remaining copies distributed in accordance with institution-specific procedures.

(2) Program Fail: The inmate assignment supervisor or counselor, in his/her sole discretion, with reasonable cause based upon an inmate's poor performance and non-compliance with prescribed programming may fail an inmate from any qualifying program. Poor performance and non-compliance include the following behaviors: refusal to participate, non-attendance, poor performance quality, poor performance effort, poor interpersonal communications with staff and fellow inmates, poor self-improvement effort and inability to follow directions or to ensure the orderly continued operation of the program.

(a) When a program failure is submitted, it is the supervisor's responsibility to complete an Inmate Performance Report (CD 118b).

(b) One copy will be given directly to the inmate, one copy attached to the daily attendance roster, and remaining copies distributed in accordance with institution-specific procedures.

(3) For purposes of this rule, inmates who dispute a program fail may use the inmate grievance system as described in the rule on Inmate Grievance Review System (OAR 291-109).

(4) Evaluation Period: There is also a 30-day program pass evaluation period that is a total of 30 successful programming days (30 daily passes). Inmates will not earn daily points during this evaluation period. An inmate will undergo the 30-day program pass evaluation period if involved in any of the following:

(a) Removal from a program for failure to satisfactorily perform in a program assignment; or

(b) Placement in segregated housing in connection with an inmate disciplinary sanction order.

(c) If an inmate is involved in any of the above events during the initial 120-day evaluation period described in OAR 291-077-0030(3), the 30-day program pass evaluation will not start until after the 120-day evaluation period is completed.

(4) Behavioral Adjustment:

(a) The department will record all inmate disciplinary sanction orders and adjust downward the inmate's monthly performance points based on the level of misconduct assigned to the disciplinary rule violation(s) by the corresponding inmate disciplinary grid(s) contained in the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). For each disciplinary order sanctioning an inmate for a disciplinary rule violation, the department will deduct points from an inmate's monthly performance points based on the level of misconduct as follows: [Table not included. See ED. NOTE.]

(b) Deductions for behavioral adjustment will be made in the month in which the final disciplinary order is issued in the disciplinary case. Monthly performance points with behavioral adjustments will be calculated as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

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

Hist.: DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06

**291-077-0035**

**Non-Monetary Incentives (Non-Cash Incentives)**

The purpose of non-cash incentives is to enhance cost effective inmate management by providing tiered access to services and privileges at department facilities. Non-cash incentives encourage pro-social behavior among inmates consistent with good correctional practices and the mission of the department. Functional unit managers may limit an inmate's access to services and privileges available within the incentive level attained by the inmate, as necessary, to ensure the safe and secure operation of the facility and within resources available to and physical plant limitations of the facility.

(1) General:

(a) Functional unit managers will develop a list of services and privileges at their facility as part of the DOC non-cash incentives program.

(b) Specific services and privileges available to inmates may differ between facilities depending on size and configuration of space and availability of resources.

(c) Some incentive services and privileges will be available throughout the department at each facility.

(d) There will be three incentive levels (Level I, Level II, and Level III) available to inmates housed at multi-custody and medium security facilities.

(e)There will be three incentive levels (Level IV, Level V, and Level VI) available to inmates housed at minimum security facilities.

(f) Incentive levels will be calculated electronically at the end of each business day and made available to staff the following business day.

(2) Inmate Eligibility:

(a) All general population inmates will be eligible to earn services and privileges identified as non-cash incentives. Inmates who are not in general population will be ineligible to participate in the non-cash incentive program within the context of this rule. A non-cash incentive program may be developed and implemented in select special housing assignments as recommended by the functional unit manager and approved by the Assistant Director for Operations/designee.

(b) The time period necessary to attain eligibility to promote to a higher incentive level will not start until an inmate is released from special housing.

(c) Inmates may earn promotion to higher incentive levels by compliance with prescribed programming and good institutional behavior.

(d) Alternatively, an inmate's incentive level may be lowered as a consequence of noncompliance with prescribed programming or engaging in prohibited conduct.

(e) An inmate's incentive level will be lowered no more than one level as a result of a disciplinary sanction and program failure arising out of a single act of prohibited conduct except when the inmate receives a sanction of more than 21 days in segregation. When the sanction is greater than 21 days in segregation, the inmate will be placed at the lowest incentive level available at the facility. An inmate whose incentive level has been reduced one level as a result of a disciplinary sanction will be considered as meeting all the eligibility criteria of the reduced incentive level.

(f) An inmate may not start accruing credit for promotion to a higher incentive level until after all disciplinary sanctions are satisfied, including any loss of privileges.

(g) Multi-custody and medium security facilities will share a single set of inmate eligibility criteria.

(h) Minimum security facilities will have a set of eligibility criteria that differs from multi-custody or medium security facilities because they are operationally unique; e.g., housing inmates with shorter sentences.

(i) The incentive levels and corresponding eligibility criteria are shown in Appendix B. Functional unit managers may develop additional criteria to manage services and privileges specific to the institution within the framework of Appendix B (e.g. waiting lists).

(j) The functional unit manager or designee may adjust an inmate's incentive level by one, up or down, as necessary to promote good institutional conduct and program compliance.

(k) The functional unit manager or designee may waive the non-cash incentive system for a specific event(s) to allow all general population inmates to participate.

(3) Transfers:

(a) Inmates will retain the incentive level they have earned and any time accrued towards promotion to the next incentive level upon transfer to another facility with a similar security level. (For example, an inmate transferred from a multi-custody facility or a medium custody facility to another multi-custody or medium security facility will retain the same incentive level.)

(b) Inmates transferred from a multi-custody or medium facility to a minimum security facility will retain incentive property and canteen spending limit privileges earned prior to the transfer. However, the inmate will be placed at the appropriate incentive level as determined by how his/her institutional history matches the eligibility criteria for minimum security facilities. Access to institution-specific services and privileges available at the receiving facility may be subject to waiting periods established by the functional unit manager or designee.

(4) Property:

(a) Inmates will retain property purchased (i.e., television, CD player, CDs) prior to the adoption of this rule subject to limitations on use established by the functional unit manager or designee.

(b) Property items offered as part of the non-cash incentive program (incentive property) will be offered department wide unless the property is part of a limited duration pilot project approved by the Assistant Director of Operations/designee.

(c) Once purchased, incentive property will be handled in accordance with the rule on Personal Property (Inmate) (OAR 291-117).

(d) When access to property is restricted by a disciplinary sanction (loss of privileges or assignment to disciplinary segregation), incentive property will be stored at the direction of the functional unit manager/designee.

(e) Inmates will not be required to send incentive property home as a result of disciplinary infractions.

(f) Incentive property will be returned to the inmate upon completion of the disciplinary sanction. Within available resources, the inmate will be allowed full access and use of the incentive property even if the inmate's incentive level has been reduced as a result of the disciplinary infraction. (For example, an inmate may be assigned to housing that is not wired for televisions upon release from disciplinary segregation.)

(g) Transfers: Incentive property attained after the implementation of this rule will transfer to the receiving facility.

(h) Certain property sold prior to implementation of this rule will not transfer to the receiving facility; e.g., 13-inch television.

(5) Non-Cash Incentive Categories: The functional unit manager or designee will identify services and privileges that are unique to the facility.

Some services and privileges will be offered consistently throughout the department at every facility.

(6) Multi-Custody and Medium Security Facilities:

(a) Level I inmates are eligible to access only services and privileges defined by rule.

(b) Level II inmates are eligible to access services defined by rule and the following enhancements:

(A) May spend $10 above the established weekly base level for canteen;

(B) May apply for membership in clubs or special interest groups (if available);

(C) May purchase a personal television;

(D) May purchase a CD player and CDs (Note: The number of CDs purchased may be limited);

(E) May attend special events as defined by the functional unit manager or designee;

(F) May apply for participation in activities associated with special turnouts as defined by the functional unit manager or designee; and

(G) Will receive two additional visitation points monthly.

(H) The functional unit manager may, with the approval of the Institutions Administrator, offer additional visiting enhancements based upon objective criteria (e.g., location, architecture, etc.).

(c) Level III inmates are eligible to access services and privileges as listed for Level II inmates with the following enhancements:

(A) May spend $25 above the established weekly base level for canteen;

(B) May apply for elected leadership in clubs or special interest groups (if available);

(C) May apply for participation in arts, crafts, and handicraft activities as defined by the functional unit manager or designee;

(D) May apply for participation in incentive housing as defined by the functional unit manager or designee, and

(F) Will receive five additional visitation points monthly.

(H) The functional unit manager may, with the approval of the Institutions Administrator, offer additional visiting enhancements based upon objective criteria (e.g., location, architecture, etc.).

(7) Minimum Security Facilities: Inmates transferring to minimum security facilities will retain personal property and canteen spending limits earned prior to the transfer.

(a) Level IV inmates are eligible to access services and privileges as defined by rule.

(b) Level V inmates are eligible to access services and privileges as defined by rule and the following enhancements:

(A) May spend $10 above the established weekly base level for canteen;

(B) May purchase a personal television;

(C) May purchase a CD player and CDs (Note: The number of CDs purchased may be limited);

(D) May attend special events as defined by the functional unit manager or designee;

(E) May apply for participation in special activity turnouts as defined by the functional unit manager or designee; and

(F) Will receive two additional visitation points monthly.

(G) The functional unit manager may, with the approval of the Institutions Administrator, offer additional visiting enhancements based upon objective criteria (e.g., location, architecture, etc.).

(c) Level VI inmates are eligible to access services and privileges as listed for Level V inmates and the following enhancements:

(A) May spend $25 above the established weekly base level for canteen;

(B) May apply for participation in arts, crafts, and handicraft activities as defined by the functional unit manager or designee;

(C) May apply for participation in incentive housing as defined by the functional unit manager or designee; and

(D) Will receive five additional visitation points monthly.

(E) The functional unit manager may, with the approval of the Institutions Administrator, offer additional visiting enhancements based upon objective criteria (e.g., location, architecture, etc.).

(8) The functional unit manager or designee will create a matrix of non-cash incentives detailing services and privileges available to inmates at each incentive level within the facility. The matrix will be updated and made available to inmates at least annually. Any restrictions or additional eligibility criteria for institution-specific services and privileges (e.g., waiting lists) will be included in the matrix.

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

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

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

Hist.: DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06

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## Department of Fish and Wildlife
## Chapter 635

**Rule Caption:** Set 2006 Columbia River sturgeon seasons and commercial Tribal winter salmon seasons.

**Adm. Order No.:** DFW 3-2006(Temp)

**Filed with Sec. of State:** 1-27-2006

**Certified to be Effective:** 1-27-06 thru 3-31-06

**Notice Publication Date:**

**Rules Amended:** 635-041-0065, 635-042-0135

**Rules Suspended:** 635-042-0135(T)

**Subject:** Amend rules to extend commercial fishing seasons for sturgeon in the Columbia River below Bonneville Dam and establish commercial Tribal winter salmon seasons. Amendments are consistent with the action taken January 26, 2006 by the Columbia River Compact.

**Rules Coordinator:** Tina Edwards—(503) 947-6033

**635-041-0065**

**Winter Salmon Season**

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon, February 1 to 6:00 p.m., March 21, 2006.

(2) There are no mesh size restrictions.

(3) Closed areas are set forth in OAR 635-041-0045 remain in effect, with the exception of Spring Creek sanctuary.

(4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. l-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06

**635-042-0135**

**Sturgeon Season**

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

6:00 p.m. January 10 to 6:00 p.m. January 11, 2006;
6:00 p.m. January 17 to 6:00 p.m. January 18, 2006;
6:00 p.m. January 24 to 6:00 p.m. January 25, 2006;
6:00 p.m. January 31 to 6:00 p.m. February 1, 2006;
6:00 p.m. February 2 to 6:00 a.m. February 3, 2006;
6:00 p.m. February 7 to 6:00 p.m. February 8, 2006;
6:00 p.m. February 9 to 6:00 a.m. February 10, 2006;

6:00 p.m. February 14 to 6:00 p.m. February 15, 2006;
6:00 p.m. February 16 to 6:00 a.m. February 17, 2006 and
6:00 p.m. February 21 to 6:00 p.m. February 22, 2006.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp.), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f, 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06

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**Rule Caption:** Adopt current Attorney General's Model Rules of Procedure.
**Adm. Order No.:** DFW 4-2006
**Filed with Sec. of State:** 2-15-2006
**Certified to be Effective:** 2-15-06
**Notice Publication Date:**
**Rules Amended:** 635-001-0005
**Subject:** Amend rules to adopt the most current Attorney General's Model Rules of Procedure.
**Rules Coordinator:** Tina Edwards—(503) 947-6033

**635-001-0005**
**Model Rules of Procedure**

Pursuant to ORS 183.341, the Oregon Department of Fish and Wildlife hereby adopts the Model Rules of Procedure as promulgated by the Attorney General under the Administrative Procedures Act, dated January 1, 2006.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Fish and Wildlife.]
Stat. Auth.: ORS 183.341(2)
Stats. Implemented: ORS 183.341
Hist.: GC 86, f. 8-26-58; GC 249, f. & ef. 12-1-71; GC 266, f. 10-18-73, ef. 11-11-73; FWC 25, f. & ef. 11-28-75, Renumbered from 630-001-0005; FWC 8-1978, f. & ef. 3-7-78; FWC 3-1981, f. & ef. 1-21-81; FWC 2-1982, f. & ef. 1-11-82; FWC 64-1983, f. & ef. 11-17-83; FWC 21-1986, f. & ef. 6-20-86; FWC 112-1991, f. & cert. ef. 9-30-91; FWC 28-1992, f. & cert. ef. 4-22-92; FWC 8-1994, f. & cert. ef. 2-7-94; DFW 1-2002, f. & cert. ef. 1-3-02; DFW 83-2003, f. & cert. ef. 8-28-03; DFW 50-2004, f. & cert. ef. 6-2-04; DFW 4-2006, f. & cert. ef. 2-15-06

**Rule Caption:** 2006 Columbia River salmon, sturgeon and miscellaneous seasons and green sturgeon commercial size limit.
**Adm. Order No.:** DFW 5-2006
**Filed with Sec. of State:** 2-15-2006
**Certified to be Effective:** 2-15-06
**Notice Publication Date:** 1-1-06
**Rules Adopted:** 635-023-0085, 635-041-0076, 635-042-0027
**Rules Amended:** 635-004-0090, 635-017-0095, 635-023-0095, 635-023-0125, 635-042-0022, 635-042-0110, 635-042-0133, 635-042-0135, 635-042-0145, 635-042-0160, 635-042-0180
**Rules Repealed:** 635-042-0020
**Subject:** Adopt and amend permanent rules to establish spring chinook, sturgeon and shad seasons for commercial, Tribal and recreational fisheries in the mainstem and tributaries of the Columbia River. Adopt rules concerning the maximum size limit for green sturgeon in statewide commercial fisheries.
**Rules Coordinator:** Tina Edwards—(503) 947-6033

**635-004-0090**
**Size Limit**

(1) Except as provided in OAR 635-007-0700 through 635-007-0720 it is *unlawful* to:

(a) Take from the waters of this state or to land sturgeon for commercial purposes less than 48 inches or more than 60 inches in length;

(b) Remove the head or tail of any sturgeon taken from the waters of this state or landed for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) To possess, sell, or transport any whole sturgeon under four feet in length taken for commercial purposes in the waters of this state or the Pacific Ocean. Proof of possession, sale, or transportation of any dressed sturgeon under 28 inches in length exclusive of head and tail shall in itself create a permissible inference that the dressed sturgeon was under 48 inches in length at the time it was taken.

(2) Any person fishing with commercial fishing gear in the waters of this state who, on lifting, drawing, taking up or removing any such gear finds sturgeon entangled or caught therein which are not within the legal length limits set forth in section (1)(a) of this rule or during a season not open for sturgeon, shall immediately, with care and the least possible injury to the fish, disentangle, release and transfer the fish to the water without violence.

Stat. Auth.: ORS 506.119, 506.129 & 507.030
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0130; Renumbered from 635-036-0120; FWC 39-1981, f. 10-30-81, ef. 1-1-81; FWC 33-1988, f. & cert. ef. 5-24-88; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 144-2005(Temp), f. 12-20-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-017-0095**
**Sturgeon Season**

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) Sunday, January 1, 2006 through Monday, July 31, 2006, and

(b) Sunday, October 1, 2006 through Sunday, December 31, 2006.

(3) The retention of sturgeon in the area identified in subsection (2) is prohibited August 1, 2006 through September 30, 2006.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-023-0085**
**License Reciprocity**

(1) The statutes and regulations of the State of Washington make a valid Oregon sport fishing and shellfish harvest license lawful to take fish or shellfish for personal consumption in all waters of the Columbia River where it forms the Oregon-Washington boundary.

(2) All persons landing fish or taking shellfish in Oregon for personal use must hold a valid Oregon angling or shellfish license or a resident Washington license.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: SB 594; ORS 496.162, 506.109, 506.129
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06

**635-023-0095**
**Sturgeon Season**

(1) The **2006 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 **2006 Oregon Sport Fishing Regulations**.

(2) 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) Sunday, January 1, 2006 through Monday, July 31, 2006, and

(b) Sunday, October 1, 2006 through Sunday, December 31, 2006.

(3) The retention of sturgeon in the area identified in subsection (2) is prohibited August 1, 2006 through September 30, 2006.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Sunday, January 1, 2006 through Sunday, April 30, 2006, and

(b) Saturday, May 13, 2006 through Tuesday, July 4, 2006.

(5) The retention of sturgeon in the area identified in subsection (4) is prohibited May 1, 2006 through May 12, 2006 and again from July 5, 2006 through December 31, 2006.

(6) During the fishing period as identified in section (4)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(7) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam and from Highway 395 Bridge upstream to McNary Dam May 1 through July 31, 2006.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-023-0125**
**Spring Sport Fishery**

(1) The **2006 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 **2006 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2006 through April 19, 2006 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2006 through April 30, 2006 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.

(3) Effective February 15, 2006 through May 15, 2006, 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.

(4) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(5) All other specifications and restrictions as outlined in the current 2006 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; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-041-0076**
**Summer Salmon Season**

Stat. Auth.: ORS 496.118, 506.119
Stats. Implemented: ORS 506.109, 506.129, 507.030
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0022**
**Spring Chinook Gill Net and Tangle Net Fisheries**

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1–3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2006 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(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; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0027**
**Summer Salmon Season**

Stat. Auth.: ORS 496.118, 506.109, 506.129
Stats. Implemented: ORS 506.119, 507.030
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06

**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: May 15, 2006 through May 19, 2006; May 22, 2006 through May 26, 2006 and May 30, 2006 through June 2, 2006; June 5, 2006 through June 9, 2006; June 12, 2006 through June 16, 2006 and June 19, 2006 through June 23, 2006.

(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. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0133**
**Sturgeon Size**

(1) White or green sturgeon between 48 inches and 60 inches in overall length may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon and sturgeon fishing seasons with the same fishing gear authorized for the taking of salmon or sturgeon.

(2) Length of a commercially caught sturgeon shall be defined as the shortest distance between the tip of the nose and the extreme tip of the tail while the fish lies on its side on a flat surface with its tail in a normal position.

(3) It is *unlawful* to:

(a) Mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon;

(b) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0135**
**Sturgeon Season**

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

6:00 p.m. January 10 to 6:00 p.m. January 11, 2006;
6:00 p.m. January 17 to 6:00 p.m. January 18 ,2006;
6:00 p.m. January 24 to 6:00 p.m. January 25, 2006;
6:00 p.m. January 31 to 6:00 p.m. February 1, 2006;
6:00 p.m. February 2 to 6:00 a.m. February 3, 2006;
6:00 p.m. February 7 to 6:00 p.m. February 8, 2006;
6:00 p.m. February 9 to 6:00 a.m. February 10, 2006;
6:00 p.m. February 14 to 6:00 p.m. February 15, 2006;
6:00 p.m. February 16 to 6:00 a.m. February 17, 2006; and
6:00 p.m. February 21 to 6:00 p.m. February 22, 2006.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp.), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f, 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0145**
**Youngs Bay Salmon Season**

(1) Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) 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 15, 2006 to 6:00 a.m. February 16, 2006;
6:00 p.m. February 19, 2006 to 12 Noon February 20, 2006;
6:00 p.m. February 22, 2006 to 6:00 a.m. February 23, 2006;
6:00 p.m. February 26, 2006 to 12 Noon February 27, 2006;
6:00 p.m. March 1, 2006 to 6:00 a.m. March 2, 2006;
6:00 p.m. March 5, 2006 to 12 Noon March 6, 2006;
6:00 p.m. March 8, 2006 to 12 Noon March 9, 2006; and
6:00 p.m. March 12, 2006 to 6:00 a.m. March 13, 2006.
March 16, 2006 from 6:00 a.m. to 10:00 a.m.; and
March 23, 2006 from 12 noon to 4:00 p.m.
March 27, 2006 from 6:00 a.m. to 6:00 p.m.;
March 30, 2006 from 6:00 a.m. to 6:00 p.m.;
April 3, 2006 from 6:00 a.m. to 6:00 p.m.;
April 6, 2006 from 6:00 a.m. to 6:00 p.m.;
April 10, 2006 from 6:00 a.m. to 6:00 p.m.; and
April 13, 2006 from 6:00 a.m. to 6:00 p.m.

(B) Spring Season:
April 17, 2006 from 9:00 a.m. to 1:00 p.m.;
6:00 p.m. April 20, 2006 to 6:00 a.m. April 21, 2006;
6:00 p.m. April 24, 2006 to 6:00 a.m. April 25, 2006;
6:00 p.m. April 27, 2006 to 6:00 a.m. April 28, 2006;
6:00 p.m. May 1, 2006 to 12 Noon May 2, 2006;
6:00 p.m. May 4, 2006 to 12 Noon May 5, 2006;
12 Noon May 8, 2006 to 12 Noon May 12, 2006;
12 Noon May 15, 2006 to 12 Noon May 19, 2006;
12 Noon May 22, 2006 to 12 Noon May 26, 2006;
12 Noon May 29, 2006 to 12 Noon June 2, 2006;
12 Noon June 5, 2006 to 12 Noon June 9, 2006; and
12 Noon June 13, 2006 to 12 Noon June 16, 2006.

(C) Summer Season:
12 Noon June 21, 2006 to 12 Noon June 23, 2006;
12 Noon June 28, 2006 to 12 Noon June 30, 2006;
12 Noon July 5, 2006 to 6:00 p.m. July 6, 2006;
12 Noon July 12, 2006 to 6:00 p.m. July 13, 2006;
12 Noon July 19, 2006 - 6:00 p.m. July 20, 2006; and
12 Noon July 26, 2006 to 6:00 p.m. July 27, 2006.

(b) The fishing areas for the winter, spring and summer fisheries are: From February 15, 2006 through March 13, 2006 and from April 20, 2006 through July 27, 2006, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(A) On March 16, 2006, March 23, 2006 and April 17, 2006, the fishing area extends from old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(B) From March 27, 2006 through April 13, 2006 the fishing area extends from markers at the mouth of the Walluski River upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. Monofilament gillnets are allowed.

(a) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season from February 15, 2006 to April 13, 2006. 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 17, 2006 to July 27, 2006.

(b) In the fishing area, as described in (1)(b), the use of additional weights or anchors attracted directly to the leadline is allowed upstream of the mouth of the Walluski River.

(3) A maximum of three green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A),(1)(a)(B) and (1)(a)(C), the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-

91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0160**
**Blind Slough and Knappa Slough Select Area Salmon Season**

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a) (B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in Blind Slough and Knappa Slough in paragraph (B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:
February 22–February 23, 2006;
February 26 – February 27, 2006;
March 1 – March 2, 2006;
March 5 – March 6, 2006;
March 8 – March 9, 2006; and
March 12 – March 13, 2006.

(B) Blind and Knappa Sloughs:

(i) April 20 – April 21, 2006; April 24 – April 25, 2006 and April 27 – April 28, 2006;

(ii) May 1 – May 2, 2006; May 4 – May 5, 2006; May 8 – May 9, 2006; May 11 – May 12, 2006; May 15 –May 16, 2006; May 18 – May 19, 2006; May 22 – May 23, 2006; May 25 – May 26, 2006; May 29 – May 30, 2006; June 1 – June 2, 2006; June 5 – June 6, 2006; June 8 – June 9, 2006; June 12 – June 13, 2006 and June 15 –June 16, 2006.

(b) The fishing areas for the winter and springs seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the periods identified in (1)(a)(B)(i), the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7- inches;

(B) During the spring fishery, outlined above (1)(a)(B) and (1)(a)(C), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8-inches.

(2)A maximum of three green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (1)(a)(A),(1)(a)(B) and (1)(a)(C), the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06

**635-042-0180**
**Deep River Select Area Salmon Season**

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: nightly from 6:00 p.m. to 8:00 a.m. the following morning (14 hours), February 20 – February 21, 2006; February 27 – February 28, 2006; March 6 – March 7, 2006 and March 13 – March 14, 2006.

(b) Spring season: nightly from 7:00 p.m. to 7: 00 a.m. the following morning (12 hours), April 17 – April 18, 2006; April 20 – April 21, 2006; April 24 – April 25, 2006; April 27 – April 28, 2006; May 1 – May 2, 2006; May 4 – May 5, 2006; May 8 – May 9, 2006; May 11 – May 12, 2006; May 15 –May 16, 2006; May 18 – May 19, 2006; May 22 – May 23, 2006; May 25 – May 26, 2006; May 29 – May 30, 2006; June 1 – June 2, 2006; June 5 – June 6, 2006; June 8 – June 9, 2006; June 12 – June 13, 2006 and June 15 –June 16, 2006.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(a) During the winter season, outlined above (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7- inches;

(b) During the spring season, outlined above (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(4) A maximum of three green or white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2)(a) and (2)(b), the weekly aggregate sturgeon limit applies to

possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06

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**Rule Caption:** Outfitter and Guide Nonresident Tag Allocation Program.
**Adm. Order No.:** DFW 6-2006
**Filed with Sec. of State:** 1-25-2006
**Certified to be Effective:** 1-25-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 635-075-0035
**Rules Amended:** 635-075-0026, 635-075-0029
**Subject:** Rules were amended in relating to the Outfitter and Guide Nonresident Tag Allocation Program.
**Rules Coordinator:** Tina Edwards—(503) 947-6033

**635-075-0026**
**Application Requirements**

(1) A valid controlled hunt Outfitter and Guide application shall be purchased from the department. The purchase price of the application is set forth in OAR 635-060-0005(2) ($3.00 plus $1.50 agent fee).

(a) Only one hunt number and one species type may be included on a single application. No more than 50% of the available tags for a specific hunt number and species may be applied for, except in cases where only one person applies for tags and/or an odd number of tags exists in particular hunt.

(b) Tags will only be issued for specific hunt units in which the Outfitter and Guide is certified.

(c) Applications must be complete and include such information as required which will include the six-digit State Marine Board Registration number required under ORS 704.020 or they may be disqualified from the tag allocation drawing.

(d) Applications, along with the proper fees, must be received by midnight December 1, of each year, at the department headquarters office. Applications received after the specified deadline dates shall be disqualified.

(2) No outfitter or guide may receive more than 25 tags per year for any single species of big game from the December Outfitter and Guide tag drawing. Tags received in the first-come, first-serve remaining tag process are in addition to tags drawn by an outfitter and guide in the December Outfitter and Guide tag drawing.

Stat. Auth.: ORS 496.012, 496.138 & 497.112
Stats. Implemented: ORS 496.012, 496.138 & 497.112
Hist.: FWC 73-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 114-2004(Temp), f. & cert. ef. 11-23-04 thru 5-20-05; Administrative correction 6-17-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 6-2006, f. & cert. ef. 1-25-06

**635-075-0029**
**Tag Purchasing Requirements**

(1)The department will notify outfitters and guides of the drawing results by December 31 of each year.

(2) On or before March 31 of each year Outfitters and Guides who are successful in the drawing must:

(a) Submit to the department the names, addresses, proof of nonresidency, and hunting license numbers (if already purchased) of the nonresidents for whom tags are to be issued. For the purpose of these rules: Proper identification for nonresident documents includes an out-of-state driver's license. If an applicant does not have a driver's license, then a combination of three pieces of identification are required including utility bill, rent receipt, passport, birth certificate, social security card, major credit card, medical card, marriage license, voter's registration card, library card, or military ID. One piece must show name and current address outside the state of Oregon.

(b) Submit to the department all required fees. Outfitters and guides must submit all fees; they will not be accepted from nonresident applicants to whom the tags will be issued. The department shall not issue a tag to any person who does not have a valid nonresident Oregon hunting license. (Note: Fees for Outfitter and Guides tags are described in ORS 497.112.) No later than July 31 the department will issue to outfitters and guides all requested tags from the December drawing for which they have met requirements.

Stat. Auth.: ORS 496.012, 496.138 & 497.112
Stats. Implemented: ORS 496.012, 496.138 & 497.112
Hist.: FWC 73-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 27-2003(Temp), f. & cert. ef. 3-28-03 thru 6-6-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 6-2006, f. & cert. ef. 1-25-06

**635-075-0035**
**Remaining Tags**

(1) Any remaining Outfitter and Guide tags not sold on or before March 31st will become available on a first-come, first-serve basis. The department will publish a list of available tags two business days after March 31st.

(2) First-come, first-serve tags will become available for purchase starting at 8:00 AM on the third business day after March 31st and ending at 5:00 PM on April 15th. Any applications received prior to 8:00 AM on the third business day after March 31st will not be accepted.

(3) Up to five first-come, first-serve tags can be sold to outfitters and guides for unnamed clients.

(a) The non-refundable tag fee for unnamed client tags is $451.50 for deer and $666.50 for elk.

(b) The deadline to identify a hunter for tags sold with unnamed clients is one week before the hunt begins.

(4) An unlimited number of first-come, first-serve tags can be sold to an outfitter or guide when the client is identified.

(5) Any unsold Outfitter and Guide Tags remaining after 5:00 PM on April 15th will be included in the June public controlled hunt drawing.

Stat. Auth.: ORS 496.012, 496.138, 497.112
Stats Implemented: ORS 496.012, 496.138, 497.112
Hist.: DFW 6-2006, f. & cert. ef. 1-25-06

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.
**Adm. Order No.:** CWP 1-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 413-015-0405, 413-015-0710
**Subject:** These Child Protective Services Assessment and Interviewing rules are being amended to reflect a new process that will outline steps to take when a Department or Oregon Youth Authority (OYA) employee is the alleged perpetrator of child abuse or neglect.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**413-015-0405**
**CPS Assessment**

The following actions are usually taken to assess a child=s safety, to establish a child safety plan, and to complete the CPS assessment. The steps do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) Consult with CPS supervisor. Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

(a) Before making initial contact with the family;

(b) Prior to a decision to place a child in protective custody;

(c) When a referral indicates potential danger to the worker;

(d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;

(e) When a referral involves a foster care home certified by the Department;

(f) When making dispositions in complicated or sensitive situations or cases;

(g) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of the Department of Human Services (DHS) or Oregon Youth Authority (OYA);

(h) Prior to initiating court action; and

(i) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) Review relevant records. The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

(a) Safety threats and risk influences;

(b) Worker safety;

(c) Child and family support systems and protective capacity; and

(d) History of or a pattern of abuse.

(3) Contact the reporter. The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) Contact and work with other entities. The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 though 0615.

(5) Determine ICWA Status. The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(8) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(9) Inquire about and determine employment. The CPS worker must make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of DHS or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of DHS or OYA, the CPS supervisor must notify the DHS, Office of Human Resources, at the time of the assessment and at the time the assessment is reviewed as required in section (18) of this rule. The CPS supervisor must document the notifications in FACIS.

(10) Conduct safety assessment. The CPS worker must conduct the safety assessment using the GAP within the times lines set out in OAR 413-015-0500 through 0514. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(11) Develop safety plan. When a safety threat has been identified as a result of the safety assessment, the CPS worker must immediately develop a safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0514 provide specific time lines and requirements for a safety plan.

(12) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(13) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 though 0905.

(14) Provide notice of child placed in protective custody. If a child is placed in protective custody (see OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(15) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0514 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers to protect the child, the safety plan components, identity of relatives who are willing to contribute to the safety plan, and cultural considerations.

(16) Notify reporting party. The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(17) Determine disposition of CPS assessment. The CPS worker must determine a disposition to complete the CPS assessment. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(18) Obtain supervisory review. A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker. After the assessment is reviewed by a CPS supervisor, if the alleged perpetrator is an employee of DHS or OYA, the CPS supervisor must inform the DHS, Office of Human Resources, of the disposition. If the disposition is founded, the CPS supervisor also informs the DHS, Office of Human Resources of the type of abuse. The CPS supervisor must document the notification in FACIS.

(19) Enter FACIS data. Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(20) Notify parents or caregivers of CPS assessment dispositions. The CPS worker must notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded). If providing the notice would increase the risk of harm to a child or adult victim, an exception to notification may be made with CPS supervisor approval based on documentation of risk.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp) f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 1-2006, f. & cert. ef. 2-1-06

**413-015-0710**
**Interviewing**

The CPS worker must, to the extent possible, do the following during the interview:

(1) Present identification to the family at the beginning of the interview.

(2) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse, and give an explanation of the alleged child abuse.

(3) Allow the parent or caregiver to respond to each allegation.

(4) Ensure the privacy of the persons being interviewed.

(5) Focus the interview on the safety of the children.

(6) Observe and ask questions about indications of child abuse.

(7) Assess whether the parents or caregivers are involved in domestic violence.

(8) Identify legal parents and extended family members who might assist in developing a child safety plan.

(9) Observe the interactions between the parents or caregivers and the children, and between the parents or caregivers.

(10) Inquire about employment status of the alleged perpetrator. If the alleged perpetrator is an employee of the Department of Human Services or Oregon Youth Authority, the CPS worker and CPS supervisor must comply with OAR 413-015-0405(9) and (18).

(11) Summarize the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(12) Obtain names of persons from the parents and caregivers who can provide additional information in making the child safety assessment or child safety plan.

(13) Ask the parents and caregivers to sign an authorization to release information to enable the Department to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(14) If the CPS worker believes the juvenile court will be involved in the case, explain the juvenile court process and the availability of legal representation to the parents and caregivers.

(15) Provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.

(16) Inform the parents and caregivers about the Department's grievance procedure.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 1-2006, f. & cert. ef. 2-1-06

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**Rule Caption:** Changing OARs affecting Child Welfare programs.
**Adm. Order No.:** CWP 2-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 413-020-0140, 413-040-0110, 413-040-0135, 413-040-0140, 413-090-0300, 413-090-0310, 413-090-0380
**Subject:** These rules covering Guardian and Legal Custodian Consents, Substitute Care Placement Review, and Payments for Special and/or Extraordinary Needs are being amended to update references from the state hospital to SAIP (Secure Adolescent Inpatient Program) or SCIP (Secure Children's Inpatient Program).

These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**413-020-0140**
**Exercise and Delegation of Legal Authority**

Where the Department has legal custody of a child through a Voluntary Custody Agreement, a court order, or a Release and Surrender Agreement, the Department will exercise its authority through Department staff and through delegation to other persons as follows:

(1) Physical Custodian. The Department delegates the following responsibilities to the physical custodian by this administrative rule. This delegation shall continue as long as the child is in the legal custody of the Department and resides with the physical custodian. Any exception to this rule shall be given in writing to the child's custodian and a copy will be maintained in the child's case record with the Department. The department will delegate to the child's Physical Custodian its authority to consent to:

(a) The child/youth's registration in public school; assisting them with selecting or changing class schedules; authorizing absence from school; participation in school and extracurricular activities; and enrollment in school meal and school insurance programs. Consent for traditional school testing as deemed necessary. School pictures, except those listed under 413-020-0130(2)(c);

(b) Routine medical care and dental care, including vaccinations and immunization; routine examinations and lab tests;

(c) Short term inter-county travel;

(d) Application for work permits or releases.

(2) Service Worker. The Service Worker may exercise the Department's consent authority to any action to which the physical custodian may consent. In addition, the child's Service Worker may exercise the Department's authority to give consent for the following:

(a) Education records, academic or school behavioral records; or any specialized school testing. The Department Service Worker may not assume the role or responsibilities of Educational Surrogate, per OAR 581-015-0099.

(b) Psychiatric or psychological evaluation, outpatient psychiatric or psychological treatment, and behavioral rehabilitation services for the child; and

(c) Photograph(s) taken for publicity purposes or media promotions that may draw attention to the individual.

(3) Service Delivery Area (SDA) Manager or Designee. The SDA Manager or Designee may exercise the Department's consent authority to any action to which the Physical Custodian or Services Worker may consent. In addition, the SDA Manager or Designee may exercise the Department's authority to consent to the following actions with respect to children serviced by the SDA:

(a) Emergency medical care and/or surgery, to include anesthesia;

(b) Major medical and surgical procedures that are not extraordinary or controversial, to include anesthesia;

(c) Admission to a state training center for the retarded, or to SAIP (Secure Adolescent Inpatient Program), SCIP (Secure Children's Inpatient Program), or a private hospital for purpose of psychiatric treatment;

(d) Registration in special schools, including private or alternative schools;

(e) Application for driver's training, permits and license;

(f) Interstate travel and international travel;

(g) Examination by law enforcement agency (e.g., polygraphs, interrogations without a warrant, etc.).

(h) Use of firearms for purpose of recreational hunting, target practice, and/or Hunter Safety Course.

Stat. Auth.: ORS 161.390, 418.005
Stats. Implemented: ORS 109.640, 161.327, 161.336, 161.341, 161, 346, 161.365, 161.370, 418.005, 418.312
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2003, f. & cert. ef. 1-9-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-040-0110**
**Definitions**

The following definitions apply to OARs 413-040-0100 to 413-040-0170:

(1) "Date Child Entered Substitute Care" means the earlier of the following two dates:

(a) The date the court found the child within the jurisdiction of the court (under ORS 419B.100); or

(b) The date that is 60 days from the date of removal.

(2) "Department" means the Department of Human Services.

(3) "Complete Judicial Review" means a hearing that results in a written order that contains the findings required under ORS 419B.476 or includes substantially the same findings as are required under ORS 419A.116.

(4) "Local Citizen Review Board (CRB)" means a board of not less than three nor more than five members appointed by the Chief Justice of the Supreme Court of the State of Oregon to review the cases of all children in the custody of the Department and placed in an out-of-home placement (ORS 419A.090-419A.094).

(5) "Permanency Hearing" means the hearing that determines the permanency plan for the child. The Permanency Hearing is conducted by a juvenile court, another court of competent jurisdiction or by an authorized tribal court.

(6) "SAIP" means Secure Adolescent Inpatient Program.

(7) "SCIP" means Secure Children's Inpatient Program.

(8) "Substitute Care" means a child in the legal or physical custody and care of the Department, including those supervised by another agency, and placed in a paid or unpaid out-of-home placement, including, but not limited to foster or relative placements, group homes, permanent foster care, emergency shelters, residential facilities, non-finalized adoptive placements, subsidized independent living, accredited psychiatric facilities, SAIP, and SCIP.

(9) "Termination of Parental Rights" means that a court of competent jurisdiction has entered an order terminating the rights of the parent or parents, pursuant to ORS 419B.500 through 419B.530 or the statutes of another state. The date of the termination order determines the effective date of the termination even if an appeal of that order has been filed (ORS 419A.200).

Stat. Auth.: ORS 418.005
Stats. Implemented: Title IV, ORS 419A.090-122, SB408, ORS 419B.440-476 & 419C.623-656
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 24-1999, f. & cert. ef. 12-14-99; SOSCF 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-6-00; administrative correction 9-16-00; CWP 23-2003, f. & cert. ef. 5-22-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-040-0135**
**Responsibility for Administrative Reviews**

(1) Responsibility for CRB Reviews when more than one Department office, cluster or state is involved with the case. Offices will meet the administrative review requirements for children in placements as follows:

(a) For Oregon children in substitute care placements inside and outside of Oregon, the local Department office in the county holding legal jurisdiction is responsible for the administrative review.

(A) Information about a child placed out-of state will be requested through Interstate Compact on the Placement of Children (ICPC) from the supervising state; and

(B) The Oregon caseworker will compile information for the review on family members residing in Oregon and receiving Department services.

(b) For non-finalized adoptive placements on fully free children, the supervising Department office is responsible for the administrative review.

(c) For children in the legal custody of the Department whose placement is being co-managed by the Department and mental health or developmental disability case managers:

(A) The Department office in the county holding legal jurisdiction is responsible for the administrative review. The mental health or development disability case managers will be invited and encouraged to participate in the review;

(B) The Department caseworker will gather information for the review from the Mental Health or Developmental Disabilities case manager; and

(C) The Department caseworker will compile information for the review on family members receiving Department services.

(2) Review Requirements for Hospitalized Children and Children on Runaway Status. Administrative Reviews must be held for the following children:

(a) Children returned to care from SAIP or SCIP. The review must be held within 30 days of the child's return to care if the review would have been due during the child's hospitalization, with the exception of children placed directly from the hospital into a nursing home, without a prior substitute care placement.

(b) Children placed in an accredited psychiatric facility or hospital shall continue to have regularly scheduled CRB reviews.

(c) Children on the run shall continue to have regularly scheduled CRB reviews.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419A.090-122, 419B.440-476, 419C.623-656
Hist.: CWP 23-2003, f. & cert. ef. 5-22-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-040-0140**
**Permanency Hearings by the Court**

A Permanency Hearing must be held no later than 12 months after a child was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed in substitute care, whichever is the earlier, and thereafter no less frequently than 12 months for as long as the child remains in substitute care. The Permanency Hearing will:

(1) Be held for all children in the legal or physical custody of the Department and placed in paid or unpaid substitute care including, but not limited to, children in foster or relative placements, group homes, permanent foster care, emergency shelters, residential facilities, non-finalized adoptive placements, subsidized independent living, accredited psychiatric facilities, SAIP, and SCIP. Children's permanency hearings continue regardless of whether the placement is licensed or certified or, the child is on runaway status, or the child is returned to a parental home on the basis of a trial home visit.

(2) Be conducted by a juvenile court, another court of competent jurisdiction, or by an authorized tribal court; and

(3) Determine the permanency plan for the child that includes whether, and if applicable, when the child will:

(a) Be returned to the parent;

(b) Be placed for adoption and the Department shall file a petition to terminate the parental rights of the parent(s) to a child in Department custody;

(c) Be referred to legal guardianship; or

(d) Be placed in another planned permanent living arrangement. If the Department has determined that is not in the best interest of the child to file a petition for termination of parental rights, the case plan must also contain documentation for review by the court that:

(A) The child is being cared for by a relative and that placement is intended to be permanent; or

(B) There is a compelling reason that filing such a petition would not be in the best interests of the child. Such compelling reasons include, but are not limited to:

(i) The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time;

(ii) Another permanent plan is better suited to meet the health and safety needs of the child;

(iii) The court or local CRB in a prior hearing or review determined that while the case plan was to reunify the family the Department did not make reasonable efforts or, if the Indian Child Welfare Act applies, active effort to make it possible for the child to safely return home; or

(iv) The Department has not provided to the family of the child, consistent with the time period in the case plan, such services as the Department deems necessary for the child to safely return home, if reasonable efforts to make it possible for the child to safely return home are required to be made with respect to the child.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 419A.090-419A.122, 419B.440-419B.476, 419C.623-419C.656
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 24-1999, f. & cert. ef. 12-14-99; SOSCF 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-6-00; SOSCF 22-2000, f. 9-6-00, cert. ef. 9-7-00; CWP 23-2003, f. & cert. ef. 5-22-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-090-0300**
**Purpose**

These rules describe how payments for special and/or extraordinary needs may be used to benefit children in the custody of the Department who are in foster care, family and professional shelter care, residential group care and child who are in non-reimbursed placement such as SAIP and SCIP.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-090-0310**
**Definition**

(1) "Clothing Replacement Allowance": means the Department includes the cost of maintaining adequate clothing for each child in the substitute care maintenance payments to the provider.

(2) "Department" means the Department of Human Services (DHS).

(3) "Payment for Special and/or Extraordinary Needs": means a payment for specific services or supplies which are essential to the child's substitute care and no other resource exists to cover the essential service or supply. This payment is unrelated to and independent of the regular monthly substitute care maintenance payment. The payment for the child's special or extraordinary need shall not be ongoing in nature and is available on a limited or one-time basis.

(4) "SAIP" means Secure Adolescent Inpatient Program.

(5) "SCIP" means Secure Children's Inpatient Program.

(6) "SDA" means Service Delivery Area (SDA). A geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03; CWP 2-2006, f. & cert. ef. 2-1-06

**413-090-0380**
**Children in Non-Reimbursed Placement at Oregon State Hospital and Other Non-Reimbursed Providers**

(1) The Department has established a procedure to provide personal allowances for children who are in custody of the Department and are placed in a non-reimbursed placement at SAIP, SCIP, and other non-reimbursed providers.

(2) Procedure:

(a) Determine if the children have benefits or resource coming in to their trust account. The Department staff can use the IFDF screen to see if the child has a balance in his/her trust account. If there is money in the trust account, the worker can initiate a CF 198 (Trust Action) monthly to receive payment for the child. Maximum monthly amount is not to exceed $30.00;

(b) If the child does not have any benefits or resources coming in, then the allowance payment may be made from "Payments for Special and/or Extraordinary Needs" using the individual the Department location cost center and an object code of 980.092, Personal Allowance. (This is an EAS object code). Department staff would initiate payment by completing a CF 294 (Administrative Expense Voucher) monthly, including the child's case number and person letter. Maximum monthly amount would be $30.00.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 27-2000 f. & cert. ef. 9-14-00; CWP 10-2003, f. & cert. ef. 1-7-03; CWP 2-2006, f. & cert. ef. 2-1-06

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**Rule Caption:** Changing OARs affecting Child Welfare programs.
**Adm. Order No.:** CWP 3-2006(Temp)
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06 thru 6-30-06

**Notice Publication Date:**
**Rules Amended:** 413-015-0405
**Rules Suspended:** 413-015-0405(T)
**Subject:** This temporary rule change was filed effective January 1, 2006 but due to a subsequent permanent rule filing, this temporary rule change needs to be re-filed effective February 1, 2006. Amending this CPS Assessment rule (OAR 413-015-0405) adds the expectation that child protective services (CPS) workers provide a pamphlet to families at the beginning of each assessment. This pamphlet will describe the assessment and court process and the rights of parents during that process. The rule is also being amended to include the expectation that a CPS worker notify the DA's office (MDT chair) within 3 business days whenever, during a sex abuse assessment/investigation, a parent or guardian who is identified as an alleged perpetrator is asked and agrees to leave the home voluntarily.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**413-015-0405**
**CPS Assessment**

The following actions are usually taken to assess a child's safety, to establish a child safety plan, and to complete the CPS assessment. The steps do not occur in a prescribed order but are controlled by the specific circumstances in a given case. The steps are described in a logical order in these rules, but they are not necessarily in the order they must be completed.

(1) Consult with CPS supervisor. Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at key points during the assessment, such as:

(a) Before making initial contact with the family;

(b) Prior to a decision to place a child in protective custody;

(c) When a referral indicates potential danger to the worker;

(d) When a referral involves allegations that child abuse occurred in a licensed child caring agency;

(e) When a referral involves a foster care home certified by the Department;

(f) When making dispositions in complicated or sensitive situations or cases;

(g) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of the Department of Human Services (DHS) or Oregon Youth Authority (OYA).

(h) Prior to initiating court action; and

(i) Prior to a decision to close a case during or at the end of the CPS assessment.

(2) Review relevant records. The CPS worker must review relevant paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the assessment. The CPS worker must review the documents to identify information related to:

(a) Safety threats and risk influences;

(b) Worker safety;

(c) Child and family support systems and protective capacity; and

(d) History of or a pattern of abuse.

(3) Contact the reporter. The CPS worker must contact the reporter or other collateral sources for additional information if the referral does not contain adequate information to proceed with the assessment.

(4) Contact and work with other entities. The CPS worker must contact other entities including LEAs, public and private schools, tribes, and multi-disciplinary teams (MDTs) as necessary to complete the CPS assessment. The requirements for making these contacts are further described in "Working with Other Entities," OAR 413-015-0600 though 0615.

(5) Determine ICWA Status. The CPS worker must initiate the process to determine the child's ICWA status and notify the tribe if applicable:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Oregon Tribes must be notified within 24 hours after information alleging abuse is received by the Department. Consult with the ICWA manager to determine whether there is reasonable cause to believe that the child is ICWA eligible.

(c) If the Indian child is enrolled or eligible for enrollment in an Oregon tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local department ICWA liaison or a supervisor if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(6) Identify legal parents and putative fathers. The CPS worker or designee must make a reasonable effort to identify legal parents and putative fathers within 30 days after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(7) Notify Parent or Caregiver of CPS Process. The CPS worker must provide the parent or caregiver with the "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(8) Notify Parent or Caregiver of intent to interview. The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(9) Conduct Interview. The CPS worker must interview people, as necessary, to complete the CPS assessment. The requirements for interviewing parents and children are described in OAR 413-015-0700 to 0740.

(10) Inquire about and determine employment. The CPS worker must make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of DHS or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the DHS or OYA, the CPS supervisor must notify the DHS, Office of Human Resources, at the time of the assessment and at the time the assessment is reviewed as required in section (18) of this rule. The CPS supervisor must document the notifications in FACIS.

(11) Conduct safety assessment. The CPS worker must conduct the safety assessment using the GAP within the times lines set out in OAR 413-015-0500 through 0514. The safety assessment time lines are based on the department response determined by the screener during the screening process, described in OAR 413-015-0210(1)(a) through (c).

(12) Develop safety plan. When a safety threat has been identified as a result of the safety assessment, the CPS worker must immediately develop a safety plan with the involvement of the family and tribe, if applicable and practicable. OAR 413-015-0500 through 0514 provide specific time lines and requirements for a safety plan.

(13) Photograph and document. The CPS worker must take photographs, as necessary, to complete the CPS assessment. The requirements for taking photographs are described in OAR 413-015-0800, "Photographs and Documents of Abuse."

(14) Obtain medical examinations. The CPS worker must obtain medical examinations, as necessary, to complete the CPS assessment. The requirements for obtaining medical examinations are described in "Medical Examination and Medical History," OAR 413-015-0900 though 0905.

(15) Provide notice to the District Attorney responsible for the county MDT. When assessing an allegation of sexual abuse, if a CPS worker develops a safety plan that includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the district attorney responsible for the MDT in the county where the child resides by:

(a) Providing this notice in writing; and

(b) Providing this notice within three business days of the date the parent or caregiver leaves the family home.

(16) Provide notice of child placed in protective custody. If a child is placed in protective custody (see OAR 413-015-0410), the CPS worker must notify parents, including a non-custodial parent; caregivers; and the child's tribe, if applicable, in writing.

(17) Record assessment activities. The CPS worker must record assessment activities and information gathered during the assessment process. OAR 413-015-0500 through 0514 provide specific requirements and procedures for making findings and documenting information such as safety threats that have been identified, the capacity of parents or caregivers to protect the child, the safety plan components, identity of relatives who are willing to contribute to the safety plan, and cultural considerations.

(18) Notify reporting party. The CPS worker must make a concerted effort to contact the person who made the report of suspected child abuse when the Department has made contact with the family and has concluded the CPS assessment.

(19) Determine disposition of CPS assessment. The CPS worker must determine a disposition to complete the CPS assessment. The requirements

for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions."

(20) Obtain supervisory review. A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker. After the assessment is reviewed by a CPS supervisor, if the alleged perpetrator is an employee of DHS or OYA, the CPS Supervisor must inform the DHS, Office of Human Resources, of the disposition. If the disposition is founded, the CPS supervisor also informs the DHS, Office of Human Resources of the type of abuse. The CPS supervisor must document the notification in FACIS.

(21) Enter FACIS data. Each local department office may designate an individual to enter the CPS supervisor's electronic verification of review and approval into FACIS.

(22) Notify parents or caregivers of CPS assessment dispositions. The CPS worker must notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded). If providing the notice would increase the risk of harm to a child or adult victim, an exception to notification may be made with CPS supervisor approval based on documentation of risk.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp) f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 1-2006, f. & cert. ef. 2-1-06; CWP 3-2006(Temp), f. & cert. ef. 2-1-06 thru 6-30-06

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**Rule Caption:** Changing OARs affecting Child Welfare programs.
**Adm. Order No.:** CWP 4-2006(Temp)
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06 thru 7-31-06
**Notice Publication Date:**
**Rules Adopted:** 413-010-0081, 413-010-0082, 413-010-0083, 413-010-0084, 413-010-0085, 413-010-0086
**Subject:** Rules 413-010-0081 to 413-010-0086 are being adopted to establish the Department procedures for the release of adoption home study reports. Prospective adoptive families provide sensitive, personal information to the Department while it prepares adoption home study reports. These procedures balance the needs of families for privacy with the need for CASAs, children's attorneys, and children's tribes to represent children.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**413-010-0081**
**General Principles Regarding Release of Adoption Home Study Reports**

(1) These rules (OAR 413-010-0081 to 413-010-0086) establish the Department of Human Services (Department) procedures for the release of adoption home study reports prepared by the Department. The Department will make these reports available only as provided in these rules.

(2) Adoption home study reports are needed to ensure that children who are in the legal custody of the Department are placed in the care of families who will provide permanency, safety, attachment, and well being. In addition, adoption home study reports prepared by the Department are sometimes used to assist the persons who are the subject of the report to be considered for the placement of children who are in the custody of a public agency in another state or under the jurisdiction of a juvenile court in another state.

(3) Interpretation of these rules is guided by the following principles:

(a) Children deserve to be placed into adoptive families in a timely manner to meet their needs for permanency, safety, attachment, and well being.

(b) When the Indian Child Welfare Act, 25 USC sections 1901–1935 (1978), applies to a child, the child's tribe will be invited to participate in the selection of the adoptive family. The level of tribal involvement in the selection process may vary from case to case. Tribes that choose to be involved in the selection process need information about the prospective adoptive families.

(c) The Department, CASAs, children's tribes, and children's attorneys, who may have different statutory obligations, work to assure that children in the custody of the Department who have adoption as their permanency plan are placed into adoptive families who can meet their need for permanency, safety, attachment, and well being.

(d) To ensure that the Department can achieve suitable matches with adoptive families for children who are in the legal custody of the Department and have no current caretaker or potential relative adoptive resources, the Department must make recruitment efforts tailored to the individual needs of the child.

(e) The Department values the information contributed about the child by CASAs, children's tribes, and children's attorneys during the process of selecting an adoptive family.

(f) Prospective adoptive families provide sensitive, personal information to the Department while it prepares adoption home study reports.

(g) The Department must compare the needs of families for privacy with the need for CASAs, children's attorneys, and children's tribes to represent children.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

**413-010-0082**
**Definitions**

As used in OAR 413-010-0081 to 413-010-0086:

(1) An "adoption committee" is a committee responsible for decisions regarding adoptive placement selections. Adoption committees include staff from the Department, licensed adoption agencies, and community partners knowledgeable about the adoptive placement selection for children. Each of the following is considered an adoption committee:

(a) A Central Office Adoption Committee.

(b) A Local Permanency/Adoption Committee.

(c) Preliminary and subsequent Current Caretaker Committees.

(d) A Permanency/Adoption Council.

(2) "CASA" means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170.

(3) The "adoption home study report" (report) is a document containing an assessment of a family as an adoptive resource, used to determine the suitability of the family to adopt a child in the Department's custody, in the custody of a public child welfare agency in another state, or under the jurisdiction of a juvenile court in another state. The report is used as a tool to determine a match between the family and a child. The requirements for an adoption home study report are found in OAR 413-120-0200.

(4) "Third party information" is information provided to the Department by persons other than immediate household members of the prospective adoptive family and includes information from references, employers, and adult children of the prospective adoptive parents, as well as reports from health and mental health professionals.

(5) "CET" is a DHS employee who provides consultation, education, and training services to DHS child welfare staff.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

**413-010-0083**
**Release and Review of Adoption Home Study Reports**

(1) An adoption home study report may be released only to:

(a) A child's CASA, child's tribe, and a child's attorney as provided in these rules (OAR 413-010-0081 to 413-010-0086).

(b) A public or private adoption agency:

(A) A report may be released to a public or private adoption agency if the agency is considering the family who is the subject of the report for adoption of a child in the custody of a public child welfare agency or under the jurisdiction of a juvenile court, regardless of whether the child is under the supervision of the public agency or a private agency providing supervision on behalf of the public agency, if the agency submits a written request for the report and the Department has an authorization for disclosure of the report signed by family members who are the subject of the report.

(B) The Department will redact information as provided in OAR 413-010-0084 from the report before releasing the report to a private or public adoption agency if the Department does not have an authorization signed by family members who are the subject of the report for disclosure of the entire report.

(2) Requests by the family who is the subject of a report.

(a) An adoption home study report may be reviewed for accuracy by the family who is the subject of the report if the family makes a written request for the report.

(b) When a family who is the subject of a report requests to review the report, the DHS worker, CET, or supervisor will prepare a copy of the report with third party information removed and make that copy of the report available to the family within a reasonable time for the family to review.

(c) The Department may not release a copy of the report to the family who is the subject of the report.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

**413-010-0084**
**Pre-Release Redaction of Adoption Home Study Report**

(1) Before releasing an adoption home study report to a child's CASA, child's tribe, or child's attorney, and before releasing a report to a public or private adoption agency without an authorization signed by family members who are the subject of the report, the Department shall redact from the report information that is confidential by federal or state law. Information that must be redacted under this provision includes:

(a) Protected health information;

(b) Mental health information;

(c) Substance abuse information;

(d) Criminal record check information; and

(e) Social security numbers.

(2) Before releasing an adoption home study report to a child's CASA, child's tribe, or child's attorney, or releasing a report to a public or private adoption agency without an authorization signed by family members who are the subject of the report, the Department may redact in the report to ensure that the prospective adoptive family cannot be identified as a result of the release of the report. Personal information about the prospective family, the disclosure of which would be unreasonable, will not be disclosed and sensitive information provided by others will be protected. Information that may be redacted under this provision includes:

(a) The identity of references for the prospective adoptive family;

(b) Information obtained from adult children of the prospective adoptive family;

(c) Names of schools, businesses, or other places or things that could help identify a person named in the report or who provided third party information for the report;

(d) Dates of birth;

(e) Last names of persons;

(f) Addresses;

(g) Personal identification numbers;

(h) Telephone numbers;

(i) Personal information that would likely embarrass members of the prospective adoptive family if the identity of the family became known; and

(j) Other information that could be used to identify a person, such as a job title, nickname, ceremonial title, a well known achievement or subject of notoriety.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

**413-010-0085**
**Circumstances in Which Release of an Adoption Home Study Report May be Inappropriate and a Summary Should Be Used**

The Department may determine that release of an adoption home study report, even if redacted, is not appropriate. In those circumstances, the Department may instead provide a summary in lieu of the full report. The decision to use a summary will be made on a case-by-case basis by the Department's Central Office Adoptions Manager or designee upon recommendation of the Department's local field office staff. Release of a summary is justified when the Department determines that the interest in protecting information in the report outweighs the benefits to the child of a release of a redacted report, and protection of information cannot be achieved through redaction.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

**413-010-0086**
**Process for Release of Adoption Home Study Report to CASA, Child's Tribe, and Child's Attorney**

The following procedures will be followed to effect the release of an adoption home study report to a child's CASA, child's tribe, and child's attorney:

(1) The Department will inform the child's CASA or local CASA program director, the child's tribe, and the child's attorney, as applicable, that the Department has selected report(s) to submit to an adoption committee. The information will be provided as soon as practicable after selection of a report that will be considered by an adoption committee but not later than 10 business days before the adoption committee meets to consider the selected families.

(2) If the child's CASA, child's tribe, or child's attorney want copies of the adoption home study reports on the families that will be considered by the adoption committee, the child's CASA, child's tribe, or child's attorney must make a request to the Department as soon as possible but no later than seven business days prior to the scheduled adoption committee.

(3) The Department will make the selected reports, which have been redacted as provided in OAR 413-010-0084, or a summary of the report as provided in OAR 413-010-0085, available to the child's CASA through the local CASA program director, to the child's tribe or the child's attorney as soon as possible but no later than seven business days prior to the scheduled adoption committee.

(4) If the child's worker subsequently selects another adoption home study report to submit to the adoption committee, the worker will notify the child's CASA, child's tribe, and child's attorney as soon as possible that the additional report(s) have been selected, even though the three business day requirement in OAR 413-010-0085(3) cannot be met. If the child's CASA, child's tribe, or child's attorney want a copy of the additional home study, the worker will provide a redacted copy or summary of the report, as provided in OAR 413-010-0084 and 413-010-0085, prior to the committee meeting.

(5) Prior to the release of a report under these rules (OAR 413-010-0081 to 413-010-0086), the Department will redact the report following the standards in OAR 413-010-0084 and will release only the redacted version unless the provisions of OAR 413-010-0085 apply, in which case the Department will release a summary of the report.

(6) The redacted report or summary of the report will be released to the child's CASA through the local CASA program director.

(7) The local CASA program director must retain the report or summary, keep it secure, and allow the child's CASA to review and take notes from the report at the office of the local CASA program.

(8) The local CASA program director, the child's tribe, and the child's attorney are responsible for securing and monitoring the disclosure of information in an adoption home study report or summary, may not make copies of the report or summary and may not disclose the report, summary, or information in the report or summary to any person not authorized by the Department rules to have the report or summary.

(9) The child's CASA, local CASA program director, child's tribe, and child's attorney may not redisclose any information contained in the report for any purpose other than discussing the needs of the child with employees of the Department, the child's CASA, CASA's supervisor, the local CASA program director, the statewide CASA program director, the child's tribe, the child's attorney, the court, or the adoption committee.

(10) The local CASA program director, child's tribe, and child's attorney must return the report or summary to the Department or destroy the report or summary upon completion of the adoption home selection process.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06

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

**Rule Caption:** Medicaid Temporary Prescription Drug Assistance for Fully Dual Eligible Medicare Part D Clients.
**Adm. Order No.:** OMAP 1-2006(Temp)
**Filed with Sec. of State:** 1-18-2006
**Certified to be Effective:** 1-18-06 thru 6-29-06
**Notice Publication Date:**
**Rules Adopted:** 410-121-0149
**Subject:** The Pharmacy Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP is temporarily adopting OAR 410-121-0149 to authorize the State to pay for medications for clients with Medicare Part D coverage.
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-121-0149**
**Medicaid Temporary Prescription Drug Assistance for Fully Dual Eligible Medicare Part D Clients**

(1) This rule is a temporary solution implemented because many pharmacies are not able to verify that the fully dual eligible client is enrolled in one of the federal Medicare Prescription Drug Plans or that the client is eligible for low-income subsidy assistance. OMAP will continue to work with the federal Medicare program to resolve these implementation issues with Part D coverage.

(2) Effective January 14, 2006, for the purposes described in Subsection (1), enrolled pharmacies may send the Office of Medical Assistance Programs (OMAP) claims for Part D drugs and cost-sharing obligations of clients who have both Medicare and Medicaid coverage (fully dual eligible clients) if:

(a) The drug(s) was covered by OMAP for fully dual eligible clients prior to January 1, 2006; and

(b) The pharmacy has attempted to bill Medicare's Part D system but cannot resolve the claim by:

(A) Continuing to bill the Medicare Part D plan as the primary payer identified through an E-1 query;

(B) Trying to resolve the issue with the Medicare Part D plan directly;

(C) Billing Wellpoint/Anthem, Medicare's Point of Sale Solution.

(3) If all the criteria in Subsection (2) are met, then OMAP will consider paying the claim or a portion of the claim, as follows:

(a) The pharmacy must contact the DHS Medicare hotline at 1-877-585-0007 to obtain authorization for claim submission;

(b) The fully dual eligible client is responsible for paying the appropriate $1/$3 or $2/$5 Medicare copayment, whichever is applicable;

(c) OMAP payment authorization will be limited to not greater than a one-month supply; and

(d) OMAP's reimbursement amount will be limited to the amount the Part D drug plan would have paid, had the Part D drug plan adjudicated the claim first, or the amount OMAP would pay for Medicaid clients who are not also Medicare beneficiaries.

(4) This rule supersedes all other rules relating to the limitations and exclusions of drug coverage for clients with Medicare Part D.

Stat. Auth. ORS 409.010, 409.050, 2005 OL, Ch. 754 (SB 1088)
Statutes Implemented: ORS 414.065
Hist.: OMAP 1-2006(Temp), f. & cert. ef. 1-18-06 thru 6-29-06

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**Rule Caption:** Targeted Case Management for Tribal Governments and Early Intervention/Early Childhood Special Education Programs.
**Adm. Order No.:** OMAP 2-2006(Temp)
**Filed with Sec. of State:** 2-7-2006
**Certified to be Effective:** 2-7-06 thru 7-1-06
**Notice Publication Date:**
**Rules Adopted:** 410-138-0600, 410-138-0610, 410-138-0620, 410-138-0640, 410-138-0660, 410-138-0680, 410-138-0700, 410-138-0710, 410-138-0720, 410-138-0740, 410-138-0760, 410-138-0780
**Subject:** The Targeted Case Management Services program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP temporarily adopted these Targeted Case Management rules to describe the requirements applicable to qualified providers, establish reimbursement mechanisms, and authorize payment for targeted case management services by qualified providers. The Centers for Medicare and Medicaid Services, through approved State Medicaid Plan amendments (SPA), have authorized the TCM services for Oregon, and OMAP must now align the SPA authorization with OMAP operations and existing practices.
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-138-0600**
**Purpose — Federally Recognized Tribal Governments in Oregon**

(1) The Targeted Case Management (TCM) Services program is a medical assistance program, that leverages Office of Medical Assistance Programs (OMAP) certified Case Management Provider Organization allowable tribal funds with matching Federal Funds for Oregon Health Plan (OHP) Medicaid eligible clients. These rules are to be used in conjunction with the OMAP (OAR 410 division 120). The TCM Services program rules are designed to assist the Case Management Provider Organization in matching allowable tribal and Federal Funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(2) The rules of the Federally Recognized Tribal Government Targeted Case Management program define Oregon Medicaid's program to reimburse the TCM services provided by a federally recognized tribal government located in the State of Oregon.

(3) TCM services include case management of non-medical services, which address health, psychosocial, economic, nutritional and other services.

(4) Provision of tribal TCM services may not restrict an eligible Client's choice of providers. Clients must have free choice of available tribal TCM service providers or other TCM service providers available to the eligible Client, subject to 42 USC 1396n. Eligible Clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0610**
**Targeted Group — Federally Recognized Tribal Governments in Oregon**

(1) The target group consists of Oregon Health Plan (OHP) Medicaid eligible individuals served by tribal programs within the State of Oregon, or receiving services from a Federally recognized Indian tribal government located in the State of Oregon, and not receiving case management services under other Title XIX programs. The target group includes elder care; individuals with diabetes; children and adults with health and social service care needs; and pregnant women. These services will be referred to as Tribal Targeted Case Management Services.

(2) An Oregon Health Plan (OHP) Medicaid-eligible individual means an individual who has been determined to be eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Department of Human Services. For purposes of these rules, an eligible individual will be referred to as a Client.

(3) This does not include TCM services funded by Title IV and XX of the Social Security Act, and federal and or state funded parole and probation, or juvenile justice programs.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 409.010
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0620**
**Definitions — Federally Recognized Tribal Governments in Oregon**

(1) "Assessment" — After the need for tribal targeted case management services has been determined, the tribal case manager assesses the specific areas of concern, family strengths and resources, community resources and extended family resources available to resolve those identified issues. At assessment, the tribal case manager makes preliminary decisions about needed medical, social, educational, or other services and the level or direction tribal case management will take.

(2) "Case Planning" — The tribal case manager develops a case plan, in conjunction with the Client and family (where applicable), to identify the goals and objectives, which are designed to resolve the issues of concern identified through the assessment process. Case planning includes setting of activities to be completed by the tribal case manager, the family and Client. This activity will include accessing medical, social, educational, and other services to meet the Clients' needs.

(3) "Case Plan Implementation" — The tribal case manager will link the Client and family with appropriate agencies and medical, social, educational or other services through calling or visiting these resources. The tribal case manager will facilitate implementation of agreed-upon services through assisting the Client and family to access them and through assuring the Clients and providers fully understand how these services support the agreed-upon case plan.

(4) "Case Plan Coordination" — After these linkages have been completed, the tribal case manager will ascertain, on an ongoing basis, whether or not the medical, social, educational, or other services have been accessed as agreed, and the level of involvement of the Client and family. Coordination activities include, personal, mail and telephone contacts with providers and others identified by the case plan, and well as meetings with the Client and family to assure that services are being provided and used as agreed.

(5) "Case Plan Reassessment" — In conjunction with the Client, the tribal case manager will determine whether or not medical, social, educational or other services continue to be adequate to meet the goals and objectives identified in the case plan. Reassessment decisions include those to

continue, change or terminate those services. Reassessment will also determine whether the case plan itself requires revision. This may include assisting Clients to access different medical, social, educational or other needed services beyond those already provided. Reassessment activities include, staffing and mail, personal, and telephone contacts with involved parties.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 409.010
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0640**
**Provider Organizations — Federally Recognized Tribal Governments in Oregon**

A Tribal Targeted Case Management (TCM) Provider must be an organization certified as meeting the following criteria:

(1) A minimum of three years experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management, including: Assessment, Case Planning, Case Plan Implementation, Case Plan Coordination, and Case Plan Reassessment;

(2) A minimum of three years case management experience in coordinating and linking community medical, social, educational or other resources as required by the target population;

(3) Administrative capacity to ensure quality of services in accordance with tribal, state, and Federal requirements;

(4) Maintain a sufficient number of case managers to ensure access to targeted case management services;

(5) A financial management capacity and system that provides documentation of services and costs;

(6) Capacity to document and maintain Client case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-120-1360, and confidentiality requirements in ORS 192.519–192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable;

(7) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program;

(8) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon;

(9) Enrollment as a TCM provider with the Office of Medical Assistance Programs.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0660**
**Qualifications of Case Managers within Provider Organizations — Federally Recognized Tribal Governments in Oregon**

The following are qualifications of Case Managers within Provider Organizations:

(1) Completion of training in a case management curriculum;

(2) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(3) Skill in interviewing to gather data and complete needs assessment, in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(4) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(5) Knowledge and understanding of these rules and the applicable State Medicaid Plan Amendment.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0680**
**Payment, Methodology, and Billing Instructions and Codes — Federally Recognized Tribal Governments in Oregon**

(1) Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose. Targeted Case Management (TCM) services may not be reimbursed under this rule if the services are case management services funded by Title IV and XX of the Social Security Act, and federal and or state funded parole and probation, or juvenile justice programs.

(2) Payment Methodology for Tribal Targeted Case Management: For the purposes of these TCM rules, "Unit" is defined as a month. A unit consists of at least one documented contact with the Client (or other person acting on behalf of the Client) and any number of documented contacts with other individuals or agencies identified through the case planning process.

(3) Payment for tribal TCM services will be made using a monthly rate based on the total average monthly cost per Client served by the TCM Provider during the last fiscal year for which audited financial statements have been filed with the Department of Human Services (Department). The costs used to derive the monthly tribal TCM rate will be limited to the identified costs divided by the number of Clients served. Tribal TCM provider costs for direct and related indirect costs that are paid by other Federal or State programs must be removed from the cost pool. The cost pool must be updated, at a minimum, on an annual basis using a provider cost report. The rate is established on a prospective basis. In the first year, the rate will be based on estimates of cost and the number of Clients served. For subsequent years, the rate will be based on actual eligible TCM costs from the previous year. A cost report must be submitted to the Department at the end of each state fiscal year (at a minimum), and will be used to establish a new rate for the following fiscal year.

(4) Payment will be made to the enrolled tribal TCM organization as the performing provider for those services provided by the employed staff person.

(5) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, Department of Human Services and the TCM provider and constitutes agreement by the provider to comply with all applicable rules of the Medical Assistance Program, federal and state laws or regulations.

(6) The TCM provider will bill according to OAR 410 division 138 rules. Payments will be made through the Medical Management Information System (MMIS).

(7) Targeted Case Management for the Office of Medical Assistance Programs (OMAP) certified case management providers, is a cost-sharing (Federal Financial Participation matching) program. In addition to the requirements set forth in subsections (1) through (6) of this rule, and pursuant to 42 CFR 433.10, DHS may monthly, but will no less than quarterly, invoice the TCM provider for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The TCM provider shall pay the amount stated in the invoice within 30 days of the date of the invoice:

(a) The TCM provider's share means the tribal funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, tribal funds may be considered as the State's share in claiming federal financial participation if the tribal funds meet the following conditions: The tribal funds are transferred to DHS from a tribal government; and, the tribal funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds;

(b) The TCM provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the TCM provider;

(c) The TCM provider shall submit to OMAP an original signed document certifying that the allowable tribal funds transferred to OMAP (for the non-federal matching share) by the TCM provider under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(8) Failure to timely remit the non-federal share described in subsections (1) will constitute an overpayment, and will make the provider subject to overpayment recoupment or other remedy pursuant to OMAP General Rules, OAR 410-120-1400 through 410-120-1685.

(9) Billing criteria for this program is as follows:

(a) The procedure code to be used for Federally Recognized Tribal Government — Targeted Case Management is "T1017." One of the activities listed below must occur in order to bill. Maximum billing code is one time per month per client:

(A) Assessment;
(B) Case Planning;
(C) Case Plan Implementation;
(D) Case Plan Coordination;
(E) Case Plan Reassessment.

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) Appropriate Diagnosis Code and Modifier must be used.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0700**
**Purpose — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) The Targeted Case Management (TCM) Services Program is a medical assistance program, that leverages Office of Medical Assistance Programs (OMAP) certified Case Management Provider Organization General Funds with matching Federal Funds for Oregon Health Plan (OHP) Medicaid eligible clients. These rules are to be used in conjunction with the OMAP General Rules Program (OAR 410 division 120). The TCM Services rules are designed to assist the Targeted Case Management Provider Organization in matching State and Federal Funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(2) The rules of the Early Intervention/Early Childhood Special Education Targeted Case Management program define Oregon Medicaid's program to reimburse the TCM services provided under Early Intervention/Early Childhood Special Education. This TCM program provides services to eligible preschool children with disabilities, birth until eligible for public school.

(3) EI/ECSE TCM program services include management of non-medical services, which address health, psychosocial, economic, nutritional and other services.

(4) Provision of EI/ECSE TCM program services may not restrict an eligible child's choice of providers. Eligible children must have free choice of available EI/ECSE TCM service providers or other TCM service providers available to the eligible child, subject to 42 USC 1396n. Eligible children must have free choice of the available providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0710**
**Target Group — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) These rules apply to the population of Oregon Health Plan (OHP) Medicaid eligible clients who are preschool children with disabilities, beginning from birth until eligibility for public school, and who are either eligible for Early Intervention services under OAR 581-015-0946(3); or Early Childhood Special Education services under OAR 581-015-0943(4), (EI/ECSE). For the purpose of these rules, children in this target group shall be referred to as "eligible children."

(2) An Oregon Health Plan (OHP) Medicaid-eligible child means a child who has been determined to be eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Department of Human Services.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 409.010
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0720**
**Definitions — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) "Case management" is provided to eligible children in the target group to assist and enable the eligible child to gain access to needed medical, social, educational, developmental and other appropriate services. The case manager (aka service coordinator) is responsible for assisting the child and family in gaining access to and coordinating all services across agency lines and serving as the single point of contact in helping the child and family obtain the services and assistance they need. Case management may be delivered in person, electronically, or by telephone for the purpose of enabling the child and family to gain access to and obtain the needed services. Case management services include:

(a) "Intake and Needs Assessment" — The systematic ongoing collection of data to determine current status and identify needs in physical, environmental, psychosocial, developmental, educational, social, behavioral, emotional, and mobility areas. Data sources include family interview, existing available records, and needs assessment;

(b) "Plan of Care: Development of the Targeted Case Management Plan Coordinated with the Individualized Family Service Plan (IFSP)" — The case manager (service coordinator) develops a targeted case management plan coordinated with the IFSP, in conjunction with the family and other IFSP team members to identify goals, objectives and issues identified through the targeted case management assessment process. Targeted case management case planning includes determining activities to be completed by the case manager, in support of the eligible child and family. These activities include accessing appropriate health and mental health, social, educational, vocational, and transportation services to meet the eligible child's needs.

(2) "Service Coordination and Monitoring":

(a) Linkages — establishing and maintaining a referral process with pertinent individuals and agencies which avoids duplication of services to the eligible child and family;

(b) Planning — Identifying needs, writing goals and objectives, and determining resources to meet those needs in a coordinated, integrated fashion with the family and other IFSP team members;

(c) Implementation — Putting the targeted case management plan into action and monitoring its status;

(d) Support — Support is provided to assist the family to reach the goals of the plan, especially if resources are inadequate or the service delivery system is non-responsive;

(3) "Reassessment and Transitioning Planning": The case manager (service coordinator), in consultation with the family and other IFSP team members, determines whether or not the linked services continue to meet the eligible child and family's needs, and if not, adjustments are made and new or additional referrals are made to adequately meet the defined child and family needs. These services:

(a) Assist families of eligible children in gaining access to EI/ECSE services and other medical or social services identified in the targeted case management plan;

(b) Permit coordinating of EI/ECSE services and other medical or social services (such as medical services for other than diagnostic and evaluation purposes) that the eligible child needs or is being provided;

(c) Assist families in identifying available medical and social service providers;

(d) Permit coordination and monitoring the delivery of available medical or social services;

(e) Inform families of the availability of medical/social services;

(f) Maintain a record of targeted case management activities in each eligible child's record.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 409.010
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0740**
**Provider Organizations — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) Qualifications of EI/ECSE TCM Provider Organizations: TCM Provider organizations must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be a sub-contractor with such a contractor, and must meet the following criteria:

(a) Demonstrated capacity (including sufficient number of staff) to provide TCM services;

(b) Demonstrated Case Management experience in coordinating and linking such community resources as required by the target population;

(c) Demonstrated experience with the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain individual case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-120-1360, and confidentiality requirements in the Individuals with Disabilities Education and Improvement Act, ORS 192.518–192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable;

(g) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Enrollment as a TCM provider with the Office of Medical Assistance Programs.

(2) In addition to the requirements in subsection (1) of this rule, the EI/ECSE TCM Provider must either be a governmental entity or a subcontractor of a government entity. The TCM Provider must submit written documentation that a governmental entity is solely responsible for providing the TCM provider's share from public funds for purposes of OAR 410-138-0780 of this rule. If the TCM provider is a subcontractor of a governmental entity, the documentation shall include a copy of the subcontract that expressly identifies the State of Oregon Department of Human Services as a named third party beneficiary of the governmental entity's obligation to make the public fund payments. Such documentation is subject to approval by DHS.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0760**

**Provider Requirements — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) Qualification of Case Managers (Service Coordinators).

(2) Case Managers (Service Coordinators) must:

(a) Be employees of the EI/ECSE contracting or subcontracting agency and meet the personnel standards requirements in OAR 581-015-1100;

(b) Have demonstrated knowledge and understanding about:

(A) The Oregon EI/ECSE program, including these rules and the applicable State Medicaid Plan Amendment.

(B) The Individuals with Disabilities Education Improvement Act;

(C) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

**410-138-0780**

**Payment, Payment Methodology, and Billing Instructions and Codes — Early Intervention/Early Childhood Special Education Targeted Case Management**

(1) Payment for EI/ECSE TCM services, under these rules, will not duplicate payments made to public or private entities under other program authorities for this same purpose.

(2) Payment Methodology for EI/ECSE Targeted Case Management: Payment for Targeted Case Management will be based on a monthly encounter rate.

(a) The rate for reimbursement of the case management services is computed as follows. Compute the annual case manager salary and fringe benefits, plus other operating cost including travel, supplies, telephone, and occupancy cost, plus direct supervisory cost, plus average indirect administrative cost of provider organization; that will equal the total annual cost per case manager. Then divide by 12; that will equal the monthly cost per case manager. Then divide by the number of children to be served during the month, that will equal the total monthly cost per child.

(b) The total cost, per case manager, is the sum of the case manager's salary, direct supervisory costs, indirect administrative costs of the provider organization and other operating costs such as travel, supplies, occupancy, and telephone usage. Dividing the statewide average cost, per case manager, by twelve (12) months yields the average monthly cost per case manager. Dividing the monthly cost, per case manager, by the number of children to be served during the month results in the total monthly costs per child. This is the encounter rate to be used for the monthly billing whenever a Medicaid eligible client receives a TCM service during that month.

(3) Payment will be made to the enrolled Targeted Case Management Organization as the performing provider for those services provided by the employed staff person.

(4) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, Department of Human Services and the TCM provider and constitutes agreement by the provider to comply with all applicable rules of the Medical Assistance Program, federal and state laws or regulations.

(5) The TCM provider will bill according to OAR 410 division 138 rules. Payments will be made through the Medical Management Information System (MMIS).

(6) Targeted Case Management for TCM Provider organizations certified as eligible to enroll under OAR 410-138-0740 is a cost-sharing (Federal Financial Participation matching) program. In addition to the requirements set forth in subsections (1) through (5) of this rule, and pursuant to 42 CFR 433.10, DHS may monthly, but will no less than quarterly, invoice the governmental TCM provider or the TCM Provider's responsible governmental entity for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The governmental TCM provider or its responsible governmental entity shall pay the amount stated in the invoice within 30 days of the date of the invoice.

(a) The TCM provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to DHS from public agencies; and, the public funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds;

(B) The public funds transferred to DHS may not be derived by the governmental entity from donations or taxes that would not otherwise be recognized as the non-federal share under 42 CFR 433 Subpart B.

(b) The TCM provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the TCM provider;

(c) The governmental TCM provider or its responsible governmental entity shall submit to OMAP an original signed document certifying that the public funds transferred to OMAP (for the non-federal matching share) under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds, and that the transferred funds are not derived from donations or taxes that would not otherwise be recognized as the non-federal share under 42 CFR 433 Subpart B.

(7) Failure to timely remit the non-federal share described in subsection (6) or failure to comply with the public funds requirements of subsection (6) will constitute an overpayment, and will make the provider subject to overpayment recoupment or other remedy pursuant to OMAP General Rules, OAR 410-120-1400 through 410-120-1685. Failure to comply with the public funds requirements in this rule may result in termination of the TCM provider enrollment agreement.

(8) Billing criteria for this program is as follows:

(a) The procedure code to be used is "T2023" for Early Intervention/Early Childhood Special Education — Targeted Case Management. One of the activities listed below must occur in order to bill. Maximum billing code is one time per month per client:

(A) Intake and Needs Assessment;

(B) Plan of Care: Development of the Targeted Case Management Plan Coordinated with the Individual Family Service Plan (IFSP);

(C) Service Coordination and Monitoring;

(D) Reassessment and Transitioning Planning.

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) Diagnosis Code "V62.3" must be used.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06

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**Rule Caption:** Sceening and Selection procedures for Managed Care services.
**Adm. Order No.:** OMAP 3-2006
**Filed with Sec. of State:** 2-7-2006
**Certified to be Effective:** 3-1-06
**Notice Publication Date:** 1-1-06
**Rules Adopted:** 410-141-0010
**Rules Repealed:** 410-141-0010(T)
**Subject:** The Oregon Health Plan (OHP-Division 141) Administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Having temporarily adopted OAR 410-141-0010 in October 2005, OMAP permanently adopted 410-141-0010, effective March 1, 2006, to provide screening and selection procedures for the procurement and solicitation of managed care services.
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-141-0010**

**Prepaid Health Plan Contract Procurement Screening and Selection Procedures**

(1) Basis and scope:

(a) The Department of Human Services (DHS) will use screening and selection procedures to procure Managed Care Services pursuant to ORS 414.725. DHS may award Qualified Managed Care Organizations (MCO) a Contract as a prepaid health plan (PHP) for purposes of administering the Oregon Health Plan (OHP);

(b) The OHP is funded with federal Medicaid funds. DHS will interpret and apply this rule to satisfy federal procurement and contracting requirements in addition to state requirements applicable to contracts with PHPs. DHS will seek prior federal approval of PHP contracts;

(c) For purposes of source selection and screening in the procurement of Managed Care Services, DHS may use:

(A) The Request for Application (RFA) process described in sections (3) through (6) of this rule; or

(B) Any method described in the Department of Justice's (DOJ) Model Rules (chapter 137, division 047) for source selection and procurement process, except for bidding.

(2) In addition to the terms defined in OAR 410-141-0000, the following definitions for screening and selection procedures apply:

(a) Addendum or Addenda — an addition or deletion to, a material change in, or general interest explanation of an RFA;

(b) Application — Documents submitted by an MCO that seeks qualification to be Awarded a Contract. The Applicant is the MCO submitting the Application;

(c) Award — As the context requires, the act or occurrence of DHS' identification of a qualified MCO with which DHS will enter into a Contract;

(d) Closing — The date and time announced in an RFA as the deadline for submitting Applications;

(e) MCO — A corporation, governmental agency, public corporation or other legal entity that operates as a managed health, dental, chemical dependency, physician care, or mental health organization;

(f) Managed Care Services — Capitated Services provided by a PHP pursuant to ORS 414.725;

(g) Offer — A response to an RFA, including all required responses and assurances, and the Certification of Application;

(h) Request for Applications (RFA) — All documents used by DHS for soliciting Applications for qualification in a specific RFA issued by DHS, for one or more categories of Contracts, one or more Service Areas or such other objective as DHS may determine is appropriate for solicitation of Managed Care Services.

(3) RFA Process:

(a) DHS will provide public notice of every RFA on its Web site. The RFA will indicate how prospective Applicants will be made aware of Addenda by posting notice of the RFA on the electronic system for notifying the public of DHS procurement opportunities, or at the option of the requestor, mailing notice of the availability of the RFA to persons that have expressed interest in DHS procurement of Managed Care Services;

(b) The RFA process begins with a public notice of the RFA, which will be communicated with the electronic notification system used by DHS to notify the public of procurement opportunities. A public notice of a RFA shall identify the qualification requirements for the category of contract (e.g., FCHP, DCO, etc.), the designated Service Area(s) where Managed Care Services are requested or other objective that DHS determines appropriate for solicitation of Managed Care Services, and a sample Contract;

(c) DHS will provide notice of any RFA Addenda in a manner intended to foster competition and to make prospective Applicants aware of the Addenda. The RFA will specify how DHS will provide notice of Addenda;

(d) If the RFA so specifies, potential Applicants must submit a letter of intent to DHS within the time period specified in the RFA. The letter of intent does not commit any potential Applicant to apply, however, if required, DHS will not consider Applications from Applicants who do not submit a timely letter of intent;

(e) Submitting the Application — DHS will only consider Applications that are submitted in the manner described in the RFA. Applicants must:

(A) Identify electronic Application submissions as defined in the RFA. DHS is not responsible for any failure attributable to the transmission or receipt of electronic or facsimile Applications, including but not limited to receipt of garbled or incomplete documents, delay in transmission or receipt of documents, or security and confidentiality of data;

(B) Submit Applications, when sent by mail, in a sealed envelope that is marked appropriately.

(C) Ensure DHS receives their Applications at the required delivery point prior to the Closing date, listed in the RFA. DHS will not accept late Applications;

(f) The Application must be completed as described in the RFA. To avoid duplication and burden, DHS may permit a current contractor to submit an abbreviated Application that focuses only on additional or different requirements specific to the new Contract or the new Service Area or capacity or other DHS objective that is the subject of the RFA;

(g) DHS will enter into or renew a Contract only if it determines that the action would be within the scope of the RFA and consistent with the effective administration of the OHP, including but not limited to:

(A) The capacity of any existing PHP(s) in the Service Area compared to the capacity of an additional PHP for the number of potential enrollees in the Service Area;

(B) The potential opportunity for Clients to have a choice of more than one PHP;

(h) Disclosure of Application Contents and Release of Information:

(A) Application information, including the letter of intent, shall not be disclosed to any Applicant (or other person) until the completion of the RFA process. The RFA process shall be considered complete when a Contract has been Awarded. No information will be given to any Applicant (or other person) relative to their standing with other Applicants during the RFA process;

(B) Application information shall be subject to disclosure upon the Award date, with the exception of information that has been clearly identified and labeled "Confidential" under ORS 192.501–192.502, insofar as DHS determines it meets the requirements for an exemption from disclosure;

(C) Any requestor shall be able to obtain copies of non-exempt information after the RFA process has been completed. The requestor shall be responsible for the time and material expense associated with the request. This fee includes the copying of the document(s) and the staff time (and agency attorney time, if requested by DHS) associated with performing the task, in accordance with ORS 192.440(3). DHS may require prepayment of estimated charges before acting on a request;

(i) Protests must be submitted, in writing, to DHS prior to the protest date specified in the RFA. The protest shall state the reasons for the protest or request and any proposed changes to the RFA provisions, specifications or contract terms and conditions that the prospective Applicant believes will remedy the conditions upon which the protest is based. Protests and judicial review of the RFA shall be handled using the process set forth in OAR 137-047-0730;

(j) DHS is not obligated to enter into a Contract with any Applicant, and further, has no financial obligation to any Applicant.

(4) Application for qualification:

(a) An MCO seeking qualification as a PHP must meet the requirements and provide the assurances specified in the RFA. DHS determines whether the MCO qualifies based on the Application and any additional information and investigation that DHS may require.

(b) DHS determines an MCO is qualified when the MCO meets the requirements of the RFA, including written assurances, satisfactory to DHS, that the MCO:

(A) Provides or will provide the services described in the Contract;

(B) Provides or will provide the health services described in the Contract in the manner described in the Contract;

(C) Is organized and operated, and will continue to be organized and operated, in the manner required by the Contract and described in the Application;

(D) Under arrangements that safeguard the confidentiality of patient information and records, will provide to DHS, CMS, the Office of Inspector General, the Oregon Secretary of State, and the Oregon Medicaid Fraud Unit of the DOJ, or any of their duly authorized representatives, for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the MCO relating to its operation as a PHP and to any facilities that it operates; and

(E) Will continue to comply with any other assurances it has given DHS.

(c) DHS may determine that an MCO is potentially qualified if within a specified period of time the MCO is reasonably susceptible of being made qualified. DHS is not obligated to determine whether an Applicant is potentially qualified if, in its discretion, DHS determines that sufficient qualified Applicants are available to obtain DHS' objectives under the RFA. DHS determines that an MCO is potentially qualified if:

(A) DHS finds that the MCO is reasonably susceptible to meeting the operational and solvency requirements of the Application within a specified period of time; and

(B) The MCO enters into discussions with DHS about areas of qualification that must be met before the MCO is operationally and financially qualified. DHS will determine the date and required documentation and written assurances required from the MCO;

(C) If DHS determines that a potentially qualified Applicant cannot become a qualified MCO within the time announced in the RFA for Contract Award, DHS may:

(i) Offer the Contract at a future date when the Applicant demonstrates, to DHS' satisfaction, that the Applicant is a qualified MCO within the scope of the advertised RFA; or

(ii) Inform the Applicant that it is not qualified for Contract Award.

(5) Evaluation and determination procedures:

(a) DHS evaluates an Application for qualification on the basis of information contained in the RFA, the Application and any additional infor-

mation that DHS obtains. Evaluation of the Application will be based on the criteria in the RFA;

(b) DHS will notify each MCO that applies for qualification of its qualification status;

(c) Review of DHS' qualification decisions shall be as set forth in ORS 279B.425;

(d) DHS may enter into negotiation with qualified or potentially qualified Applicants concerning potential capacity and enrollment in relation to other available, or potentially available, capacity and the number of potential enrollees within the Service Area. DHS may determine that it will limit Contract Award(s) to fewer than the number of qualified or potentially qualified Applicants, to achieve the objectives in the RFA.

(6) Contract award conditions:

(a) The Applicant's submission of the Application with the executed Certification of Application is the MCO's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Applicant for DHS' acceptance for the period specified in the RFA. DHS' Award of the Contract constitutes acceptance of the Offer and binds the Applicant to the Contract;

(b) No Contingent Offers. Except to the extent the Applicant is authorized to propose certain terms and conditions pursuant to the RFA, an MCO shall not make its Offer contingent upon DHS' acceptance of any terms or conditions other than those contained in the RFA;

(c) By timely signing and submitting the Application and Certification of Application, the Applicant acknowledges that it has read and understands the terms and conditions contained in the RFA and that it accepts and agrees to be bound by the terms and conditions of the RFA;

(d) DHS may Award multiple Contracts in accordance with the criteria set forth in the RFA. DHS may make a single Award or limited number of Awards rather than multiple Awards to all qualified or potentially qualified Applicants, in order to meet DHS' needs including but not limited to adequate capacity for the potential enrollees in the Service Area;

(e) An Applicant who claims to have been adversely affected or aggrieved by DHS Contract Award or intent to Award a Contract must file a written protest with the DHS issuing office within seven (7) calendar days after receiving the notice of Award. Protests and judicial review of Contract Award shall be handled using the procedures set forth in OAR 137-047-9740.

(7) Applicability of DOJ Model Rules: Except where inconsistent with the preceding sections of this rule, DHS will use the following DOJ Model Rules to govern solicitations for Managed Care Services:

(a) OAR 137-046 — General Provisions Related to Public Contracting: OAR 137-046-0100, 137-046-0110 and 137-046-0400 through 137-046-0480;

(b) OAR 137-047 — Public Procurements for Goods or Services: OAR 137-047-0100, 137-047-0260 through 137-047-0330, 137-047-0400 through 137-047-0800.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 51-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 3-2006, f. 2-7-06, cert. ef. 3-1-06

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

**Rule Caption:** Permanently amends school immunizations rules pursuant to 2005 Oregon Laws, Chapter 343 (SB 225).
**Adm. Order No.:** PH 1-2006
**Filed with Sec. of State:** 1-27-2006
**Certified to be Effective:** 1-27-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 333-050-0010, 333-050-0020, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130
**Subject:** Permanently amends rules to incorporate changes made by Senate Bill 225 during the 2005 Oregon Legislative Assembly. Removes requirement that schools issue an exclusion order to transferring students. Allows children to sign their own Certificate of Immunization Status at age 15 years. Requires students attending a four year college or university pursuant to a non-immigrant visa to show documentation of measles vaccination before attending classes.
**Rules Coordinator:** Christina Hartman—(971) 673-1291

**333-050-0010**
**Definitions Used in the Immunization Rules**

As used in OAR 333-050-0010 through 333-050-0140:

(1) "Certificate of Immunization Status" means a form provided or approved by Health Services on which to enter the child's immunization record requiring the following:

(a) Evidence of Immunization signed by the parent, health care practitioner or an authorized representative of the Department; and/or

(b) A written statement of medical or immunity exemption signed by a physician or an authorized representative of the Department; and/or

(c) A written statement of religious exemption signed by the parent; and/or

(d) A written statement of disease history (immunity exemption) for varicella signed by a parent, physician or authorized representative of the Department.

(2) "Certificate of Immunization Status Addendum" means a form provided or approved by Health Services on which to enter the child's immunizations received after the initial series of D/T, polio and MMR. It does not replace the Certificate of Immunization Status form. The Addendum should be attached to the child's original Certificate of Immunization Status form. The dates do not need to be transcribed onto the original Certificate of Immunization Status form.

(3) "Exempted Children's Facility" are those which:

(a) Are primarily supervised training in a specific subject, including, but not limited to, dancing, drama, or music;

(b) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;

(c) Are operated at a facility where children may only attend on a limited basis not exceeding a total of five days per calendar year; or

(d) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(4) "Contraindication" means either a child or a household member's physical condition especially any condition or disease which renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices of the U.S. Public Health Services and the 26th edition, 2003, of the **Red Book** (The Report of the Committee on Infectious Disease, The American Academy of Pediatrics).

(5) "County Immunization Status Form" means a form provided by Health Services to the Department (or school/facility if there is no Department) to report annually to Health Services the number of children as specified, in the area served, and the number susceptible to the vaccine preventable diseases covered by these rules.

(6) "Department" means the District or County Board of Health, Public Health Officer, Public Health Administrator or Health Department having jurisdiction within the area.

(7) "Evidence of Immunization" means an appropriately signed and dated statement indicating at least the month and year each dose of each vaccine was received.

(8) "Exclude" or "Exclusion" means not being allowed to attend a school/facility pursuant to an exclusion order from the Department based on non-compliance with the requirements of ORS 433.267(1), and these rules. Exclusion occurs when records have not been updated by the starting time of the school/facility on the specified exclusion day.

(9) "Exclusion Order for Incomplete Immunization or Insufficient Information" means a form provided or approved by Health Services for the Departments' and Health Services' use in excluding a child whose record is in non-compliance with the vaccine requirements of OAR 333-050-0050(2) or who has insufficient information on his/her record. Forms submitted for approval must contain the substantive content of the Health Services form.

(10) "Exclusion Order for No Record" means a form provided or approved by Health Services for the Departments', Health Services' and schools'/facilities' use in excluding a child with no record. Forms submitted for approval must contain the substantive content of the Health Services form.

(11) "Health Care Practitioner" means a practitioner of the healing arts who has within the scope of the practitioner's license, the authority to order immunizations, to include: M.D., D.O., licensed nurse practitioners with prescription writing privileges, and licensed physicians' assistants with prescription writing privileges who are working under the sponsorship of an M.D., D.O., or a registered nurse working under the direction of an M.D. or a D.O.

(12) "Health Services" means the Oregon Department of Human Services, Health Services, Immunization Program.

(13) "Medical or Immunity Exemption" means a written statement signed by a physician or an authorized representative of the Department that the child should be exempted from receiving specified immunization(s). Medical or Immunity exemptions include both of the following:

(a) "Immunity Exemption" means an exemption due to a disease history based on a health care practitioner's diagnosis or the results of an immune titer. Representatives of the Departments will automatically authorize parental signature for verification of history of varicella. Children with an immunity exemption are counted as complete for the vaccine series they are exempt from.

(b) "Medical Exemption" means an exemption based on a medical diagnosis resulting from a specific medical contraindication. Children with a medical exemption are counted as having a medical exemption and are considered susceptible to the diseases for which they have not received immunizations.

(14) "New Enterer" means a child who meets one of the following criteria:

(a) Infants or preschoolers attending an Oregon facility;

(b) Initially attending a school at the entry level (kindergarten or the first grade, whichever is the entry level);

(c) Initially attending a school/facility from a home-school setting at any grade (preschool through the 12th grade); or

(d) Initially attending a school/facility after entering the United States from a foreign country at any grade (preschool through 12th grade).

(15) "Non-Compliance" means failure to comply with any requirement of ORS 433.267(1) or these rules.

(16) "Primary Review Summary" means a form provided or approved by Health Services to schools/facilities for enclosure with records forwarded to the Department for secondary review and follow up. Forms submitted for approval must contain the substantive content of the Health Services form.

(17) "Private Provider" means any health care practitioner as defined in Section (11) of this rule and not identified as a public provider.

(18) "Public Provider" means county health jurisdictions, their contractees and other governmental entities receiving vaccine from the Immunization Program, Oregon Department of Human Services.

(19) "Record" means a statement relating to compliance with the requirements of ORS 433 .267(1)(a) through (d) and these rules.

(20) "Religion" means any system of beliefs, practices or ethical values.

(21) "Religious Exemption" means a statement signed by a parent that the child has not been immunized as prescribed by OAR 333-050-0050(2), because the child is being reared as an adherent to a religion, the teachings of which are opposed to such immunization.

(22) "School Year" or "SY" means an academic year as adopted by the school or school district (usually September through June).

(23) "Susceptible" means being at risk of contracting one of the diseases covered by these rules, by virtue of being in one, or more of the following categories:

(a) Not being complete on the immunizations required by these rules;

(b) Possessing a medical exemption from any of the vaccines required by these rules due to a specific medical diagnosis based on a specific medical contraindication; or

(c) Possessing a religious exemption for any of the vaccines required by these rules.

(24) "These Rules" means OAR 333-050-0010 through 333-050-0140.

(25) "Transferring Child" means a child who moves from a school within the United States to a school in Oregon, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school.

(26) "Up-to-Date" means currently on schedule and not subject to exclusion, based on the immunization schedule for spacing doses, as prescribed in OAR 333-050-0120.

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

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0021; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0020**
**Purpose and Intent**

(1) The purpose of these rules is to implement ORS 433.235 et seq., which requires evidence of immunization or a medical or a religious exemption for each child as a condition of attendance in any school/facility and which requires exclusion from school/facility attendance until such requirements are met.

(2) The intent of the school/facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either: evidence of immunization or a religious and/or medical or immunity exemption. If age appropriate, required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Varicella, *Haemophilus influenzae* Type b vaccine and Diphtheria/Tetanus containing vaccine. (See OAR 333-050-0120);

(b) A transferring child provide evidence of immunization or an exemption(s), within 30 days of initial attendance; and

(c) A child currently attending not be allowed to continue in attendance without complete, incomplete but up-to-date evidence of immunization or an exemption(s).

(d) The only exception is for family child care homes, either registered or exempt from registration providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These programs are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(3) Nothing prohibits a public school, private school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical and religious exemptions are included and the requirements are in compliance with the United States Public Health Advisory Committee on Immunization Practices recommendations.

(4) Public schools are required to allow transferring students at least 30 days to provide an immunization record.

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0040**
**Statements (Records) Required**

(1)(a) The statement initially documenting evidence of immunization or exemption under ORS 433.267(1)(a) through (c) must be on a Certificate of Immunization Status form. Evidence of immunization shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer. Presigned Certificate of Immunization Status forms without vaccine dates are not allowable. If a Certificate of Immunization Status form is signed but not dated, the person who receives the form at the school or facility should date the form with the date it was received.

(b) The statement documenting evidence of updated immunizations under ORS 433.267(1)(a) through (c) may be on the initial Certificate of Immunization Status form. Evidence of updated immunizations shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer.

(c) The school/facility may choose to complete or update a Certificate of Immunization Status form by transcribing dates from and attaching an already appropriately completed, signed and dated record. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record; or

(d) The parent or school/facility may choose to complete or update a Certificate of Immunization Status form by transcribing dates from and attaching one of the following records listed in (A) through (D). The Certificate of Immunization Status form must be signed and dated by the person transcribing the information. A reference should be made to the attached record on the Certificate of Immunization Status form.

(A) A health care practitioner documented immunization record;

(B) An unsigned record on health care practitioner letterhead;

(C) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT. ALERT records may

be placed in the student's file without transcription onto a Certificate of Immunization Status as long as the printout represents a complete immunization history. If the ALERT record is an update to the Certificate of Immunization Status, it may be attached to the original certificate without transcription; or

(D) A written statement signed and dated by the parent.

(e) When a transferring student enters an Oregon school, the receiving school will attempt to obtain immunization records from the previous school. If immunization records are not immediately available, the receiving school may, according to school policy:

(A) Allow the student to enroll conditionally. If immunization records are not received the school will include the student on the Primary Review Summary report; or

(B) Issue an Exclusion Order for No Record to the parent or guardian with an exclusion date of not less than thirty days after initial attendance. The school is required to provide a copy of the order to the parent either by hand at time of enrollment or by mailing the order at least fourteen days prior to the exclusion date.

(2) If the child transfers to a new school district, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school, the receiving school must assure that the transferred records are on a signed Certificate of Immunization Status form or another Health Services-approved form. The original transferred records that are not on an approved form shall be attached to a Certificate of Immunization Status form and the form shall be marked with a reference to the attached records, signed, and dated by the person transcribing the information on the form.

(3) The records relating to the immunization status of children in schools shall be transferred to the receiving schools pursuant to ORS 326.575(2) within 30 days pursuant to ORS 433.267(1)(d).

(4) When a new enterer is admitted in error to a school or facility without an immunization history or appropriately signed exemption, the school or facility may issue an Exclusion Order for No Record. The exclusion date shall be fourteen days after the date the exclusion order is mailed to the parent.

(5)(a) When a child is determined by the facility, school or school district to be homeless and does not have a completed Certificate of Immunization Status on file with the school, the student will be allowed to enroll conditionally. If immunization records are not received the school will include the student on the Primary Review Summary report. Schools may also choose to issue an Exclusion Order for No Record to the parent with an exclusion date of not less than 30 days after initial attendance.

(b) School staff shall make every effort to help the family compile an immunization record for the student, including requesting a record from a previous school, Oregon Immunization ALERT or a previous medical provider.

(6) Where a child attends both a facility and a school, the school is responsible for reporting and for enforcing these rules in accordance with the school/facility vaccine requirements. However, because of the need for outbreak control when school is not in session, the facility administrator will be responsible for requesting that the parent also provide an up-to-date Certificate of Immunization Status to the facility. If the parent doesn't comply, the facility administrator shall inform the parent that in the event of an outbreak the child will be excluded until it is determined that the child is not susceptible.

(7) When a child reaches the age of medical consent in Oregon, fifteen years of age, the child may sign their own Certificate of Immunization Status.

Stat. Auth.: ORS 433.273
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0030; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0050**
**Immunization Requirements**

(1) For purposes of this section, immunization against the following diseases means receipt of any vaccine licensed by the United States Food and Drug Administration (or their foreign equivalent) for the prevention of that disease.

(2) For purposes of ORS 433.267(1), immunizations are required as follows:

(a) Diphtheria/Tetanus containing vaccine — Four doses, unless:

(A) The fourth dose was received prior to four years of age, in which case a fifth dose is also required*; or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses; or

(C) A child enrolled before SY 1998/99 is complete for Diphtheria/Tetanus containing vaccine with three doses of DTaP, DTP or DT, if the first dose of DTaP, DTP or DT was received at or after the first birthday and the third dose was received at or after the child's fourth birthday.

(b) Polio — Four doses* unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles —The first dose, must be received at or after 12 months of age. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. Second dose, if required, must be received at least 28 days after first dose (See **Table 1**);

(d) Rubella — One dose, must be received at or after 12 months of age.

(e) Mumps — One dose, must be received at or after 12 months of age.

(f) *Haemophilus influenzae* Type b (Hib) vaccine — Up to four doses depending on the child's current age and when previous doses were administered. (See **Table 1** to determine the number of required doses.)

(g) Hepatitis B — Up to three doses (See Table 1). If the first dose was received at or after eleven years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(h) Varicella — Up to two doses, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age and after March 1995, the date the vaccine was licensed in the United States. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. Second dose, if required, must be received at least 28 days after first dose (See Table 1 to determine the number of required doses).

* A child cannot be excluded from school for not having the 5th dose of Diphtheria/Tetanus containing vaccine or 4th dose of Polio until kindergarten.

(3) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(4) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in this rule is not known, this procedure does not satisfy the requirements of these rules.

(5) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services shall give notice in writing to all local health departments when the suspension takes effect. Additional written notice shall be given to all local health departments when the suspension is lifted. Local health departments will notify schools/facilities of any temporary suspensions that affect their procedures under these rules. Any waived vaccine doses will be required at the next review cycle following the lifting of the suspension.

(6) The local public health officer, after consultation with Health Services, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an exclusion order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the Department, with the agreement of Health Services, will not issue exclusion orders for the unavailable vaccine.

(7) Medical or immunity exemptions from immunization requirements are allowed as follows:

(a) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(A) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the Department for a child who has immunity based on a health care practitioner's diagnosis;

(B) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the Department;

(C) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the Department for a child who experienced invasive *Haemophilus influenzae* Type b disease at 24 months of age or older;

(D) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the Department; and

(E) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the Department;

(b) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(A) Exemption for rubella or varicella vaccination may be certified by a physician or an authorized representative of the Department for a postpubertal female when it is believed that there is a significant risk of her being or becoming pregnant within one month for varicella or rubella; and

(B) Exemption for one or more immunization(s), shall be established by a diagnosis based on a specific medical contraindication certified in a letter from the physician or an authorized representative of the Department. The vaccine(s), medical diagnosis, practitioner's name, address and phone number must be documented and attached to the record.

(c) Exemptions submitted to the school/facility must be in English.

(8) A child may attend a school/facility under ORS 433.267(1) if the child is incomplete but up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(9) If evidence is presented to the Department that an exclusion order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the Department shall rescind the exclusion order. The Department shall notify the child's school or facility when an exclusion order is rescinded.

(10) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the Department shall use its judgment to make a final determination of the child's immunization status.

(11) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Parents must select which vaccines a child is being exempted from by checking the appropriate boxes on the Certificate of Immunization Status.

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

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0060**

**Primary Review of Records**

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than five weeks (35 days) prior to the third Wednesday in February unless otherwise approved in writing first by the Department and then by Health Services.

(2) The administrator shall categorize all children as follows:

(a) "Complete": This category applies to any child whose record indicates that he/she is fully immunized as specified by OAR 333-050-0050(2) or (7)(a);

(b) "Religious Exemption": This category applies to any child whose incomplete immunizations are covered by a religious exemption;

(c) "Medical Exemption": This category applies to any child who is susceptible because of a Medical Exemption Statement on file as specified by OAR 333-050-0050(7)(b);

(d) "Incomplete Immunizations": This category applies to any child whose record indicates that he/she is not fully immunized as specified in OAR 333-050-0050(2). This category only includes a child who is past due on his/her immunizations on or before the date the Primary Review Summary form is due at the Department;

(e) "Insufficient Information": This category applies to any child whose record does not have enough information to make a proper determination about the child's immunization status, including unsigned records, vaccine dates before day of birth, dates out of sequence, missing doses in the middle of a vaccine series, more than two doses of a vaccine series given in the same month, dates before vaccine licensure and religious exemptions signed by the parent where no vaccines are specified. This category does not apply to signed but undated records;

(f) "No Record": This category applies to any child with no record on file at the school/facility.

(g) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or school should be counted by the facility or school where they attend the most hours.

(3)(a) Five weeks (35 days) prior to the third Wednesday in February, unless otherwise approved in writing first, by the Department and then by Health Services, the administrator shall provide to the Department for secondary review:

(A) Organized alphabetically within category, copies of records or a computer printout of the records of all children with incomplete immunizations or insufficient information, except where the Department has explicitly indicated to the administrator that the child is not yet due for his/her next immunization. In this case the record or computer printout should not be forwarded for review until the specified secondary review date;

(B) Copies of records of children with a medical or immunity exemption, except those records which:

(i) Are specified in OAR 333-050-0050(7)(a)(D); or

(ii) Have been certified by the Department as having a permanent medical or immunity exemption and are otherwise complete with no further review required.

(C) A completed Primary Review Summary Form, which includes an alphabetical list for each category, including children with no record. The report must include each child's name, current grade level, parent(s) name and current mailing address. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system is an acceptable alternative; and

(D) The administrator shall review the completed Primary Review Summary Form for mathematical accuracy and correct any errors before forwarding the completed Primary Review Summary Form to the Department.

(b) All copies of records provided to the Department for secondary review must contain at least the following: The child's name; date of birth; current grade level; parent(s) name and current mailing address; and evidence of immunization or exemption. A copy of the records or a data processing printout of the records must be used in place of the original record.

(A) The computer printouts and the results from computer generated immunization assessments (computer outputs) must have the prior approval of Health Services. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by Health Services no later than the last working day of November in the year prior to the year in which the primary review reports are due.

(B) The computer printout will be reviewed for essential data elements and the sequence of data elements. Health Services reserves the right to require proof of specific test data and approval by Health Services of the test results as calculated by computerized system.

(C) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional printouts have been approved by Health Services.

(D) Health Services also reserves the right to withdraw computer system approval.

(E) When ORS 433.235 to 433.280 and/or these rules are amended, computer systems must be updated within 120 days. Health Services will then allow 60 days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.

(4) Additional review cycles for incomplete/insufficient records with specific time-frames are allowable if:

(a) Mutually agreed upon by the affected Department and schools/facilities.

(b) Additional exclusion cycles may be required at the direction of the Department or Health Services. Exclusion dates shall be no less than 14 days from the date that the Exclusion Orders are mailed.

(5) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

Stat. Auth.: ORS 433.273
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0040; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0080**
**Exclusion**

(1) The Department may use an Exclusion Order for Incomplete Immunization or Insufficient Information or an Exclusion Order for No Record depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:

(a) No later than 21 days from the date that the secondary review began, the Department shall mail by first class mail an appropriately completed and signed order of exclusion to the parent of each child determined to be out of compliance with these rules. If a student is listed by the school as the "person responsible," the Exclusion Order will be sent to him/her. In the event that the Department has knowledge that the address of the parent, provided on the Primary Review Summary Form is incorrect, the Department shall use all reasonable means to notify the parent, including inquiries to the school/facility administrator and the local Post Office to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child. After all reasonable means have been exhausted, the administrator shall exclude the child on the stated exclusion date. For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the Department shall retain one copy. The Department shall also retain copies of the records of children to be excluded until notification from the school/facility that such children are in compliance.

(b) The Department shall indicate on the Primary Review Summary Form, the status of each child whose records it reviewed and shall submit a copy of that form to the administrator along with copies of Exclusion Orders issued.

(c) The date of exclusion shall be 35 days from the date that the secondary review began. If additional exclusion cycles are conducted, the exclusion dates shall be set at no less than 14 days from the date that the Exclusion Orders are mailed.

(d) For children excluded for insufficient information and/or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1)(d);

(e) For children excluded for no record, compliance will be achieved by submitting to the administrator evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a medical or religious exemption.

(f) When the administrator verifies that the requested information has been provided per the Exclusion Order or that an appropriate medical and/or religious exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school/facility attendance.

(g) On the specified date of exclusion, the administrator shall exclude from school/facility attendance all children so ordered by the Department until the requirements specified by the Department are verified by the administrator.

(h) The Department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.

(2) If children whose records are not updated on the specified exclusion day arrive at their school/facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.

(3) If the excluded children do not meet the requirements specified by the Department and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.

(4) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive, or are otherwise made aware of the records of a child from another school/facility containing an Exclusion Order, which has not been cancelled, shall notify the parent(s) and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.

(5) Twelve days after the mandatory February exclusion date, the administrator shall ensure: that the Primary Review Summary Form returned from the Department is updated by appropriately marking the current status of each child as specified (including children listed as having no record); that the mathematics on the Primary Review Summary Form are accurate; and that a copy of the revised Primary Review Summary Form is forwarded to the Department on that day by first class mail or hand delivery. The administrator shall maintain a file copy of the updated Primary Review Summary Form.

(6) The Department shall review the updated Primary Review Summary Form for mathematical accuracy. Any errors should be corrected by contacting the affected school/facility.

Stat. Auth.: ORS 433.273
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0050; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0090**
**Administrative Hearings for Review of Exclusion Orders**

(1) Each Exclusion Order issued under OAR 333-050-0080 shall contain a notice informing the recipient of the opportunity to obtain an administrative hearing to review the order, pursuant to this rule.

(2) An administrative hearing provides a parent who believes the order to be in error the opportunity to obtain a review in person before the Department. An administrative hearing is not for the purpose of challenging the propriety or validity of the law or rules, nor is it for the purpose of supplementing an existing record. A record may be supplemented at any time without the necessity of an administrative hearing by presentation of the required documentation, pursuant to OAR 333-050-0080(1)(d) and (e).

(3) A request for an administrative hearing shall be made in writing by the parent and must be received by the Department no later than seven (7) days prior to the date set for the exclusion of the child. If not, the right to a hearing shall be deemed waived, unless proof is provided by the parent that the order was not received at least 11 days prior to the date set for the exclusion of the child or that other good cause for the delay exists as determined by the Department. A parent's request for hearing shall explain in what respect the parent believes the order to be in error. The purpose of this explanation by the parent is to identify the issues to be addressed at the hearing and to determine whether there is a possibility of resolving the matter without a hearing. If the explanation is not provided, the Department shall request the parent to, in advance of the hearing, provide the reason. Unless the reason is provided prior to the date of exclusion, the hearing shall be deemed waived.

(4) If prior to the hearing the order of exclusion is found by the Department to be in error, or if prior to the hearing, compliance is achieved pursuant to OAR 333-050-0080(1)(d) and (e), the Exclusion Order may be rescinded without a hearing and formal decision.

(5) The Department shall schedule a requested hearing to commence prior to the date set for exclusion of the child from the school/facility. If it is not possible to do so, the hearing shall be scheduled to commence as soon as possible after the date set for exclusion. When a hearing is scheduled for on or after the date of exclusion, the Department shall provide written notice to the school/facility that the exclusion of the child should be held in abeyance pending a notification of the decision following the hearing. Notification of the date, time, and place of the administrative hearing shall be provided to the parent, together with a copy of this OAR. Notice sent by first class mail will suffice.

(6) The chief administrator of the Department or his or her designee shall be the hearing officer.

(7) The parent or his/her authorized representative shall have the right to:

(a) Inspect in advance of the administrative hearing any documentary evidence leading to the Exclusion Order;

(b) Be represented by legal counsel;

(c) Question and confront witnesses; and

(d) Present evidence that is relevant to the issues in the hearing, either through witnesses or documentary evidence.

(8) The Department shall present the evidence which is the basis for the Exclusion Order at the hearing.

(9) The hearing may be continued for good cause and for reasonable periods as determined by the hearing officer.

(10) The decision arrived at shall:

(a) Be based solely on the evidence presented at the hearing and such matters as the hearing officer takes judicial notice of;

(b) Be written and in a form and substance which either affirms or rescinds the Exclusion Order and which states the reasons and identifies the evidence relied upon for such affirmation or rescission; and

(c) Be maintained as a record of the Department and a copy provided to the parent and to the administrator of the school/facility if the school/facility has been previously notified to hold the order of exclusion in abeyance pending the decision.

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 2-1982, f. & ef. 2-4-82; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0051; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0100**

**Follow Up**

(1) In the event that any of the records are original documents the Department shall return such records to the administrator.

(2) The administrator shall be responsible for updating records each time the parents, health care practitioner, or an authorized representative of the Department provides evidence of immunization and/or a medical or religious exemption on each child.

(3) When a person is diagnosed as having one of the following school/facility restrictable diseases:

(a) Diphtheria, Measles, Pertussis, Rubella, Varicella or, in children's facilities only, Polio, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student and/or employee who is susceptible to that disease.

(b) More information on disease restrictions for schools and facilities can be found in OAR 333-019-0010 and 333-019-0014.

(4) The administrator shall maintain a system to track susceptibles, in case of request by the Department. The Department may request that the list be sorted by disease susceptibility, classroom, grade, and/or school. The administrator will provide the sorted list within one calendar day in order to facilitate appropriate disease control measures.

(5) The Department and/or Health Services may conduct school/facility record validation surveys to insure compliance with ORS 433.235 through 433.280 and these rules.

(6) Health Services may issue exclusion orders as needed for compliance with these rules during the validation survey process and when Health Services is the recognized Public Health Authority in the county.

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0055; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

**333-050-0130**

**Second Dose Measles in Post Secondary Educational Institution**

(1) Health Services shall require each post-secondary educational institution, except a community college and a private, proprietary vocational school, to require that each entering full-time student born on or after January 1, 1957, has two doses of measles vaccine prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) Beginning September 1, 2007, for students subject to subsection (1) of this rule who are attending the institution pursuant to a non-immigrant visa, documentation of measles vaccination must be provided prior to the student attending classes. If the student's first dose of measles vaccine was received less than 30 days prior to attendance, the student has until the beginning of the second term or semester to provide documentation of the second dose.

(3) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between the first and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(4) Each post-secondary educational institution under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption.

(5) Each post-secondary educational institution under the jurisdiction of the law shall develop procedures to implement and maintain this requirement.

(6) Health Services may conduct validation surveys to insure compliance.

(7) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(8) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0080; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06

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**Rule Caption:** Public Water Systems.

**Adm. Order No.:** PH 2-2006

**Filed with Sec. of State:** 1-31-2006

**Certified to be Effective:** 1-31-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 333-061-0020, 333-061-0030, 333-061-0032, 333-061-0036, 333-061-0040, 333-061-0042, 333-061-0043, 333-061-0057, 333-061-0060, 333-061-0070, 333-061-0071, 333-061-0072, 333-061-0090, 333-061-0097, 333-061-0215, 333-061-0220, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0290

**Subject:** The Department of Human Services is permanently amending rules relating to public water systems in order to:

1. Increase fees by adding fee schedules to the rules relating to Cross Connection Control, Water System Plan Review and Water Operator Certifications Programs;

2. Exempt certain plumbers from the certification requirements for backflow assembly testing;

3. Include a direct reporting requirement for drinking water-certified testing laboratories when analyses show that a sample contains contaminant levels in excess of Maximum Contaminant Levels (MCL);

4. Corrections required as a conditional of approval for the previously adopted Environmental Protection Agency (EPA) Long Term 1 Enhanced Surface Water Treatment rule; and

5. Housekeeping and clarifications changes.

**Rules Coordinator:** Christina Hartman—(971) 673-1291

**333-061-0020**

**Definitions**

As used in these rules, unless the context indicates otherwise:

(1) "Act" means the Oregon Drinking Water Quality Act of 1981 (ORS 448.115–448.990 as amended).

(2) "Action Level" means the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a water system is required to complete.

(3) "Administrator" means the Director of the Department of Human Services or his/her designee.

(4) "Approval" or "Approved" means approved in writing.

(5) "Approved Air Gap (AG)" means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressurized receiving vessel. An "Approved Air Gap" shall be at least twice the diameter of the supply pipe measured vertically above the overflow rim of the vessel and in no case less than 1 inch (2.54 cm), and in accord with Oregon Plumbing Specialty Code.

(6) "Approved Backflow Prevention Assembly" means a Reduced Pressure Principle Backflow Prevention Assembly, Reduced Pressure Principle-Detector Backflow Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Pressure Vacuum Breaker Backsiphonage Prevention Assembly, or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, of a make, model, orientation, and size approved by the Department. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, or other testing laboratories using equivalent testing methods, are considered approved by the Department.

(7) "Aquifer" means a water saturated and permeable geological formation, group of formations, or part of a formation that is capable of transmitting water in sufficient quantity to supply wells or springs.

(8) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(9) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(10) "Atmospheric Vacuum Breaker (AVB)" means a non-testable device consisting of an air inlet valve or float check, a check seat and an air inlet port(s). This device is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only. Product and material approval is under the Oregon Plumbing Specialty Code.

(11) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system, which serves the premise in question.

(12) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(13) "AWWA" means the American Water Works Association.

(14) "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any sources other than its intended source, and is caused by backsiphonage or backpressure.

(15) "Backflow Preventer" means a device, assembly or method to prevent backflow into the potable water system.

(16) "Backflow Prevention Assembly" means a backflow prevention assembly such as a Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Reduced Pressure Principle Backflow Prevention Assembly, or Reduced Pressure Principle-Detector Backflow Prevention Assembly and the attached shutoff valves on the inlet and outlet ends of the assembly, assembled as a complete unit.

(17) "Backpressure" means an elevation of pressure downstream of the distribution system that would cause, or tend to cause, water to flow opposite of its intended direction.

(18) "Backsiphonage" means a drop in distribution system pressure below atmospheric pressure (partial vacuum), that would cause, or tend to cause, water to flow opposite of its intended direction.

(19) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the EPA finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

(20) "Bore-Sighted Drain to Daylight" means an unrestricted straight-line opening in an enclosure that vents to grade, and is sized and constructed to adequately drain the full flow discharge from a reduced pressure principle backflow prevention assembly thus preventing any potential for submersion of the assembly.

(21) "Bottled Water" means potable water from a source approved by the Department for domestic use which is placed in small, easily transportable containers.

(22) "Calculated Fixed Radius" means a technique to delineate a wellhead protection area, based on the determination of the volume of the aquifer needed to supply groundwater to a well over a given length of time.

(23) "CFR" means the Code of Federal Regulations. Specifically, it refers to those sections of the code which deal with the National Primary and Secondary Drinking Water Regulations.

(24) "Check Valve" means a valve, which allows flow in only one direction.

(25) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

(26) "Coliform-Positive" means the presence of coliform bacteria in a water sample.

(27) "Community Water System" means a public water system that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents.

(28) "Compliance Cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001.

(29) "Compliance Period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third from January 1, 1999 to December 31, 2001.

(30) "Comprehensive performance evaluation (CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: Assessment of plant performance; evaluations of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(31) "Conceptual Model" means a three-dimensional representation of the groundwater system, including the location and extent of the hydrogeologic units, areas of recharge and discharge, hydrogeologic boundaries and hydraulic gradient.

(32) "Confined Well" means a well completed in a confined aquifer. More specifically, it is a well which produces water from a formation that is overlain by an impermeable material of extensive area. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(33) "Confluent Growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(34) "Constructed Conveyance" means any human-made conduit such as ditches, culverts, waterways, flumes, mine drains, canals or any human-altered natural water bodies or waterways as determined by the Department.

(35) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water that creates a health hazard.

(36) "Contingency Plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a loss of capacity to supply water to the distribution system or in case of a fire, explosion or release of hazardous waste which could threaten human health or the environment.

(37) "Corrosion Inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(38) "Cross Connection" means any actual or potential unprotected connection or structural arrangement between the public or user's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substances other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel, or change-over devices, and other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

(39) "CT" means the product of the residual disinfectant concentration "C" (measured in mg/l) and disinfectant contact time(s), "T" (measured in minutes).

(40) "Degree of Hazard" means either pollution (non-health hazard) or contamination (health hazard) and is determined by an evaluation of hazardous conditions within a system.

(41) "Delineation" means the determination of the extent, orientation and boundaries of a wellhead protection area using factors such as geology, aquifer characteristics, well pumping rates and time of travel.

(42) "Demonstration Study" means a series of tests performed to prove an overall effective removal and/or inactivation rate of a pathogenic organism through a treatment or disinfection process.

(43) "Department" means the Oregon Department of Human Services (DHS).

(44) "Discharge" means the volume rate of loss of groundwater from the aquifer through wells, springs or to surface water.

(45) "Disinfectant Contact Time" means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfection residual measurement to a point before or at the point where residual disinfectant concentration is measured.

(46) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(47) "Disinfection profile" means a summary of *Giardia lamblia* inactivation through the treatment plant.

(48) "Distribution System" means the network of pipes and other facilities, which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.

(49) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(50) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(51) "Double Check-Detector Backflow Prevention Assembly (DCDA)" means a specially designed assembly composed of a line size approved double check valve assembly assembled with a bypass containing a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard.

(52) "Double Check Valve Backflow Prevention Assembly (DC)" means an assembly of two independently acting approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly is designed to protect against a non-health hazard.

(53) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(54) "Drinking Water Protection" means implementing strategies within a drinking water protection area to minimize the potential impact of contaminant sources on the quality of water being used as a drinking water source by a Public Water System.

(55) "Drinking Water Protection Area (DWPA)" means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake's, reservoir's or stream's watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Department.

(56) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(57) "Effective Corrosion Inhibitor Residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(58) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(59) "Element" means one of seven objectives considered by the U.S. EPA as the minimum required components in any state wellhead protection program: specification of duties, delineation of the wellhead protection area, inventory of potential contaminant sources, specification of management approaches, development of contingency plans, addressing new (future) wells, and ensuring public participation.

(60) "Emergency" means a condition resulting from an unusual calamity such as a flood, storm, earthquake, drought, civil disorder, volcanic eruption, an accidental spill of hazardous material, or other occurrence which disrupts water service at a public water system or endangers the quality of water produced by a public water system.

(61) "Emergency Response Plan" means a written document establishing contacts, operating procedures, and actions taken for a public water system to minimize the impact or potential impact of a natural disaster, accident, or intentional act which disrupts or damages, or potentially disrupts or potentially damages the public water system or drinking water supply, and returns the public water system to normal operating condition.

(62) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(63) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(64) "EPA" means the United States Environmental Protection Agency.

(65) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from start-up to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(66) "Filtration" means a process for removing particulate matter from water through porous media.

(a) "Conventional Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix), flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(b) "Direct Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix) and filtration but excluding sedimentation resulting in substantial particulate removal.

(c) "Slow Sand Filtration" means a treatment process involving passage of raw water through a bed of sand at low velocity (generally less than 235 gallons per square foot per day) resulting in substantial particulate removal by physical and biological mechanisms.

(d) "Diatomaceous Earth Filtration" means a process resulting in substantial particulate removal in which:

(A) A precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and

(B) While the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, in order to maintain the permeability of the filter cake.

(67) "First Customer" means the initial service connection or tap on a public water supply after any treatment processes.

(68) "First Draw Sample" means a one-liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

(69) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(70) "Future Groundwater Sources" means wells and/or springs that may be required by the public water system in the future to meet the needs of the system.

(71) "GAC 10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

(72) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(73) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(74) "Groundwater under the direct influence of surface water (GWUDI)" means any water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium,* or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(75) "Haloacetic acids (five) (HAA5)" mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.

(76) "Hauled Water" means water for human consumption transported from a Public Water System in a manner approved by the Department.

(77) "Health Hazard (Contamination)" means an impairment of the quality of the water that could create an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, or other substances.

(78) "Human Consumption" means water used for drinking, personal hygiene bathing, showering, cooking, dishwashing and maintaining oral hygiene.

(79) "Hydraulic Conductivity" means the capacity of the medium, e.g., soil, aquifer, or any hydrogeological unit of interest, to transmit water.

(80) "Hydraulic Connection" refers to a well, spring or other groundwater collection system in which it has been determined that part of the water supplied by the collection system is derived, either naturally or induced, from a surface water source.

(81) "Hydraulic Gradient" means the slope of the water table or potentiometric surface, calculated by dividing the change in hydraulic head between two points by the horizontal distance between the points in the direction of groundwater flow.

(82) "Hydraulic Head" means the energy possessed by the water mass at a given point, related to the height above the datum plane that water resides in a well drilled to that point. In a groundwater system, the hydraulic head is composed of elevation head and pressure head.

(83) "Hydrogeologic Boundary" means physical features that bound and control direction of groundwater flow in a groundwater system. Boundaries may be in the form of a constant head, e.g. streams, or represent barriers to flow, e.g. groundwater divides and impermeable geologic barriers.

(84) "Hydrogeologic Mapping" means characterizing hydrogeologic features (e.g. hydrogeologic units, hydrogeologic boundaries, etc.) within an area and determining their location, areal extent and relationship to one another.

(85) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(86) "Impermeable Material" means a material that limits the passage of water.

(87) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(88) "Infiltration Gallery" means a system of perforated pipes laid along the banks or under the bed of a stream or lake installed for the purpose of collecting water from the formation beneath the stream or lake.

(89) "Initial Compliance Period" means the 1993–95 three-year compliance period for systems with 150 or more service connections and the 1996–98 three-year compliance period for systems having fewer than 150 service connections for the contaminants prescribed in OAR 333-061-0036(2)(a)(A)(v), 333-061-0036(3)(a)(J) and (3)(c)(N).

(90) "Interfering Wells" means wells that, because of their proximity and pumping characteristics, and as a result of the aquifer's hydraulic properties, produce drawdown cones that overlap during simultaneous pumping. The result is a lowering of the pumping level in each well below what it would be if that well were pumping by itself.

(91) "Inventory of Potential Contaminant Sources" means the reconnaissance level location of land use activities within the Drinking Water Protection Area that as a category have been associated with groundwater or surface water contamination in Oregon and elsewhere in the United States.

(92) "Lead Free" when used with respect to solders and flux shall mean solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and fittings shall mean pipes and fittings containing not more than 8.0 percent lead. When used with respect to plumbing fittings and fixtures intended for dispensing water for human consumption shall mean in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) and ANSI/NSF standard 61, section 9.

(93) "Lead Service Line" means a service line made of lead, which connects the water main to the building inlet and any pigtail, gooseneck or other fitting, which is connected to such lead line.

(94) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(95) "Local Administrative Authority" means the individual official, board, department or agency established and authorized by a state, county or city to administer and enforce the provisions of the Oregon State Plumbing Specialty Code adopted under OAR 918-750-0110.

(96) "Major Additions or Modifications" means changes of considerable extent or complexity including, but not limited to, projects involving water sources, treatment facilities, facilities for continuous disinfection, finished water storage, pumping facilities, transmission mains, and distribution mains, except main replacements of the same length and diameter.

(97) "Man-made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in **Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69,** except the daughter products of Thorium-232, Uranium-235 and Uranium-238.

(98) "Master Plan" means an overall plan, which shows the projected development of a distribution system and alternatives for source development.

(99) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the user's of a public water system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(100) "Maximum Residual Disinfectant Level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(101) "Multi-purpose Piping System" means a piping system within residential dwellings intended to serve both domestic and fire protection needs. This type of system is considered part of a potable water system.

(102) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(103) "Non-Health Hazard (Pollution)" means an impairment of the quality of the water to a degree that does not create a hazard to the public health, but does adversely affect the aesthetic qualities of such water for potable use.

(104) "Non-Transient Non-Community Water System (NTNC)" means a public water system that is not a Community Water System and that regularly serves at least 25 of the same persons over 6 months per year.

(105) "Open Interval" means in a cased well, the sum of the length(s) of the screened or perforated zone(s) and in an uncased (open-hole) well, the sum of the thickness(es) of the water-bearing zones or, if undeterminable, 10 percent of the length of the open hole.

(106) "Optimal Corrosion Control Treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(107) "Pathogenic" means a specific agent (bacterium, virus or parasite) causing or capable of causing disease.

(108) "Peak Daily Demand" means the maximum rate of water use, expressed in gallons per day, over the 24-hour period of heaviest consumption.

(109) "Permit" means official permission granted by the Department for a public water system which exceeds maximum contaminant levels to delay, because of economic or other compelling factors, the installation of water treatment facilities which are necessary to produce water which does not exceed maximum contaminant levels.

(110) "Person" means any individual, corporation, association, firm, partnership, municipal, state or federal agency, or joint stock company and includes any receiver, special master, trustee, assignee, or other similar representative thereof.

(111) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(112) "Pilot Study" means the construction and operation of a scaled down treatment system during a given period of time to determine the feasibility a full-scale treatment facility.

(113) "Plug Flow" means movement of water in a pipe such that particles pass through the pipe and are discharged in the same sequence in which they entered.

(114) "Point of Delivery (POD)" means the point of connection between a public water system and the user's water system. Beyond the point of delivery, the Oregon Plumbing Specialty Code applies. See "Service Connection."

(115) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(116) "Point-of-Entry Treatment Device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(117) "Point-of-Use Treatment Device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(118) "Pollutant" means a substance that creates an impairment of the quality of the water to a degree which does not create a hazard to the public health, but which does adversely affect the aesthetic qualities of the water.

(119) "Porous Media Assumption" means the assumption that groundwater moves in the aquifer as if the aquifer were granular in character, i.e. moves directly down-gradient, and the velocity of the groundwater can be described by Darcy's Law.

(120) "Potable Water." See Safe Drinking Water.

(121) "Potential Contaminant Source Inventory" means the determination of the location within the wellhead protection area of activities known to use or produce materials that can contaminate groundwater.

(122) "Potential Cross Connection" means a cross connection that would most likely occur, but may not be taking place at the time of an inspection.

(123) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(124) "Premise" means real estate and the structures on it.

(125) "Premise Isolation" means the practice of protecting the public water supply from contamination or pollution by installing backflow prevention assemblies at, or near, the point of delivery where the water supply enters the premise. Premise isolation does not guarantee protection to persons on the premise.

(126) "Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB)" means an assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. This assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under backsiphonage conditions only.

(127) "Provisional Delineation" means approximating the wellhead protection area for a well by using the wellhead protection area from another well in the same hydrogeologic setting or by using generalized values for the aquifer characteristics to generate an approximate wellhead protection area for the well. Used only for the purpose of evaluating potential siting of new or future groundwater sources. Not an acceptable way to formally delineate a wellhead protection area.

(128) "Public Health Hazard" means a condition, device or practice which is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and which presents an unreasonable risk to health.

(129) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day. Public water system also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community Water System," a "Transient Non-Community Water System," a "Non-Transient Non-Community Water System" or a "State Regulated Water System."

(130) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system.

(131) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(132) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(133) "Recovery" means the rise in water level in a well from the pumping level towards the original static water level after pumping has been discontinued.

(134) "Reduced Pressure Principle Backflow Prevention Assembly (RP)" means an assembly containing two independently acting approved check valves, together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard.

(135) "Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)" means a specifically designed assembly composed of a line size approved reduced pressure principle backflow prevention assembly with a bypass containing a specific water meter and an approved reduced pressure principle backflow prevention assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard or a health hazard.

(136) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(137) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(138) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(139) "Responsible Management Authority" means the Public Water System whose water supply is being protected and any government entity having management, rule or ordinance-making authority to implement wellhead protection management strategies within the wellhead protection area. The Responsible Management Authority is responsible for implementation of the Wellhead Protection Plan and includes cities, counties, special districts, Indian tribes, state/federal entities as well as public water systems.

(140) "Safe Drinking Water" means water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.

(141) "Sanitary Survey" means an on-site review of the water source, watershed, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the capability of the water system to produce and distribute safe drinking water.

(142) "Secondary Contaminant" means those contaminants, which, at the levels generally found in drinking water, do not present an unreasonable risk to health, but do:

(a) Have adverse effects on the taste, odor and color of water; and/or

(b) Produce undesirable staining of plumbing fixtures; and/or

(c) Interfere with treatment processes applied by water suppliers.

(143) "Secondary Maximum Contaminant Level (SMCL)" means the level of a secondary contaminant which when exceeded may adversely affect the aesthetic quality of the drinking water which thereby may deter public acceptance of drinking water provided by public water systems or may interfere with water treatment methods.

(144) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(145) "Sensitivity" means the intrinsic characteristics of a drinking water source such as depth to the aquifer for groundwater or highly erodible soils in a watershed that increase the potential for contamination to take place if a contaminant source is present.

(146) "Service Connection" means the piping connection by means of which water is conveyed from a distribution main of a public water system to a user's premise. For a community water system, the portion of the service connection that conveys water from the distribution main to the user's property line, or to the service meter, where provided, is under the jurisdiction of the water supplier.

(147) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(148) "Single Family Structure" means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(149) "Source Water Assessment" means the information compiled by the Department and the Department of Environmental Quality (DEQ), consisting of the delineation, inventory and susceptibility analyses of the drinking water source, which enable public water systems to develop and implement drinking water protection plans.

(150) "Specific Ultraviolet Absorption (SUVA) at 254 nanometers" means an indicator of the humic content of water as a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (UV254) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(151) "Spill Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB)" means an assembly containing an independently operating, internally loaded check valve and independently operating

loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with a properly located resilient seated test cock, a properly located bleed/vent valve, and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

(152) "Spring" means a naturally occurring discharge of flowing water at the ground surface, or into surface water. Springs can be derived from groundwater or they can be surface water influenced.

(153) "Stand-alone Fire Suppression System" means a piping system within a premise intended to only serve as a fire protection system separated from the potable water system.

(154) "State Regulated Water System" means a public water system, which serves 4 to 14 service connections or serves 10 to 24 people. Monitoring requirements for these systems are the same as those for Transient Non-Community water systems.

(155) "Static Water Level" means the vertical distance from ground surface to the water level in the well when the well is at rest, i.e., the well has not been pumped recently and the water level is stable. The natural level of water in the well.

(156) "Surface Water" means all water, which is open to the atmosphere and subject to surface runoff.

(157) "Susceptibility" means the potential, as a result of the combination of land use activities and source water sensitivity that contamination of the drinking water source may occur.

(158) "Team" means the local Wellhead Protection team, which includes representatives from the Responsible Management Authorities and various interests and stakeholders potentially affected by the Wellhead Protection Plan.

(159) "Thermal Expansion" means the pressure increase due to a rise in water temperature that occurs in water piping systems when such systems become "closed" by the installation of a backflow prevention assembly or other means, and will not allow for expansion beyond that point of installation.

(160) "These Rules" means the Oregon Administrative Rules encompassed by OAR 333-061-0005 through 333-061-0098.

(161) "Time-of-Travel (TOT)" means the amount of time it takes groundwater to flow to a given well. The criterion that effectively determines the radius in the calculated fixed radius method and the up-gradient distance to be used for the analytical and numerical models during delineation of the wellhead protection area.

(162) "Too Numerous To Count (TNTC)" means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform bacteria detection.

(163) "Total Organic Carbon (TOC)" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

(164) "Transient Non-Community Water System" means a public water system that serves a transient population of 25 or more persons.

(165) "Turbidity" means a measure of the cloudiness of water caused by suspended particles. The units of measure for turbidity are nephelometric turbidity units (NTU).

(166) "Unconfined Well" means a well completed in an unconfined aquifer. More specifically, a well which produces water from a formation that is not overlaying by impermeable material. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(167) "University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR)" is an agency that conducts laboratory and field tests to evaluate and grant "Certificates of Approval" to backflow prevention assemblies meeting approved standards.

(168) "Vadose Zone" means the zone between the ground surface and the water table where the available open spaces between soil and sediment particles, in rock fractures, etc., are most filled with air.

(169) "Variance" means official permission granted by the Department for public water systems to exceed maximum contaminant levels because the quality of the raw water is such that the best available treatment techniques are not capable of treating the water so that it complies with maximum contaminant levels, and there is no unreasonable risk to health.

(170) "Vault" means an approved enclosure above or below ground to house a backflow prevention assembly that complies with the local administrative authority having jurisdiction.

(171) "Virus" means a virus of fecal origin, which is infectious to humans by waterborne transmission.

(172) "Waiver" means official permission from the Department for a public water system to deviate from the construction standards set forth in these rules.

(173) "Water-bearing Zone" means that part or parts of the aquifer encountered during drilling that yield(s) water to a well.

(174) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the Department.

(175) "Water Supplier" means a person, group of persons, municipality, district, corporation or other entity, which owns or operates a public potable water system.

(176) "Water Source" means any lake, stream, spring, groundwater supply, impoundment or other source of water from which water is obtained for a public water system. In some cases, a public water system can be the source of supply for one or more other public water systems.

(177) "Water System" means a system for the provision of piped water for human consumption.

(178) "Water System Operations Manual" means a written document describing the actions and procedures necessary to operate and maintain the entire water system.

(179) "Water Table" means the upper surface of an unconfined aquifer, the surface of which is at atmospheric pressure and fluctuates seasonally. It is defined by the levels at which water stands in wells that penetrate the aquifer.

(180) "Well" means an artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn or injected, provided that this definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas.

(181) "Wellfield" means two or more drinking water wells, belonging to the same water system that are within 2,500 feet, or as determined by the Department, and produce from the same and no other aquifer.

(182) "Wellhead Protection" see Drinking Water Protection.

(183) "Wellhead Protection Area (WHPA)" see Drinking Water Protection Area.

(184) "Wellhead Protection Plan" see Drinking Water Protection Plan.

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

Stat. Auth.: ORS 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273 & 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 10-1981, f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0205, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0030**

**Maximum Contaminant Levels and Action Levels**

(1) Maximum contaminant levels (MCLs) and Action Levels (ALs) for inorganic chemicals are applicable to all Community and Non-transient Non-community water systems and are listed in Table 1. The MCL for Fluoride is applicable only to Community Water Systems and the MCL for Nitrate is applicable to all water systems.

Table 1

**Contaminant — MCL (mg/l); — Action Level (mg/l);**

Antimony — 0.006
Arsenic — 0.010
Asbestos — 7 MFL*
Barium — 2
Beryllium — 0.004
Cadmium — 0.005
Chromium — 0.1
Copper — 1.3
Cyanide — 0.2
Fluoride — 4.0
Lead — 0.015
Mercury — 0.002
Nickel — MCL being re-evaluated by EPA
Nitrate (as N) — 10
Nitrite (as N) — 1
Total Nitrate + Nitrite (as N ) — 10
Selenium — 0.05
Thallium — 0.002
*MFL = million fibers per liter > 10 um

(a) Compliance with the maximum contaminant levels for inorganic contaminants is calculated pursuant to OAR 333-061-0036(2)(j).

(b) Violations of secondary contaminant levels for fluoride (2.0 mg/l) require a special public notice. Refer to OAR 333-061-0042(7).

(c) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L). The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(A) The 90th percentile lead and copper levels shall be computed as follows: The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken. The number of samples taken during the monitoring period shall be multiplied by 0.9. The contaminant concentration in the numbered sample yielded by this calculation is the 90th percentile contaminant level.

(B) For water systems serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(2) Maximum contaminant levels for organic chemicals:

(a) The maximum contaminant levels for synthetic organic chemicals are shown in Table 2 and apply to all Community and Non-Transient Non-Community water systems:

Table 2
Contaminant — MCL, mg/l
Alachlor — 0.002
Atrazine — 0.003
Benzo(a)pyrene — 0.0002
Carbofuran — 0.04
Chlordane — 0.002
Dalapon — 0.2
Dibromochloropropane — 0.0002
Dinoseb — 0.007
Dioxin(2,3,7,8-TCDD) — 0.00000003
Diquat — 0.02
Di(2-ethylhexyl)adipate — 0.4
Di(2-ethylhexyl)phthalate — 0.006
Endothall — 0.1
Endrin — 0.002
Ethylene Dibromide — 0.00005
Glyphosate — 0.7
Heptachlor — 0.0004
Heptachor epoxide — 0.0002
Hexachlorobenzene — 0.001
Hexachlorocyclopentadiene — 0.05
Lindane — 0.0002
Methoxychlor — 0.04
Oxamyl(Vydate) — 0.2
Picloram — 0.5
Polychlorinated Biphenyls — 0.0005
Pentachlorophenol — 0.001
Simazine — 0.004
Toxaphene — 0.003
2,4-D — 0.07
2,4,5-TP Silvex — 0.05

Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(a)(G).

(b) The maximum contaminant level for Total Trihalomethanes (TTHM) consists of a calculation of the running annual average of quarterly analyses of the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane0 (chloroform).

(A) Compliance with the MCL shall be calculated pursuant to OAR 333-061-0036(3)(b)(B).

(B) The MCL for TTHM and HAA5 compounds applies to all Community and Non-transient Non-community water systems using surface water or groundwater under the influence of surface water to which a disinfectant other than UV light is added to the water supply at any point in the drinking water treatment process. The MCLs for these compounds are specified in Table 3 as follows:

Table 3
Disinfection Byproduct — MCL in mg/l
Total Trihalomethanes (TTHM) — 0.080
Haloacetic acids (five) (HAA5) — 0.060
Bromate — 0.010
Chlorite — 1.0

Any system having either a TTHM running annual average greater than or equal to 0.064 mg/l or an HAA5 running annual average greater than or equal to 0.048 mg/l must conduct disinfection profiling as determined by the Department in accordance with the USEPA Disinfection Profiling and Benchmarking Guidance Manual for systems serving at least 10,000 people or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual for systems serving less than 10,000 people. For systems serving at least 10,000 people, the profile is based on daily inactivation rate calculations over a period of 12 consecutive months. If the water system uses chloramines, ozone, or chlorine dioxide as a primary disinfectant, the log inactivation for viruses must be calculated and an additional disinfection profile must be developed using a method approved by the Department. The water system must retain the disinfection profile data in graphic form, such as a spreadsheet, which must be available for review by the Department as part of a sanitary survey or other field visit contact.

(C) Water systems serving surface water or groundwater under direct influence required to conduct a disinfection profile by paragraph (2)(b)(C) of this rule serving less than 10,000 people must monitor the following parameters to determine the total log inactivation once per week on the same calendar day over twelve consecutive months:

(i) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(ii) The pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow for systems using chlorine;

(iii) The disinfectant contact time(s) ("T") during peak hourly flow; and

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

(D) Water systems with only one point of disinfection application must determine one inactivation ration ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow or must determine successive ($CT_{calc}/CT_{99.9}$) values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow (where the total inactivation ratio equals the sum of the ($CT_{calc}/CT_{99.9}$) values for each sequence. Water systems using more than one point of disinfection application before the first customer must determine the ($CT_{calc}/CT_{99.9}$) value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow conditions. Once the total inactivation ratio is calculated, multiply the value by 3 to determine the log inactivation of *Giardia lamblia*. Additional guidance is contained in the USEPA Disinfection Profiling and Benchmarking Guidance Manual for systems serving at least 10,000 people or USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual for systems serving less than 10,000 people.

(c) The maximum contaminant level for volatile organic chemicals are indicated in Table 4 and apply to all Community and Non-Transient Non-Community water systems:

Table 4
Contaminant — MCL, mg/l
Benzene — 0.005
Carbon tetrachloride — 0.005
Cis-1,2-Dichloroethylene — 0.07
Dichloromethane — 0.005
Ethylbenzene — 0.7
Monochlorobenzene — 0.1
0-Dichlorobenzene — 0.6
P-Dichlorobenzene — 0.075
Styrene — 0.1
Tetrachloroethylene(PCE) — 0.005
Toluene — 1.
Trans-1,2-Dichloroethylene — 0.1
Trichloroethylene (TCE) — 0.005
Vinyl chloride — 0.002
Xylenes(total) — 10.
1,1-Dichloroethylene — 0.007
1,1,1-Trichloroethane — 0.2
1,1,2-Trichloroethane — 0.005
1,2-Dichloroethane — 0.005
1,2-Dichloropropane — 0.005
1,2,4-Trichlorobenzene — 0.07

Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(c)(K).

(d) When the Department has reason to believe that a water supply has been contaminated by a toxic organic chemical, it will determine whether a public health hazard exists and whether control measures must be carried out;

(e) The Department may establish maximum contaminant levels for additional organic chemicals as deemed necessary when there is reason to suspect that the use of those chemicals will impair water quality to an extent that poses an unreasonable risk to the health of the water users;

(f) Persons who apply pesticides on watersheds above surface water intakes of public water systems shall comply with federal and state pesticide application requirements. **(Safe Drinking Water Act (EPA), Clean Water Act (EPA), Federal Insecticide, Fungicide and Rodenticide Act (EPA),** ORS 536.220 to 536.360 (Water Resources), 468B.005 (DEQ), 527.610 to 527.990 (DOF), 634.016 to 634.992 (Department of Agriculture)). Any person who has reasonable cause to believe that his or her actions have led to organic chemical contamination of a public water system shall report that fact immediately to the water supplier.

(3) Maximum contaminant levels for turbidity are applicable to all public water systems using surface water sources or groundwater sources under the direct influence of surface water in whole or in part. Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(4).

(a) Beginning January 1, 1992, the maximum contaminant levels for turbidity for systems which do not provide filtration treatment are as follows: The turbidity level cannot exceed 5 NTU in representative samples of the source water immediately prior to the first or only point of disinfectant application unless:

(A) The Department determines that any such event was caused by circumstances that were unusual and unpredictable; and

(B) As a result of any such event, there have not been more than two events in the past 12 months the system served water to the public, or more than five events in the past 120 months the system served water to the public, in which the turbidity level exceeded 5 NTU. An "event" is a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU. Turbidity measurements must be collected as required by OAR 333-061-0036(4)(a)(B).

(b) Beginning June 29, 1993 or 18 months after failure to meet the requirements of OAR 333-061-0032(1) through (3) whichever is later, the maximum contaminant levels for turbidity in drinking water measured at a point representing filtered water prior to any storage are as follows:

(A) Conventional filtration treatment or direct filtration treatment.

(i) For systems using conventional filtration or direct filtration treatment the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month, measured as specified in OAR 333-061-0036(4).

(ii) For systems using conventional filtration or direct filtration treatment the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must at no time exceed 1 NTU measured as specified in OAR 333-061-0036(4).

(B) Slow sand filtration.

(i) For systems using slow sand filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(4)(b), except that if the Department determines there is no significant interference with disinfection at a higher turbidity level, the Department may substitute this higher turbidity limit for that system.

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(4)(b).

(C) Diatomaceous earth filtration.

(i) For systems using diatomaceous earth filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(4)(b).

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(4)(b).

(D) Other filtration technologies. Systems using filtration technologies other than those listed in paragraphs (3)(b)(A) through (C) of this rule must meet the maximum contaminant level for turbidity of 1 NTU in at least 95% of the measurements taken each month and at no time exceed 5 NTU, as specified in OAR 333-061-0036(4)(b)(A). The Department may substitute a lower turbidity value(s) if it is determined that the above limit(s) cannot achieve the required level of treatment. The water system must demonstrate to the Department that the alternative filtration technology in combination with disinfection treatment as specified in OAR 333-061-0032 and monitored as specified by OAR 333-061-0036 consistently achieves 99.9% removal and/or inactivation of *Giardia lamblia* cysts and 99.99% removal and/or inactivation of viruses, and for all of those systems serving at least 10,000 people and beginning January 1, 2005 for all of those systems serving less than 10,000 people, 99% removal of *Cryptosporidium* oocysts.

(4) Maximum microbiological contaminant levels for all public water systems are as follows:

(a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(A) For a system which collects 40 or more samples per month, total coliform-positive samples shall not exceed 5.0 percent of the samples collected during a month.

(B) For a system which collects fewer than 40 samples per month total coliform-positive samples shall not exceed more than one sample collected during a month.

(b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample shall be a violation of the total coliform MCL. Public notification for this potential acute health risk is prescribed in OAR 333-061-0042(2)(a)(A).

(c) All public water systems must determine compliance with the MCL for total coliforms in subsections (4)(a) and (b) of this rule on a monthly basis.

(d) A water system may demonstrate to the Department that a violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. The system making the demonstration may use the health effects language of OAR 333-061-0097(4)(d) in the required public notice in addition to the mandatory language of OAR 333-061-0097(4)(a). This demonstration, made by the system in writing and submitted to the Department for review and approval, shall show to the satisfaction of the Department that the system meets the following conditions:

(A) No occurrence of *E. coli* in distribution system samples;

(B) No occurrence of coliforms at the entry point to the distribution system;

(C) The system meets treatment requirements prescribed in OAR 333-061-0032 as applicable;

(D) The system meets the turbidity MCL, if surface water sources are used;

(E) The system maintains a detectable disinfectant residual in the distribution system;

(F) The system has no history of waterborne disease outbreaks;

(G) The system has addressed requirements and recommendations of the previous sanitary survey conducted by the Department; and

(H) The system fully complies with cross connection control program requirements.

(5) Maximum contaminant levels for radionuclides are applicable only to Community water systems and are indicated in Table 5:

Table 5
Contaminant — MCL
Gross Alpha (including Radium-226 but not Radon and Uranium) — 15 pCi/L
Combined Radium-226 and Radium-228 — 5 pCi/L
Uranium — 30ug/L
Beta/Photon emitters — 4 mrem/yr

(a) The average annual concentration of beta particle and photon radioactivity from man-made sources shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem per year according to the criteria listed in the National Bureau of Standards Handbook 69 as amended August, 1963. If two or more radionuclides are present, the sum total of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

(A) The average annual concentration of tritium assumed to produce a total body dose of 4 mrem/year is 20,000 pCi/L;

(B) The average annual concentration of strontium-90 assumed to produce a bone marrow dose of 4 mrem/year is 8 pCi/L.

(b) Compliance with the MCLs shall be calculated pursuant to OAR 333-061-0036(6)(c).

(6) Contaminant levels for secondary contaminants are applicable to all public water systems. These are indicated in Table 6. (Also note OAR 333-061-0036(7)).

Table 6
Secondary Contaminant: — Level, mg/l:
Color — 15 color units
Corrosivity — Non-corrosive
Foaming agents — 0.5

PH — 6.5–8.5
Hardness (as CACO3) — 250
Odor — 3 threshold odor number
Total dissolved solids (TDS) — 500
Aluminum — 0.05–0.2
Chloride — 250
Copper — 1
Fluoride — 2.0
Iron — 0.3
Manganese — 0.05
Silver — 0.1
Sulfate — 250
Zinc — 5

(a) Violations of secondary contaminant levels for fluoride require a special public notice. Refer to OAR 333-061-0042(7).

(b) Violations of maximum contaminant levels for fluoride (4.0 mg/l) require public notification as specified in OAR 333-061-0042(2)(b)(A).

(7) Acrylamide and Epichlorohydrin. Each public water system must certify annually to the state in writing, using third party certification approved by the state or manufacturer's certification, that when acrylamide and epichlorohydrin are used in drinking water systems, the combination, or product, of dose and monomer level does not exceed the levels specified as follows:

(a) Acrylamide: 0.05% dosed at 1 ppm or equivalent.

(b) Epichlorohydrin: 0.01% dosed at 20 ppm or equivalent.

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0210, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef 12-4-85; HD 9-1989, f. & cert, ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0032**
**Treatment Requirements and Performance Standards for Surface Water, Groundwater Under Direct Influence of Surface Water, and Groundwater**

(1) General requirements:

(a) The requirements of this rule apply to all public water systems supplied by a surface water source or a groundwater source under the direct influence of surface water beginning January 1, 1992 or 18 months following determination by the Department of the source to be under the direct influence of surface water, whichever is later, for systems which do not provide filtration treatment, and June 29, 1993 or when filtration is installed, whichever is later, for systems which do provide filtration treatment. Systems which do not provide filtration treatment and fail to meet the requirements of sections (2) and (3) of this rule must install filtration and meet the requirements of sections (4) and (5) of this rule within 18 months of the failure. However, any water system serving at least 10,000 people using surface water without filtration treatment or groundwater source under the direct influence of surface water without filtration treatment and cannot meet the requirements of this rule to remain unfiltered must install filtration treatment as specified by these rules and meet the disinfection requirements in Section (5) of this rule by December 31, 2001. These regulations establish criteria under which filtration is required and treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia,* viruses, heterotrophic plate count bacteria, Legionella, *Cryptosporidium,* and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(A) At least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(B) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(C) For any public water system serving at least 10,000 people using surface water or ground water under the direct influence of surface water and beginning January 1, 2005 for any public water system serving less than 10,000 people using surface water or ground water under the direct influence of surface water:

(i) At least 99 percent (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems; and

(ii) Compliance with any applicable disinfection profiling and benchmark requirements as specified in OAR 333-061-0030(3)(b)(C) and (D) and 333-061-0060(1)(e).

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of this rule if:

(A) The system meets the requirements for avoiding filtration in section (2) of this rule and the disinfection requirements in section (3) of this rule, and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e); or

(B) The system meets the filtration requirements in section (4) of this rule and the disinfection requirements in section (5) of this rule and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e).

(c) Water system sources that have been determined to be under the direct influence of surface water according to section (7) of this rule, have 18 months to meet the requirements of this rule. During that time, the system must meet the following Interim Standards:

(A) The turbidity of water entering the distribution system must never exceed 5 NTU. Turbidity measurements must be taken a minimum of once per day. If continuous turbidimeters are in place, measurements should be taken every four hours.

(B) Disinfection must be sufficient to reliably achieve at least 1.0 log inactivation of Giardia lamblia cysts prior to the first user. Daily disinfection "CT" values must be calculated and recorded daily, including pH and temperature measurements, and disinfection residuals at the first customer.

(C) Reports must be submitted to the Department monthly as prescribed in 333-061-0040.

(D) If these interim standards are not met, the owner or operator of the water system must notify customers of the failure as required in OAR 333-061-0042(2)(b)(A).

(d) In addition to complying with the requirements of this rule, systems serving at least 10,000 people must also comply with additional requirements specified in OAR 333-061-0030, 0036, and 0040 regarding disinfection by-products.

(2) Requirements for systems without filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must meet all of the conditions of this section.

(b) Source water quality conditions.

(A) The fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml in representative samples of the source water immediately prior to the first or only point of disinfectant application in at least 90 percent of the measurements made for the 6 previous months that the system served water to the public on an ongoing basis. If a system measures both fecal and total coliform, the fecal coliform criterion, but not the total coliform criterion, in this paragraph must be met. All samples must be collected as prescribed in OAR 333-061-0036(4)(a)(A).

(B) The turbidity level cannot exceed the maximum contaminant level prescribed in OAR 333-061-0030(3)(a)(A).

(c) Site-specific conditions. The public water supply must:

(A) Meet the disinfection requirements as prescribed in section (3) of this rule at least 11 of the 12 previous months that the system served water to the public, on an ongoing basis, unless the system fails to meet the requirements during 2 of the 12 previous months that the system served water to the public, and the Department determines that at least one of these failures was caused by circumstances that were unusual and unpredictable.

(B) Maintain a comprehensive watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses in the source water. For groundwater systems under the direct influence of surface water, and at the discretion of the Department, a certified drinking water protection plan (OAR 340-040-0160 to 340-040-0180) that addresses both the groundwater- and surface water components of the drinking water supply may be substituted for a watershed control program. Groundwater systems relying on a drinking water protection plan would still be subject to the requirements of subsection (c) of this rule. The watershed control program shall be developed according to guidelines in OAR 333-061-0075. The public water system

must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water. The system must submit an annual report to the Department identifying any special concerns about the watershed, the procedures used to resolve the concern, current activities affecting water quality, and projections of future adverse impacts or activities and the means to address them. At a minimum, the watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which have or may have an adverse effect on source water quality; and

(iii) Monitor the occurrence of activities which may have an adverse effect on source water quality.

(C) Be subject to an annual on-site inspection of the watershed control program and the disinfection treatment process by the Department. The on-site inspection must indicate to the Department's satisfaction that the watershed control program and disinfection treatment process are adequately designed and maintained including the adequacy limiting the potential contamination by *Cryptosporidium* oocysts. The inspection must include:

(i) A review of the effectiveness of the watershed control program;

(ii) A review of the physical condition of the source intake and how well it is protected;

(iii) A review of the system's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(iv) An inspection of the disinfection equipment for physical deterioration;

(v) A review of operating procedures;

(vi) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(vii) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(D) Shall not have been identified by the Department as a source of waterborne disease outbreak under the system's current configuration. If such an outbreak occurs, the system must sufficiently modify the treatment process, as determined by the Department, to prevent any future such occurrence.

(E) Comply with the maximum contaminant level (MCL) for total coliform bacteria in OAR 333-061-0030(4) at least 11 months of the 12 previous months that the system served water to the public on an ongoing basis, unless the Department determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

(F) Comply with the requirements for trihalomethanes as prescribed in OAR 333-061-0030(2)(b) and 333-061-0036(3)(b) until December 31, 2001. After December 31, 2001, the system must comply with the requirements for total trihalomethanes, haloacetic acids (five), bromate, chlorite, chlorine, chloramines, and chlorine dioxide as specified in OAR 333-061-0036(3)(b).

(d) A public water system which fails to meet any of the criteria in section (2) of this rule is in violation of a treatment technique requirement. The Department can require filtration to be installed where it determines necessary.

(3) Disinfection requirements for systems without filtration. Each public water system that does not provide filtration treatment must provide disinfection treatment as follows:

(a) The disinfection treatment must be sufficient to ensure at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) inactivation of viruses, every day the system serves water to the public, except any one day each month. Each day a system serves water to the public, the public water system must calculate the CT value(s) from the system's treatment parameters, using the procedure specified in OAR 333-061-0036(4)(a)(C) and determine whether this value(s) is sufficient to achieve the specified inactivation rates for *Giardia lamblia* cysts and viruses. If a system uses a disinfectant other the chlorine, the system must demonstrate to the Department through the use of an approved protocol for on-site disinfection demonstration studies or other information satisfactory to the Department that the system is achieving the required inactivation rates on a daily basis instead of meeting the "CT" values in this rule.

(b) The disinfection system must have either:

(A) Redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system; or

(B) Automatic shut-off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water. If the Department determines than automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with paragraph (3)(b)(A) of this rule.

(c) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(4)(a)(E), cannot be less than 0.2 mg/l for more than 4 hours.

(d) Disinfectant residuals in the distribution system. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in OAR 333-061-0036(4)(a)(F), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(4) Requirements for systems that provide filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water, and does not meet all of the criteria in sections (1), (2), and (3) of this rule for avoiding filtration, violates a treatment technique and must provide treatment consisting of both disinfection, as specified in section (5) of this rule, and filtration treatment which complies with the requirements of either subsection (4)(b), (c), (d), or (e) of this rule by June 29, 1993 or within 18 months of the failure to meet the criteria in section (2) of this rule for avoiding filtration, whichever is later. Failure to install a required treatment by the prescribed dates is a violation of the treatment technique requirements.

(b) Conventional filtration treatment or direct filtration. Systems using conventional filtration treatment or direct filtration treatment shall meet the turbidity requirements as specified in OAR 333-0061-0030(3)(b)(A)(i) and (ii).

(c) Slow sand filtration. Systems using slow sand filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(B).

(d) Diatomaceous earth filtration. Systems using diatomaceous earth filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(C).

(e) Other filtration technologies. Systems using other filtration technologies shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(D).

(5) Disinfection requirements for systems with filtration:

(a) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department.

(b) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(4)(b)(B), cannot be less than 0.2 mg/l for more than 4 hours.

(c) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified is OAR 333-061-0036(4)(b)(C) cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(6) Disinfection requirements for systems using ground water:

(a) Systems using ground water sources shall provide continuous disinfection as prescribed in OAR 333-061-0050(5) under the following conditions:

(A) When there are consistent violations of the total coliform rule attributed to source water quality;

(B) When a potential health hazard exists as determined by the Department.

(b) When continuous disinfection is required, in addition to the requirements prescribed in OAR 333-061-0050(5)(c)(A) through (C), the facilities shall be designed so that:

(A) The disinfection treatment must be sufficient to ensure that the system achieve at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department; or

(B) There is sufficient contact time provided to achieve disinfection under all flow conditions between the point of disinfectant application and the point of first water use:

(i) When chlorine is used as the primary disinfectant, the system shall be constructed to achieve a free chlorine residual of 0.2 mg/l after 30 minutes contact time under all flow conditions before first water use; or

(ii) When ammonia is added to the water with chlorine to form a chloramine as the disinfectant, the system shall be constructed to achieve a combined chlorine residual of at least 2.0 mg/l after 3 hours contact time under all flow conditions before first water use.

(7) Determination of groundwater under the direct influence of surface water (GWUDI).

(a) All Public Water Systems using groundwater as a source of drinking water must evaluate their source(s) for the potential of direct influence of surface water if the source(s) is within 500 feet of perennial or intermittent surface water, or greater distances if geologic conditions or historical monitoring data indicate additional risk, as determined by the Department; and

(A) Have a confirmed or suspected history of coliform bacteria in the source; or

(B) Through the Source Water Assessment the sources have been determined by the Department to be highly sensitive as a result of aquifer characteristics, vadose zone characteristics, monitoring history or well construction.

(b) Sources may be re-evaluated if geologic conditions or water quality trends change over time, as determined by the Department.

(c) Sources that have been determined by the Source Water Assessment as not susceptible to being under the direct surface water influence are considered groundwater and do not need further evaluation.

(d) Public water systems that are required to evaluate their source(s) for direct influence of surface water may submit results of a hydrogeological assessment to demonstrate that the source is not potentially under the direct influence of surface water. The assessment must be completed within a time frame specified by the Department and shall include the following:

(A) Well characteristics: well depth, screened or perforated interval, casing seal placement;

(B) Aquifer characteristics: thickness of the vadose zone, hydraulic conductivity of the vadose zone and the aquifer, presence of low permeability zones in the vadose zone, degree of connection between the aquifer and surface water;

(C) Hydraulic gradient: gradient between the aquifer and surface water source during pumping conditions, variation of static water level and surface water level with time;

(D) Groundwater flow: flow of water from the surface water source to the groundwater source during pumping conditions, estimated time-of-travel for groundwater from the surface water source to the well(s), spring(s), etc.; and

(E) The hydrogeologic assessment must be completed by an Oregon registered geologist or other licensed professional with demonstrated experience and competence in hydrogeology in accordance with ORS 672.505 through 672.705.

(e) Emergency groundwater sources that meet the criteria of subsection (a) of this section can either be evaluated as prescribed in subsection (7)(d) of this rule, or the evaluation can be waived if a Tier 2 public notice prescribed in 333-061-0042 is issued each time the source is used. The notice must explain that the source has been identified as potentially under the direct influence of surface water, but has not been fully evaluated, and therefore may not be treated sufficiently to inactivate pathogens such as *Giardia lamblia or Cryptosporidium.*

(f) Water systems that derive their water from a confined aquifer and have been determined to be potentially under the direct influence of surface water solely as a result of inadequate well construction under paragraph (7)(a)(B) of this rule may choose to reconstruct their source according to construction standards as prescribed in OAR 333-061-0050.

(g) Water system sources that have been determined to be potentially under the direct influence of surface water must conduct a minimum of two Microscopic Particulate Analyses (MPAs) according to the "Consensus Method for Determining Groundwaters under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)." Both Samples are to be taken during a period of high runoff or streamflow, separated by a period of at least four weeks, or at other times as determined by the Department.

(h) Scoring of MPAs shall be partially modified from the "Consensus Method" according to Table 8. Scoring for giardia, coccidia, rotifers, and plant debris remains unchanged.

(i) Determinations of water system source classification based on MPAs are made as follows:

(A) If all MPAs have a risk score of less than 10, the water system source is classified as groundwater;

(B) If any MPA risk score is greater than 19, or two or more are greater than 14, the water system source is classified as under the direct influence of surface water;

(C) If at least one MPA risk score is between 10 and 19 or both are between 10 and 15, an additional set of two MPAs must be taken. Determinations are made as follows:

(i) If four or all MPA risk scores are less than 15, the water system source is classified as groundwater; and

(ii) If two or more MPA risk scores are greater than 14, or one or more is greater than 19, the water system source is classified as under the direct influence of surface water;

(iii) Two additional MPAs must be taken if only one of four MPA risk scores is greater than 14. Scores will be evaluated according to paragraph (7)(g)(C) of this rule, or by further evaluation by the Department.

(j) If an infiltration gallery, Ranney well, or dug well has been determined to be classified as groundwater under this rule, the turbidity of the source must be monitored and recorded daily and kept by the water system operator. If the turbidity exceeds 5 NTU or if the surface water body changes course such that risk to the groundwater source is increased, an MPA must be taken at that time. Re-evaluation may be required by the Department.

(k) The Department can determine a groundwater source to be under the direct influence of surface water if the criteria in subsection (7)(a) of this rule are true and there are significant or relatively rapid shifts in groundwater characteristics, such as turbidity, which closely correlate to changes in weather or surface water conditions.

(l) If geologic conditions, water quality trends, or other indicators change, the Department can require re-evaluation, as detailed in this section, of a source despite any data previously collected or any determination previously made.

(m) The Department may determine that a source is not under direct influence of surface water based on criteria other than MPAs including the Source Water Assessment, source water protection, and other water quality parameters. The determinations shall be based on the criteria indicating that the water source has a very low susceptibility to contamination by parasites, including *Giardia* and *Cryptosporidium.* The Department may impose additional monitoring or disinfection treatment requirements to ensure that the risk remains low. [Table not included. See ED. NOTE.]

(8) Requirements for groundwater sources under the direct influence of surface water with a natural filtration credit:

(a) Groundwater sources under the direct influence of surface water are granted the option to evaluate the natural filtration credit only if all MPA risk scores are less than 20. Credit shall be established by a site-specific study that would include an assessment of the ability of the local hydrogeologic setting to provide adequate log reduction in the number of particles in the *Giardia* and *Cryptosporidium* size range between the surface water and the groundwater source, using protocol established or approved by the Department;

(b) In order to be used to meet treatment requirements, natural filtration must be proven to achieve at least 2.0-log removal for *Giardia* and *Cryptosporidium.* 2.0 log removal credit is the maximum given for natural filtration; and

(c) Disinfection requirements must be met according to section (5) of this rule. Monitoring must be completed according to OAR 333-061-0036(4)(b).

(9) Disinfection Byproduct Control Requirements:

(a) This rule establishes criteria under which community water systems and Non-transient, Non-community water systems which add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in OAR 333-061-0030 and 0031, respectively. This rule also establishes the treatment technique requirements for disinfection byproduct precursors. This rule establishes criteria under which transient non-community water systems that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the MRDL for chlorine dioxide as specified in OAR 333-061-0031.

(b) Compliance dates.

(A) Community and Non-transient Non-community water systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water must comply with the treatment technique requirements of this rule as well as monitoring and maximum contaminants requirements for disinfection byproduct control as specified in OAR 333-061-0030 and 0036, respectively beginning January 1, 2002. Those systems serving fewer than 10,000 people using surface water or groundwater under the direct influence of surface water and those systems using only groundwater not under the direct influence of surface water must comply with the rules identified in this paragraph beginning January 1, 2004.

(B) Transient Noncommunity water systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2002. Those systems serving fewer than 10,000 persons using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2004.

(c) Water systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross connection events.

(d) Treatment technique for control of disinfection by-product precursors. Community and Non-transient Non-community water systems using conventional filtration treatment must operate with enhanced coagulation or enhanced softening to achieve the total organic carbon (TOC) percent removal levels specified in subsection (9)(e) of this rule unless the system meets at least one of the alternative compliance criteria listed in paragraph (9)(d)(A) or (9)(d)(B) of this rule.

(A) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Water systems may use the alternative compliance criteria in paragraphs (9)(d)(A)(i) through (vi) of this rule in lieu of complying with the performance criteria specified in subsection (e) of this section. Systems must still comply with monitoring requirements specified in OAR 333-061-0036(3)(b)(E).

(i) The system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(iii) The system's source water TOC is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as $CaCO_3$ calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in this rule to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Department for approval not later than the effective date for compliance in this rule. These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(B) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (9)(e)(B) of this rule may use the alternative compliance criteria in paragraphs (9)(d)(B)(i) and (ii) of this rule in lieu of complying with subsection (9)(e) of this rule. Systems must still comply with monitoring requirements in specified in OAR 333-061-0036(3)(b)(E).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

(e) Enhanced coagulation and enhanced softening performance requirements.

(A) Systems must achieve the percent reduction of TOC specified in paragraph (9)(e)(B) in this rule between the source water and the combined filter effluent, unless the Department approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (9)(e)(C) of this rule.

(B) Required Step 1 TOC reductions, specified in Table 9, are based upon specified source water parameters. Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC: [Table not included. See ED. NOTE.]

(C) Water systems that cannot achieve the Step 1 TOC removals required by paragraph (9)(e)(B) of this rule due to water quality parameters or operational constraints must apply to the Department, within three months of failure to achieve the TOC removals required by paragraph (9)(e)(B) of this rule, for approval of alternative minimum TOC (Step 2) removal requirements submitted by the water system. If the Department approves the alternative minimum TOC removal (Step 2) requirements, the Department may make those requirements retroactive for the purposes of determining compliance. Until the Department approves the alternate minimum TOC removal (Step 2) requirements, the water system must meet the Step 1 TOC removals contained in paragraph (9)(e)(B) of this rule.

(D) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Department by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under paragraph (9)(e)(C) of this rule must include, as a minimum, results of bench-scale or pilot-scale testing conducted under paragraph (9)(e)(D)(i) of this rule. The submitted bench-scale or pilot scale testing must be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in paragraphs (9)(e)(D)(i) through (v) of this rule such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Department, this minimum requirement supersedes the minimum TOC removal required by the Table 9 in paragraph (9)(e)(B) of this rule. This requirement will be effective until such time as the Department approves a new value based on the results of a new bench-scale and pilot-scale test. Failure to achieve Department-set alternative minimum TOC removal levels is a violation.

(ii) Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH as specified in Table 10: [Table not included. See ED. NOTE.]

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary, consistent with these rules to achieve the minimum TOC percent removal approved under paragraph (9)(e)(C) of this rule.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The water system may then apply to the Department for a waiver of enhanced coagulation requirements.

(f) Compliance calculations.

(A) Water systems other than those identified in paragraphs (9)(d)(A) or (d)(B) of this rule must comply with requirements contained in paragraph (9)(e)(B) or (C) of this rule. Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to: {1-(treated water TOC/source water TOC)}x100

(ii) Determine the required monthly TOC percent removal (from either Table 9 in paragraph (9)(e)(B) of this rule or from paragraph (9)(e)(C) of this rule).

(iii) Divide the value in paragraph (9)(f)(A)(i) of this rule by the value in paragraph (9)(f)(A)(ii) of this rule.

(iv) Add together the results of paragraph (9)(f)(A)(iii) of this rule for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (9)(f)(A)(iv) of this rule is less than 1.00, the water system is not in compliance with the TOC percent removal requirements.

(B) Water systems may use the provisions in paragraphs (9)(f)(B)(i) through (v) of this rule in lieu of the calculations in paragraph (9)(f)(A)(i) through (v) of this rule to determine compliance with TOC percent removal requirements.

(i) In any month that the water system's treated or source water TOC level is less than 2.0 mg/L, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(iii) In any month that the water system's source water SUVA, prior to any treatment is less than or equal to 2.0 L/mg-m, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(iv) In any month that the water system's finished water SUVA is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(C) Water systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (9)(d)(A) or (B) of this rule.

(g) Treatment technique requirements for DBP precursors. Treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems are recognized by the Department for water systems using surface water or groundwater under the direct influence of surface water using conventional treatment as enhanced coagulation or enhanced softening.

(10) Requirements for Water Treatment Plant Recycled Water

(a) Any water system using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener, supernatant, or liquids from dewatering processes must meet the requirements of subsections (10)(b) and (c) of this rule and OAR 333-061-0040(2)(i).

(b) A water system must notify the Department in writing by December 8, 2003 if that water system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum, the information specified in paragraphs (10)(b)(A) and (B) of this rule.

(A) A water treatment plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are re-introduced back into the water treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed water treatment plant flow experienced in the previous year (gpm), the design flow for the water treatment plant (gpm), and the operating capacity of the water treatment plant (gpm) that has been determined by the Department where the Department has made such determinations.

(c) Any water system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional filtration treatment plant or direct filtration treatment plant as defined by these rules or at an alternate location approved by the Department by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-1-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0036**

**Sampling and Analytical Requirements**

(1) General:

(a) Analyses must be conducted by EPA Methods in accordance with the analytical requirements set forth in **40 CFR 141.** Samples analyzed for the purposes of this rule shall be collected after the water has been allowed to flow from the sample tap for a sufficient length of time to assure that the collected sample is representative of water in the distribution system except for samples collected to determine corrosion by-products:

(b) Alternate Analytical Methods:

(A) With the written permission of the Department, an alternate analytical method may be employed; and

(B) The use of the alternate analytical method shall not decrease the frequency of sampling required by these rules.

(c) Approved laboratories:

(A) For the purpose of determining compliance with the maximum contaminant levels and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the Department, except that measurements for turbidity, disinfectant residual, temperature, alkalinity, calcium, conductivity, chlorite, bromide, TOC, SUVA, dissolved organic carbon (DOC), $UV_{254}$, orthophosphate, silica and pH may be performed on site using approved methods by individuals trained in sampling and testing techniques. Daily chlorite samples measured at the entrance to the distribution system must be performed by a party approved by the Department.

(B) Nothing in these rules shall be construed to preclude the Department or any of its duly authorized representatives from taking samples and from using the results of such samples to determine compliance with applicable requirements of these rules.

(d) Monitoring of purchasing water systems:

(A) When a public water system obtains its water, in whole or in part, from another public water system, the monitoring requirements imposed by these rules on the purchasing water system may be modified by the Department to the extent that the system supplying the water is in compliance with its source monitoring requirements. When a public water system supplies water to one or more other public water systems, the Department may modify monitoring requirements imposed by this rule to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(B) Any modified monitoring shall be conducted pursuant to a schedule specified by the Department and concurred in by the Administrator of the US Environmental Protection Agency.

(e) Water suppliers shall monitor each water source individually for contaminants listed in OAR 333-061-0030 (Maximum Contaminant Levels), except for coliform bacteria, TTHMs and corrosion by-products, at the entry point to the distribution system except as described below. Any such modified monitoring shall be conducted pursuant to a schedule prescribed by the Department.

(A) If the system draws water from more than one source and sources are combined before distribution, the system may be allowed to sample at an entry point to the distribution system during normal operating conditions, where justified, taking into account operational considerations, geologic and hydrologic conditions, and other factors.

(B) If a system draws water from multiple ground water sources which are not combined before distribution, the system may be allowed to sample at a representative source or sources, where justified, taking into account geologic and hydrogeologic conditions, land uses, well construction, and other factors.

(f) Compliance with MCLs shall be based on each sampling point as described in this section. If any point is determined to be out of compliance, the system shall be deemed out of compliance. If an entirely separated portion of a water system is out of compliance, then only that portion of the system shall be deemed out of compliance.

(g) The Department may require additional sampling and analysis for the contaminants included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary to determine whether an unreasonable risk to health exists. The Department may also require sampling and analysis for additional contaminants not included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary for public health protection.

(h) Water suppliers and their appointed representatives shall collect water samples from representative locations in the water system as

prescribed in this rule and shall employ proper sampling procedures and techniques. Samples submitted to laboratories for analysis shall be clearly identified and shall include the name of the water system, public water system identification number, sampling date, and time, sample location identifying the sample tap, the name of the person collecting the sample and be labeled as follows:

(A) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(B) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level as prescribed in OAR 333-061-0030. Repeat samples are also used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(C) Special: These are samples collected to supplement routine monitoring samples and are not required to be reported to the Department. Samples of this type are not considered representative of the water system and are outside the scope of normal quality assurance and control procedures and/or the established compliance monitoring program. Special samples include, but are not limited to, samples taken for special studies, user complaints, post construction/repair disinfection, sources not in service and raw water prior to treatment, except as required by this rule.

(2) Inorganic chemicals:

(a) Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Nickel, Selenium and Thallium.

(A) Sampling of water systems for regulated Inorganic Chemicals shall be conducted as follows:

(i) Community and Non-Transient Non-Community Water systems using surface water sources or groundwater sources under the direct influence of surface water solely or a combination of surface and ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Surface water systems shall collect samples annually at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) Community and Non-Transient Non-Community Water systems using ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system representative of each source after any application of treatment. Ground water systems shall collect samples once every three years at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(iii) All new Transient Non-Community or State Regulated water systems or existing Transient Non-Community, or State Regulated water systems with new sources developed after January 1, 1993 shall collect one sample beginning in the first compliance period starting January 1, 1993. Samples are to be collected at the entry points to the distribution system representative of each source after any application of treatment. Transient Non-Community, or State Regulated water systems existing prior to January 1, 1993 are not required to collect an additional inorganic analysis provided that a least one inorganic analysis per sampling point was collected before January 1, 1993.

(iv) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(v) For systems having fewer than 150 service connections the initial compliance period for monitoring for antimony, beryllium, cyanide, nickel and thallium is January 1, 1996 through December 31, 1998.

(B) The Department may allow compositing of samples from a maximum of 5 sampling points, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples is to be done in the laboratory. Composite samples must be analyzed within 14 days of collection. If the concentration in the composite sample is equal to or greater than one-fifth of the MCL of any inorganic chemical listed in section (2) of this rule, then a follow-up sample must be taken for the contaminants which exceeded one-fifth of the MCL within 14 days at each sampling point included in the composite. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the Department within 14 days of collection. If the population served by the water system is >3,300 persons, then compositing can only be allowed within the system. In systems serving ≤ 3,300 persons, compositing is allowed among multiple systems provided the 5 sample limit is maintained.

(C) Water systems may apply to the Department for a waiver from the monitoring frequencies specified in paragraph (2)(a)(A) of this rule on the condition that the system shall take a minimum of one sample while the waiver is effective and the effective period for the waiver shall not exceed one nine-year compliance cycle.

(i) The Department may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring (at least one sample shall have been taken since January 1, 1990), and all analytical results are less than the maximum contaminant levels prescribed in OAR 333-061-0030 for inorganic chemicals. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(ii) Waivers granted by the Department shall be in writing and shall set forth the basis for the determination. The Department shall review and revise, where appropriate, its determination of the appropriate monitoring frequency when the system submits new monitoring data or where other data relevant to the system's appropriate monitoring frequency become available. In determining the appropriate reduced monitoring frequency, the Department shall consider the reported concentrations from all previous monitoring; the degree of variation in reported concentrations; and other factors which may affect concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(D) Systems which exceed the maximum contaminant levels as calculated in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. The Department may decrease the quarterly monitoring requirement to the frequencies prescribed in paragraph (2)(a)(A) of this rule when it is determined that the system is reliably and consistently below the maximum contaminant level. Before such a decrease is permitted a groundwater system must collect at least two quarterly samples and a surface water system must collect a minimum of four quarterly samples.

(E) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

(b) Sulfate.

(A) Samples of water which is delivered to users shall be analyzed for sulfate as follows:

(i) Community and Non-Transient Non-Community water systems using surface or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect one sample at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (2)(b)(A) of this rule. The Department may grant a waiver if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(C) The Department may require confirmation samples for positive or negative results.

(D) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. For systems with a population greater than 3,300, the Department

may allow compositing at sampling points only within a single system. For systems with a population ≤ 3,300 the Department may allow compositing among different systems.

(c) Asbestos.

(A) Community and Non-Transient Non-Community water systems regardless of source, shall sample for Asbestos at least once during the initial three-year compliance period of each nine-year compliance cycle starting January 1, 1993 according to the schedule under subsection (2)(k) of this rule unless a water system applies for a waiver and the waiver is granted by the Department.

(B) As reviewed by the Department, if the water system is determined not to be vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, a waiver may be granted. If granted, the water system will not be required to monitor while the waiver remains in effect. A waiver remains in effect until the completion of the three year compliance period.

(C) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by the asbestos-cement pipe under conditions where asbestos contamination is most likely to occur. Systems exceeding the action levels for lead or copper shall monitor for asbestos once every three years.

(D) A system vulnerable to asbestos contamination due solely to source water shall monitor for asbestos once every nine years. Systems exceeding the action levels for lead or copper shall monitor for asbestos once every three years.

(E) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(F) A System which exceeds the maximum contaminant levels for asbestos as prescribed in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. If the Department determines that the system is reliably and consistently below the maximum contaminant level based on a minimum of two quarterly samples for groundwater systems or a minimum of four quarterly samples for surface water systems or combined surface water/groundwater systems, the system may return to the sampling frequency prescribed in paragraph (2)(c)(A) of this rule.

(G) If monitoring data collected after January 1, 1990 are generally consistent with subsection (2)(c) of this rule, then the Health Department may allow the system to use these data to satisfy monitoring requirements for the three-year compliance period beginning January 1, 1993.

(d) Lead and Copper.

(A) Community and Non-Transient, Non-Community water systems shall monitor for lead and copper in tap water as follows: Sample site location:

(i) Each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this paragraph, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (2)(d)(C) of this rule. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) In addition to any information that may have been gathered under the special corrosivity monitoring requirements, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites:

(I) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system; and

(II) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(iii) The sampling sites selected for a Community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(iv) Any Community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites," consisting of buildings, including multiple-family residences that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(v) Any Community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites," consisting of single family structures that contain copper pipes with lead solder installed before 1983. A community water system with insufficient tier 1, tier 2 and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the system.

(vi) The sampling sites selected for a Non-Transient Non-Community water system ("tier 1 sampling sites") shall consist of buildings that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(vii) A Non-Transient Non-Community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (2)(d)(A)(vi) of this rule shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed, the system shall use representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(viii) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the Department under OAR 333-061-0040(1)(f)(A)(i) why a review of the information listed in paragraph (2)(d)(A)(ii) of this rule was inadequate to locate a sufficient number of tier 1 sites. Any Community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

(B) Monitoring requirements for lead and copper in tap water. Sample collection methods:

(i) All tap samples for lead and copper collected in accordance with this paragraph shall be first draw samples.

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acid fixation of first draw samples may be done up to 14 days after the sample is collected. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(C) Monitoring requirements for lead and copper in tap water. Number of samples: Water systems shall collect at least one sample during each monitoring period specified in paragraph (2)(d)(D) of this rule from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under paragraph (2)(d)(D)(iv) of this rule shall collect at least one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (2)(d)(D)(iv) of this rule. Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The Department may specify sampling locations when a system is conducting reduced monitoring. [Table not included. See ED. NOTE.]

(D) Monitoring requirements for lead and copper in tap water. Timing of monitoring:

(i) Initial tap monitoring requirements:

(I) All large systems shall monitor during two consecutive six-month periods.

(II) All small and medium-size systems shall monitor during each six-month monitoring period until the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements specified in OAR 333-061-0034(2), in which case the system shall continue monitoring in accordance with paragraph (2)(d)(D)(ii) of this rule, or the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (2)(d)(D)(iv) of this rule.

(ii) Monitoring after installation of corrosion control and source water treatment.

(I) Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a)(D) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(2)(a)(E).

(II) Any small or medium-size system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(b)(E) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(2)(b)(F).

(III) Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall monitor during two consecutive six-month monitoring periods by the date specified in OAR 333-061-0034(4)(a)(D).

(iii) Monitoring after the Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for water quality control parameters under OAR 333-061-0034(3)(l), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Department specifies the optimal values.

(iv) Reduced monitoring.

(I) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (2)(d)(C) of this rule, and reduce the frequency of sampling to once per year.

(II) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during each of two consecutive six-month monitoring periods may request that the Department allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with paragraph (2)(d)(C) of this rule. The Department shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(III) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during three consecutive years of monitoring may request that the Department allow the system to reduce the frequency of monitoring from annually to once every three years. The Department shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(IV) A water system that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in paragraph (2)(d)(A) of this rule. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September. The Department may approve a different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a Non-transient Non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the Department shall designate a period that represents a time of normal operation for the system. Community and Non-transient Non-community water systems monitoring annually or triennially that have been collecting samples during the months of June through December and that receive Department approval to alter their sample collection period must collect their next round of samples during a time period that ends no later than 21 months or 45 months, respectively, after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially as required in this subsection.

(V) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (2)(d)(D)(iii) of this rule and collect the number of samples specified for standard lead and copper monitoring in paragraph (2)(d)(C) of this rule and shall also conduct water quality parameter monitoring in accordance with paragraphs (2)(d)(F)(iii), (iv) or (v) of this rule, as appropriate, during the period in which the lead or copper action level was exceeded. Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the requirement of paragraph (2)(d)(D)(iv)(I) of this rule and/or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria prescribed in paragraphs (2)(d)(D)(iv)(III) or (VI) of this rule. Any water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality control parameters specified by the Department for more than nine days in any six-month period specified in paragraph (2)(d)(F)(v) of this rule shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (2)(d)(D)(iii) of this rule, collect the number of samples specified for standard monitoring, and shall resume monitoring for water quality parameters within the distribution system in accordance with paragraph (2)(d)(F)(v) of this rule. Such a system may, with written Department approval, resume reduced annual monitoring for lead and copper at the tap after it has completed two subsequent six-month rounds of tap lead and copper monitoring that meet the criteria specified in paragraph (2)(d)(D)(iv)(II) of this rule. Such a system, with written Department approval, may resume reduced triennial monitoring for lead and copper at the tap if it meets the criteria specified in paragraphs (2)(d)(D)(iv)(III) and (VI) of this rule. Such a system may reduce the number and frequency of water quality parameter distribution tap samples required in accordance with paragraph (2)(d)(F)(vi)(I) and (II) of this rule. Such a system may not resume triennial monitoring for water quality parameters distribution tap samples until it demonstrates that it has re-qualified for triennial monitoring.

(VI) Any water system that demonstrates for two consecutive 6-month monitoring periods that the 90th percentile lead level is less than or equal to 0.005 mg/l and the 90th percentile copper level is less than or equal to 0.65 mg/l may reduce the number of samples in accordance with paragraph (2)(d)(C) of this rule and reduce the frequency of sampling to once every three calendar years.

(VII) Any water system subject to a reduced monitoring frequency that either adds a new source of water or changes any water treatment shall inform the Department in writing. The Department may require the system to resume standard monitoring or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(E) Monitoring requirements for lead and copper in tap water. Additional monitoring by systems: The results of any monitoring conducted in addition to the minimum requirements of subsection (d) of this rule shall be considered by the system and the Department in making any determinations (i.e., calculating the 90th percentile lead or copper level). The Department may invalidate lead and copper tap water samples as follows:

(i) The Department may invalidate a lead or copper tap sample if at least one of the following conditions is met. The decision and the rationale for the decision must be documented in writing by the Department. A sample invalidated by the Department does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum monitoring requirements:

(I) The laboratory establishes that improper sample analysis caused erroneous results; or

(II) A site that did not meet the site selection criteria; or

(III) The sample container was damaged in transit; or

(IV) There is substantial reason to believe that the sample was subject to tampering.

(ii) The system must report the results of all samples to the Department and all supporting documentation for samples the system believes should be invalidated.

(iii) The Department may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(iv) The water system must collect replacement samples for any samples invalidated if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Department invalidates the sample. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(F) Monitoring requirements for water quality parameters. All large water systems and all medium and small water systems that exceed the lead or copper action levels shall monitor water quality parameters in addition to lead and copper as follows:

(i) General Requirements. Sample collection methods:

(I) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Water quality parameter sampling is not required to be conducted at taps targeted for lead and copper sampling, however, established coliform sampling sites may be used to satisfy these requirements.

(II) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(ii) General requirements. Number of samples:

(I) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (2)(d)(F)(iii) through (vi) of this rule from the following number of sites.

System Size
# People served — # of Sites For Water Quality Parameters
100,000 — 25
10,001–100,000 — 10
3,301 to 10,000 — 3
501 to 3,300 — 2
101 to 500 — 1
_100 — 1

(II) Except as provided in paragraph (2)(d)(F)(iv)(III) of this rule, systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (2)(d)(F)(iii) of this rule. During each monitoring period specified in paragraphs (2)(d)(F)(iv) through (vi) of this rule, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(iii) Initial Sampling. All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in paragraph (2)(d)(D)(i) of this rule. All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in paragraph (2)(d)(D)(i) of this rule during which the system exceeds the lead or copper action level:

(I) At taps: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium, conductivity, and water temperature.

(II) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (2)(d)(F)(iii)(I) of this rule.

(iv) Monitoring after installation of corrosion control. Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a)(D) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in paragraph (2)(d)(D)(ii)(I) of this rule. Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in paragraph (2)(d)(D)(ii)(II) of this rule in which the system exceeds the lead or copper action level.

(I) At taps, two samples for: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium (when calcium carbonate stabilization is used as part of corrosion control).

(II) Except as provided in paragraph (2)(d)(D)(iv)(III) of this rule, at each entry point to the distribution system, at least one sample, no less frequently than every two weeks (bi-weekly) for: pH; when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(III) Any ground water system can limit entry point sampling to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and no treatment. Prior to the start of any monitoring, the system shall provide to the Department written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(v) Monitoring after Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under OAR 333-061-0034(3)(l), all large systems shall measure the applicable water quality parameters in accordance with paragraph (2)(d)(F)(iv) of this rule and determine compliance every six months with the first six-month period to begin on the date the Department specifies optimal water quality parameter values. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in this paragraph in which the system exceeds the lead or copper action level. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to paragraph (2)(d)(D)(iv) of this rule at the time of the action level exceedance, the end of the applicable six-month period under this paragraph shall coincide with the end of the applicable monitoring period under paragraph (2)(d)(D)(iv) of this rule. Compliance with Department-designated optimal water quality parameter values shall be determined as specified under OAR 333-061-0034(3)(m).

(vi) Reduced monitoring:

(I) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (2)(d)(D) of this rule shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (2)(d)(F)(iv)(II) of this rule. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

System Size
# People served — Reduced # of Sites for Water Quality Parameters
100,000 — 10
10,001–100,000 — 7
3,301 to 10,000 — 3
501 to 3,300 — 2
101 to 500 — 1
≤100 — 1

(II) Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under OAR 333-061-0034(3)(l) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (2)(d)(F)(vi)(I) of this rule from every six months to annually. Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under OAR 333-061-0034(3)(l) during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters from annually to every three years.

(III) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to 0.005 mg/l, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/l, and that it also has maintained the range of values for water quality parameters reflecting optimal corrosion control treatment specified by the Department.

(IV) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(V) Any water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Department under OAR 333-061-0034(3)(l) for more than nine days in any six-month period

shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (2)(d)(F)(v) of this rule. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria specified in paragraph (2)(d)(F)(v) of this rule and/or may resume triennial monitoring at the reduced number of sites after it demonstrates through subsequent annual rounds that it meets the criteria of paragraphs (2)(d)(F)(vi)(I) and (II) of this rule.

(vii) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of subsection (2)(d) of this rule shall be considered by the system and the Department in making any determinations.

(G) Monitoring requirements for lead and copper in source water. Sample location, collection methods, and number of samples:

(i) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with paragraphs (2)(d)(A) through (E) of this rule shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(I) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant;

(II) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source, after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant; Surface water systems include systems with a combination of surface and ground sources; and

(III) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods when water is representative of all sources being used.

(ii) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under OAR 333-061-0034(4)(b)(D) the Department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a Department-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the Department-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. For lead any value above the detection limit but below the Practical Quantitation Level (PQL) (0.005 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.0025 mg/l). For copper any value above the detection limit but below the PQL (0.050 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.025 mg/l).

(H) Monitoring requirements for lead and copper in source water. Monitoring frequency after system exceeds tap water action level. Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(i) Monitoring frequency after installation of source water treatment. Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in OAR 333-061-0034(4)(a)(D).

(ii) Monitoring frequency after Department specifies maximum permissible source water levels or determines that source water treatment is not needed.

(I) A system shall monitor at the frequency specified below in cases where the Department specifies maximum permissible source water levels under OAR 333-061-0034(4)(b)(D) or determines that the system is not required to install source water treatment under OAR 333-061-0034(4)(b)(B). A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable Department determination is made. Such systems shall collect samples once during each subsequent compliance period. A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable Department determination is made.

(II) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (2)(d)(H)(ii)(I) of this rule.

(iii) Reduced monitoring frequency:

(I) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) during at least three consecutive compliance periods under paragraph (2)(d)(H)(ii)(I) of this rule or for which the Department has determined that source water treatment is not needed and the system demonstrates during at least three consecutive compliance periods under paragraph (2)(d)(H)(ii)(I) of this rule that the concentration of lead in source water was _0.005 mg/l and the concentration of copper in source water was _0.65 mg/l may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle.

(II) A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) for at least three consecutive years or for which the Department has determined that source water treatment is not needed and the system demonstrates that during at least three consecutive years the concentration of lead in source water was _0.005 mg/l and the concentration of copper in source water was _0.65 mg/l may reduce the monitoring frequency in paragraph (2)(d)(H)(ii)(I) of this rule to once during each nine-year compliance cycle.

(III) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(a)(E).

(e) Nitrate.

(A) Community and Non-Transient Non-Community water systems using surface water sources or groundwater sources under the direct influence of surface water shall monitor for Nitrate quarterly beginning January 1,1993. The Department may allow a surface water system to reduce the sampling frequency to annually provided that all analytical results from four consecutive quarters are less than 50% of the MCL. A surface water system shall return to quarterly monitoring if any one sample is 50% of the MCL.

(B) Community and Non-Transient Non-Community water systems using groundwater sources shall monitor for Nitrate annually beginning January 1, 1993. The Department shall require quarterly monitoring for a least one year following any one sample in which the concentration is 50% of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(C) Transient Non-Community and State Regulated water systems shall monitor for Nitrate annually beginning January 1, 1993.

(D) After the initial round of quarterly sampling is completed, each Community and Non-Transient Non-Community water system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(f) Nitrite.

(A) Community, Non-Transient Non-Community, and Transient Non-Community water systems shall collect one sample at each sampling point for Nitrite during the compliance period beginning January 1, 1993. The Department shall require quarterly monitoring for at least one year following any one sample in which the concentration is 50% of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(B) After the initial sample, all systems where analytical results for Nitrite are <50% of the MCL, shall monitor once during each subsequent compliance period.

(C) Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(g) Sodium.

(A) Samples of water which is delivered to users shall be analyzed for Sodium as follows:

(i) Community and Non-Transient Non-Community water systems, surface water sources, once per year for each source;

(ii) Community and Non-Transient Non-Community water systems, ground water sources, once every three years for each source.

(B) The water supplier shall report to the Department the results of the analyses for Sodium as prescribed in rule 333-061-0040. The Department shall notify local health officials of the test results.

(h) Confirmation Samples.

(A) Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the Department may require one additional sample to be taken as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(B) Where the results of sampling for nitrate or nitrite exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the system is required to collect one additional sample within 24 hours of notification of the results of the initial sample at the same sampling point. Systems unable to comply with the 24-hr sampling requirement must initiate consultation with the Department as soon as practical, but no later than 24 hours after the system learns of the violation and must immediately notify their users as prescribed in OAR 333-061-0042(2)(a)(B), and collect one additional sample within two weeks of notification of the results of the initial sample.

(C) If a confirmation sample required by the Department is taken for any contaminant then the results of the initial and confirmation sample shall be averaged. The resultant average shall be used to determine the system's compliance as prescribed in subsection (2)(j) of this rule.

(i) The Department may require more frequent monitoring than specified in subsections (2)(a) through (g) of this rule or may require confirmation samples for positive and negative results. Systems may apply to the Department to conduct more frequent monitoring than is required in this section.

(j) Compliance with the inorganic MCLs as listed in Table 1 shall be determined based on the analytical result(s) obtained at each sampling point as follows:

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average at any sampling point. If the average at any sampling point rounded to the same number of significant figures as the MCL for the substance in question is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample with results below the detection limit specified for the approved EPA analytical method shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(B) For systems which are monitoring annually, or less frequently, the system is out of compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of the contaminant at any sampling point is greater than the MCL. If confirmation samples are required by the Department, the determination of compliance will be based on the average of the initial MCL exceedance and the confirmation sample. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(C) Compliance with MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph (2)(h)(B) of this rule and compliance shall be determined based on the average of the initial and confirmation samples.

(D) If the results of an analysis as prescribed in this rule indicate the level of any contaminant exceeds the maximum contaminant level, the water supplier shall report the analysis results to the Department within 48 hours as prescribed in OAR 333-061-0040 and initiate the public notice procedures as prescribed by OAR 333-061-0042.

(k) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population — Begin Initial monitoring — Complete initial monitoring by
300 or More — January 1, 1993 — December 31, 1993
100–299 — January 1, 1994 — December 31, 1994
Less than 100 — January 1, 1995 — December 31, 1995

(3) Organic chemicals:

(a) Alachlor, Atrazine, Benzo(a)pyrene, Carbofuran, Chlordane, Dalapon, Dibromochloropropane, Dinoseb, Dioxin(2,3,7,8-TCDD), Diquat, Di(2-ethylhexyl)adipate, Di(2-ethylhexyl)phthalate, Endothall, Endrin, Ethylene dibromide, Glyphosate, Heptachlor, Heptachlor epoxide, Hexachlorobenzene, Hexachlorocyclopentadiene, Lindane(BHC-g), Methoxychlor, Oxamyl(Vydate), Picloram, Polychlorinated biphenyls, Pentachlorophenol, Simazine, Toxaphene, 2,4-D and 2,4,5-TP Silvex.

(A) Samples of water which is delivered to users shall be analyzed for regulated synthetic organic chemicals (SOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples at each sampling point beginning with the initial compliance period starting January 1, 1993. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield or within an existing drinking water protection area may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's source assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(iii) If the initial analysis does not detect any contaminant listed in subsection (3)(a) of this rule, then monitoring at each sampling point may be reduced to:

(I) Two consecutive quarterly samples in one year during each repeat compliance period for systems serving more than 3300 population; or

(II) One sample in each repeat compliance period for systems serving less than or equal to 3300 population; or

(III) Once every 6 years for all SOCs, if the system has a state certified Drinking Water Protection Plan or for those SOCs determined to be "used" and for which that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(IV) Once every 9 years for those SOCs in an analytical method group determined to be "not used" in the delineated drinking water protection area, or for those SOCs determined to be "used" if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" according to the Department's Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (3)(a)(A) of this rule. Each water system can receive specific guidance in obtaining a waiver from the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and the water system must reapply for a waiver for Organics monitoring each compliance period.

(i) The water system shall use the drinking water protection area as delineated during the Source Water Assessment according to procedures described in the Use and Susceptibility Waiver Guidance Document.

(ii) The Use Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall take into consideration but is not limited to the use, storage, distribution, transport and disposal of the contaminant within the delineated recharge or watershed area.

(iii) The Susceptibility Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall address only those contaminants that remain after the use waiver process has been completed. The Susceptibility Waiver criteria shall take into consideration but is not limited to the history of bacteria and/or nitrate contamination, well construction, agricultural management practices, infiltration potential, and contaminant mobility and persistence.

(iv) Water systems which qualify for use and susceptibility waivers shall follow the monitoring requirements as directed in the Use and Susceptibility Waiver Guidance Document.

(v) The Use and Susceptibility Waiver Guidance Document is made a part of this rule and shall take into consideration the Wellhead Protection Program and shall be updated with new methods and procedures as they become available.

(vi) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents."

(C) If a water system detects in any sample a contaminant listed in subsection (3)(a) of this rule equal to or greater than the minimum detection limit listed in Table 11, then the water system shall monitor quarterly at each sampling point where a detection occurred.

Table 11
Contaminant — Detection Limit (mg/l)
Alachlor — 0.0002
Atrazine — 0.0001
Benzo(a)pyrene — 0.00002
Carbofuran — 0.0009
Chlordane — 0.0002
Dalapon — 0.001
Di(2-ethylhexyl)adipate — 0.0006
Di(2-ethylhexyl)phthalate — 0.0006
Dibromochloropropane (DBCP)0.00002
Dinoseb — 0.0002
Dioxin(2,3,7,8-TCDD) — 0.000000005
Diquat — 0.0004
Endothall — 0.009
Endrin — 0.00001
Ethylene Dibromide (EDB) — 0.00001
Glyphosate — 0.006
Heptachlor — 0.00004
Heptachlor Epoxide — 0.00002
Hexachlorobenzene — 0.0001
Hexachlorocyclopentadiene — 0.0001
Lindane(BHC-g) — 0.00002
Methoxychlor — 0.0001
Oxamyl(Vydate) — 0.002
Picloram — 0.0001
Polychlorinated Biphenyls (PCBs)
(as Decachlorobiphenyl) — 0.0001
Pentachlorophenol — 0.00004
Simazine — 0.00007
Toxaphene — 0.001
2,4-D — 0.0001
2,4,5-TP (Silvex) — 0.0002

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(a)(C) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(a)(B) of this rule.

(iii) If any monitoring required in paragraph (3)(a)(A) of this rule results in the detection of one or more of certain related contaminants (Aldicarb, Aldicarb sulfone, Aldicarb sulfoxide and Heptachlor, Heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(D) If the results of an analysis prescribed in paragraph (3)(a)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system must monitor quarterly. After a minimum of four quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(a)(G) of this rule, then the system may monitor annually.

(E) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result (unless the previous sample has been invalidated by the Department) and the average used to determine compliance.

(F) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample detects one or more contaminants listed in subsection (3)(a) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates are analyzed and the results reported to the Department within 14 days of collection. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population ≤ 3,300, the Department may allow compositing among different systems, provided the 5-sample limit is maintained.

(G) Compliance with contaminants listed in OAR 333-061-0030(2)(a) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the regulatory detection limit prescribed in paragraph (3)(a)(C) of this rule (Table 11) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly monitoring. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in OAR 333-061-0040 and 333-061-0042(2)(b)(A).

(H) If monitoring data collected after January 1, 1990 are consistent with the requirements of subsection (3)(a) of this rule, the Department may allow systems to use that data to satisfy the monitoring requirements for the initial compliance periods beginning January 1, 1993 and January 1, 1996.

(I) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population — Begin Initial monitoring — Complete initial monitoring by
300 or More — January 1, 1993 — December 31, 1993
100–299 — January 1, 1994 — December 31, 1994
Less than 100 — January 1, 1995 — December 31, 1995

(J) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL.

(b) Disinfection Byproducts:

(A) General sampling and analytical requirements regarding disinfection byproducts for Community water systems and Non-transient Non-community water systems that add a disinfectant (oxidant) in any part of the treatment process are specified in paragraphs (3)(b)(A) through (N) of this rule.

(i) Water systems must take all samples during normal operating conditions.

(ii) Water systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with approval from the Department in accordance with criteria developed for Consumer Confidence Reports (OAR 333-061-0043).

(iii) Failure to monitor in accordance with the monitoring plan as specified in paragraph (3)(b)(G) of this rule is a monitoring violation.

(iv) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(v) Systems may use only data collected under the provisions of this rule or 40 CFR Parts 141.140 through 141.144 (Subpart M — Information Collection Rule for Public Water Systems) to qualify for reduced monitoring.

(B) Monitoring requirements for disinfection byproducts.

(i) Routine monitoring for TTHMs and HAA5. Systems must monitor at the frequency as specified in the Table 12: [Table not included. See ED. NOTE.]

(ii) Systems may reduce monitoring, except as otherwise provided, as specified in Table 13 as follows: [Table not included. See ED. NOTE.]

(iii) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (3)(b)(B)(i) of this rule in the quarter immediately following the monitoring period in which the system exceeds 0.060

mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. For systems using only groundwater not under the direct influence of surface water and serving less than 10,000 persons, if either the TTHMs annual average is greater than 0.080 mg/L or the HAAs annual average is greater than 0.060 mg/L, the water system must go to increased monitoring as specified in paragraph (3)(b)(B)(i) of this rule in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5, respectively.

(iv) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring, the TTHM annual average is less than or equal to 0.060 mg/L and the HAA5 annual average is less than or equal to 0.045 mg/L.

(v) The Department may return a system to routine monitoring at its discretion.

(C) Chlorite. Community and Non-transient Non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) Routine monitoring.

(I) Daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (3)(b)(C)(ii) of this rule, in addition to the sample required at the entrance to the distribution system.

(II) Monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (3)(b)(C)(ii) of this rule to meet the requirement for monitoring in this paragraph.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Reduced monitoring.

(I) Chlorite monitoring at the entrance to the distribution system required by paragraph (3)(b)(C)(i)(I) of this rule may not be reduced.

(II) Chlorite monitoring in the distribution system required by paragraph (3)(c)(C)(i)(II) of this rule may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (3)(b)(C)(i)(II) of this rule has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (3)(b)(C)(ii) of this rule. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under paragraph (3)(b)(C)(i)(II) of this rule exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (3)(b)(C)(ii) of this rule, at which time the system must revert to routine monitoring.

(iv) Bromate.

(I) Routine monitoring. Community and Non-transient Non-community water systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(II) Reduced monitoring. Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by paragraph (3)(b)(C)(iv)(I) of this rule.

(D) Monitoring requirements for disinfectant residuals.

(i) Chlorine and chloramines.

(I) Routine monitoring. Community and Non-transient Non-community water systems that use chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time when total coliforms are sampled, as specified in OAR 333-061-0036(5). Water systems using surface water or groundwater under the direct influence of surface water may use the results of residual disinfectant concentration sampling conducted as required by OAR 333-061-0036(4)(a)(F) for unfiltered systems or OAR 333-061-0036(4)(b)(C) for systems which filter, in lieu of taking separate samples. Compliance with this rule is achieved when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. Operators may increase residual disinfectant levels of chlorine or chloramine (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health in order to address specific microbiological contaminant problems resulting from events in the source water or in the distribution system.

(II) Reduced monitoring from paragraph (3)(b)(D)(i)(I) of this rule is not allowed.

(ii) Chlorine dioxide.

(I) Routine monitoring. Community, Non-transient Non-community, and Transient Non-community water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by paragraph (3)(b)(D)(ii)(II) of this rule, in addition to the sample required at the entrance to the distribution system. Compliance with this rule is achieved when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL.

(II) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(III) Chlorine dioxide monitoring may not be reduced from paragraph (3)(b)(D)(ii)(II) of this rule.

(E) Monitoring requirements for disinfection byproduct precursors (DBPP).

(i) Routine monitoring. Water systems using surface water or groundwater under the direct influence of surface water which use conventional filtration treatment must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under paragraph (3)(b)(I)(i) of this rule must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(ii) Reduced monitoring. Water systems using surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The water system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC greater than or equal to 2.0 mg/L.

(F) Bromide. Water systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(G) Monitoring plans. Each water system required to monitor under this paragraph must develop and implement a monitoring plan. The system

must maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates as specified in OAR 333-061-0032(9)(b). All water systems using surface water or groundwater under the direct influence of surface water serving more than 3300 people must submit a copy of the monitoring plan to the Department no later than the date of the first report required by OAR 333-061-0040(1). The Department may also require the plan to be submitted by any other system. After review, the Department may require changes in any plan elements. The plan must include at least the following elements.

(i) Specific locations and schedules for collecting samples for any parameters included in subsection (3)(b) of this rule;

(ii) How the water system will calculate compliance with MCLs, MRDLs, and treatment techniques;

(iii) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, the sampling plan must reflect the entire distribution system.

(H) General compliance requirements.

(i) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(ii) All samples taken and analyzed under the provisions of subsection (3)(b) of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(iii) If, during the first year of monitoring as required by subsection (3)(b) of this rule, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(I) Compliance requirements for TTHMs and HAA5.

(i) For systems monitoring quarterly, compliance with MCLs as required by OAR 333-061-0030(2)(b) must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as required by paragraph (3)(b)(B) of this rule.

(ii) For water systems monitoring less frequently than quarterly, compliance must be based on an average of samples taken that year as required by paragraph (3)(b)(B)(i) of this rule. If the average of these samples exceeds the MCL, the water system must increase monitoring to once per quarter per treatment plant and the system is not considered in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Water systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(iv) If a water system fails to complete four consecutive quarters' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(J) Compliance requirements for Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as required by paragraph (3)(b)(C)(iv) of this rule. If the average of samples covering any consecutive four-quarter period exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. If a water system fails to complete 12 consecutive months monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(K) Compliance requirements for Chlorite. Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as required by paragraph (3)(b)(C)(i)(II) of this rule and paragraph (3)(b)(C)(ii) of this rule. If the arithmetic average of any three sample set exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(L) Compliance requirements for chlorine and chloramines.

(i) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system as required by paragraph (3)(b)(D)(i) of this rule. If the average covering any consecutiv00e four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(ii) In cases where water systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted as required by OAR 333-061-0040(1) must clearly indicate which residual disinfectant was analyzed for each sample.

(M) Compliance requirement for Chlorine dioxide.

(i) Acute violations. Compliance must be based on consecutive daily samples collected by the water system as required by paragraph (3)(b)(D)(ii) of this rule. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the water system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute health risks as required by OAR 333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for acute violations as required by OAR 333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040.

(ii) Non-acute violations. Compliance must be based on consecutive daily samples collected by the system as required by paragraph (3)(b)(D)(ii) of this rule. If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the water system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for non-acute health risks specified by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for non-acute violations specified by OAR 333-061-0042(2)(b)(A) in addition to reporting to the Department as required by OAR 333-061-0040.

(N) Compliance requirements for Disinfection byproduct precursors (DBPP). Compliance must be determined as specified by OAR 333-061-0032(9)(f). Water systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any water system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements as specified in OAR 333-061-0032(9)(e)(B) and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed by OAR 333-061-0032(9)(e)(C) and is in violation. Water systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet step 1 TOC removals, if the value calculated under OAR 333-061-0032(9)(f)(A)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department pursuant to OAR 333-061-0040.

(c) Volatile Organic Chemicals: Benzene, Carbon tetrachloride, Cis-1,2-Dichloroethylene, Dichloromethane, Ethylbenzene, Monochlorobenzene, O-Dichlorobenzene, P-Dichlorobenzene, Styrene, Tetrachloroethylene(PCE), Toluene, Trans-1,2-Dichloroethylene, Trichloroethylene (TCE), Vinyl chloride, Xylenes(total), 1,1-Dichloroethylene, 1,1,1-

Trichloroethane, 1,1,2-Trichloroethane, 1,2-Dichloroethane, 1,2-Dichloropropane, and 1,2,4-Trichlorobenzene.

(A) Samples of water which is delivered to users shall be analyzed for regulated volatile organic chemicals (VOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples from each sampling point during each compliance period beginning in the initial compliance period starting January 1, 1993. The water system shall take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield or within an existing drinking water protection area may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's Source Water Assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If warranted, the Department may designate additional sampling points within the distribution system or at the consumer's tap which more accurately determines consumer exposure.

(iii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) For the purpose of subsection (3)(c) of this rule, a detectable level for VOCs is 0.0005 mg/l.

(C) If the initial analyses do not detect any contaminant listed in subsection (3)(c) of this rule, then monitoring for all of the VOCs may be reduced to:

(i) Annual per entry point for surface and ground water systems;

(ii) Once every three years per entry point for ground water systems after a minimum of three years of annual monitoring and no history of detections;

(iii) Once every 6 years if the system has a state certified Drinking Water Protection Plan or if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility to the VOCs according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(iv) Once every 9 years if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" to the VOCs according to the Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(v) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents."

(D) Each Community and Non-Transient Non-Community water system which does not detect any contaminant listed in subsection (3)(c) of this rule after the initial monitoring period may apply to the Department for a waiver from the requirements prescribed in paragraphs (3)(c)(A) and (C) of this rule according to procedures described in paragraph (3)(a)(B) of this rule and the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and the water system must reapply for a waiver for Volatile Organic Chemicals monitoring every two compliance periods (6 years).

(E) As a condition of a waiver groundwater systems must take one sample at each sampling point during the time the waiver is in effect and update its vulnerability assessment addressing those factors listed in paragraph (3)(a)(B)(ii) and (iii) of this rule. The Department must confirm that a system is not vulnerable within three years of the original determination or the waiver is invalidated and the system is required to sample annually as specified in paragraph (3)(c)(C) of this rule.

(F) Surface water systems which do not detect any contaminant listed in subsection (3)(c) of this rule after completing the initial monitoring and have been determined to be not vulnerable to VOC contamination by the Department shall monitor at the discretion of the Department. The Department shall reevaluate the vulnerability of such systems during each compliance period.

(G) If a water system detects any contaminant listed in subsection (3)(c) of this rule (except vinyl chloride) in any sample greater than the minimum detection limit of 0.0005 mg/l, then the water system shall monitor quarterly at each sampling point where a detection occurred.

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(c)(G) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(c)(D) of this rule.

(iii) Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the Department may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride at the discretion of the Department.

(H) If the results of an analysis prescribed in paragraph (3)(c)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system shall monitor quarterly. After a minimum of four consecutive quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(c)(K) of this rule, then the system may monitor annually during the quarter which previously yielded the highest analytical result.

(I) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result and the average used to determine compliance.

(J) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample is _0.0005 mg/l for any contaminant listed in subsection (3)(c) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates have not been held for longer than 14 days. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population ≤ 3,300, the Department may allow compositing among different systems provided the 5-sample limit is maintained.

(K) Compliance with contaminants listed in OAR 333-061-0030(2)(c) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the water system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in OAR 333-061-0040 and 333-061-0042(2)(b)(A).

(L) If monitoring data collected after January 1, 1988 are consistent with the requirements of subsection (3)(c) of this rule, the Department may allow systems to use that data (i.e. a single sample rather than four quarterly samples) to satisfy the monitoring requirements prescribed in paragraph

(3)(c)(A) of this rule for the initial compliance period. Systems which use grandparented samples and did not detect any contaminant listed in subsection (3)(c) of this rule shall begin monitoring annually in accordance with paragraph (3)(c)(C) of this rule beginning with the initial compliance period.

(M) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population — Begin Initial monitoring — Complete initial monitoring by
300 or More — January 1, 1993 — December 31, 1993
100–299 — January 1, 1994 — December 31, 1994
Less than 100 — January 1, 1995 — December 31, 1995

(N) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL.

(4) Surface Water Treatment.

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does not provide filtration treatment must monitor water quality as specified in this subsection beginning January 1, 1991 for systems using a surface water source and January 1, 1991 or 6 months after the Department has identified a source as being under the direct influence of surface water for groundwater sources, whichever is later.

(A) Fecal coliform or total coliform density measurements as required by OAR 333-061-0032(2)(b)(A) must be performed on representative source water samples immediately prior to the first or only point of disinfectant application. The system must sample for fecal or total coliforms at the minimum frequency shown in Table 14 each week the system serves water to the public. These samples must be collected on separate days.

Table 14
Population Served: — Samples Per Week:
500 or less — 1
501 to 3,300 — 2
3,301 to 10,000 — 3
10,001 to 25,000 — 4
More than 25,000. — 5

Also one fecal or total coliform density measurement must be made every day the system serves water to the public when the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly coliform sampling requirement) unless the Department determines that the system, for logistical reasons outside of its control, cannot have the sample analyzed within 30 hours of collection.

(B) Turbidity measurements as required by OAR 333-061-0032(2)(b)(B) must be performed on representative grab samples of source water immediately prior to the first or only point of disinfectant application every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Systems using continuous turbidity monitoring must report the turbidity data to the Department in the same manner that grab sample results are reported. The Department will furnish report forms upon request.

(C) The total inactivation ratio for each day that the system is in operation must be determined based on the $CT_{99.9}$ values in Tables 15 through 22. The parameters necessary to determine the total inactivation ratio must be monitored as follows:

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) ("T") in minutes must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") in mg/l before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine, the system may demonstrate to the Department, through the use of protocol approved by the Department for on-site disinfection challenge studies or other information satisfactory to the Department, that $CT_{99.9}$ values other than those specified in the Tables 21 and 22 or other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by OAR 333-061-0032(3)(a). [Tables not included. See ED. NOTE.]

(D) The total inactivation ratio must be calculated as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio based on either of the following two methods:

(I) One inactivation ratio ($CT_{calc}/CT_{99.9}$) is determined before or at the first customer during peak hourly flow and if the $CT_{calc}/CT_{99.9}$ is greater than or equal to 1.0, the 99.9 percent *Giardia lamblia* inactivation requirement has been achieved; or

(II) Successive $CT_{calc}/CT_{99.9}$ values representing sequential inactivation ratios, are determined between the point of disinfection application and a point before or at the first customer during peak hourly flow. Under this alternative, the following method must be used to calculate the total inactivation ratio:

Step 1: Determine $CT_{calc}/CT_{99.9}$ for each sequence
Step 2: Add the $CT_{calc}/CT_{99.9}$ values together
Step 3: If $\sum(CT_{calc}/CT_{99.9})$ is greater than or equal to 1.0, the 99.9 percent *Giardia lamblia* inactivation requirement has been achieved.

(ii) If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The $CT_{calc}/CT_{99.9}$ value of each sequence and $\sum CT_{calc}/CT_{99.9}$ must be calculated using the methods in paragraph (4)(a)(D)(i)(II) of this rule to determine if the system is in compliance with OAR 333-061-0032(3)(a).

(E) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed in Table 23:

Table 23
Population — Samples per day
500 or Less — 1
501 to 1,000 — 2
1,001 to 2,500 — 3
2,501 to 3,300 — 4

The day's samples cannot be taken at the same time. The sampling intervals are subject to Department review and approval. If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual disinfectant concentration is _0.2 mg/l.

(F) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in section (5) of this rule, except that the Department may allow a public water system which uses both a surface water source or a groundwater source under the direct influence of surface water, and a groundwater source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system.

(b) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does provide filtration treatment must monitor water quality as specified in this subsection beginning June 29, 1993 or when filtration treatment is installed, whichever date is later.

(A) Turbidity measurements as required by section OAR 333-061-0032(4) must be performed on representative samples of the system's filtered water, measured prior to any storage, every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Calibration of all turbidimeters must be performed according to manufacturer's specifications, but no less frequently than quarterly. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the Department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. Systems using lime softening may acidify representative samples prior to analysis using a method approved by the Department.

(B) Monitoring for the residual disinfectant concentration entering the distribution system shall be performed as prescribed in paragraph (4)(a)(E) of this rule.

(C) Monitoring for the residual disinfectant concentration in the distribution system shall be performed as prescribed in paragraph (4)(a)(F) of this rule.

(c) In addition to subsection (4)(b) of this rule, water systems serving at least 10,000 people or serving less than 10,000 people beginning January 1, 2005 using surface water or groundwater under the direct influence of surface water where treatment includes conventional filtration treatment or direct filtration treatment must conduct continuous turbidity monitoring for each individual filter and must calibrate turbidimeters using the procedure specified by the manufacturer. Individual filter monitoring results must be recorded every 15 minutes. If there is a failure in the continuous turbidity monitoring equipment, the water system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back on-line. The water system serving at least 10,000 people has a maximum of five working days after failure to repair the equipment or the water system is in violation. The water system serving less than 10,000 people has a maximum of 14 days to resume continuous monitoring before a violation is incurred. If the water system's conventional or direct filtration treatment plant consists of two or fewer filters, continuous monitoring of the combined filter effluent turbidity may be substituted for continuous monitoring of individual filter effluent turbidity. For systems serving less than 10,000 people, the recording and calibration requirements that apply to individual filters also apply when continuous monitoring of the combined filter effluent turbidity is substituted for the continuous monitoring of individual filter effluent turbidity;

(d) The results of test data collected to meet the requirements prescribed in OAR 333-061-0036 shall be reported as prescribed in OAR 333-061-0040.

(5) Microbiological contaminants:

(a) Routine sampling for pathogens is not required but may be required by the Department when specific evidence indicates the possible presence of such organisms.

(b) Samples shall be collected and analyzed for the purpose of determining compliance with the maximum contaminant levels for coliform bacteria as follows:

(A) Samples shall be collected from points which are representative of conditions, including impacts of multiple sources, within the distribution system at regular time intervals throughout the reporting period.

(B) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(C) For all Community water systems utilizing surface and/or ground water, all Non-Transient Non-Community and Transient Non-Community water systems utilizing surface water sources, and all Non-Transient Non-Community and Transient Non-Community water systems utilizing groundwater sources serving more than 1000 persons per day, the analyses shall be made at regular time intervals and at a frequency no less than set forth in Table 24.

(D) Non-Transient Non-Community and Transient Non-Community water systems using groundwater under the direct influence of surface water must monitor at a frequency no less than set forth in Table 24. Monitoring must begin at this frequency no later than 6 months after the Department has determined that the groundwater source is under the direct influence of surface water.

Table 24

| Population | Samples Per Month |
|---|---|
| up to 1,000 | 1 |
| 1,001 to 2,500 | 2 |
| 2,501 to 3,300 | 3 |
| 3,301 to 4,100 | 4 |
| 4,101 to 4,900 | 5 |
| 4,901 to 5,800 | 6 |
| 5,801 to 6,700 | 7 |
| 6,701 to 7,600 | 8 |
| 7,601 to 8,500 | 9 |
| 8,501 to 12,900 | 10 |
| 12,901 to 17,200 | 15 |
| 17,201 to 21,500 | 20 |
| 21,501 to 25,000 | 25 |
| 25,001 to 33,000 | 30 |
| 33,001 to 41,000 | 40 |
| 41,001 to 50,000 | 50 |
| 50,001 to 59,000 | 60 |
| 59,001 to 70,000 | 70 |
| 70,001 to 83,000 | 80 |
| 83,001 to 96,000 | 90 |
| 96,001 to 130,000 | 100 |
| 130,001 to 220,000 | 120 |
| 220,001 to 320,000 | 150 |
| 320,001 to 450,000 | 180 |
| 450,001 to 600,000 | 210 |
| 600,001 to 780,000 | 240 |

(E) For Transient and Non-Transient Non-Community water systems utilizing ground water sources and serving 1000 persons or fewer per day and all State Regulated water systems, the analyses shall be made in each calendar quarter during which water is provided to the public.

(F) Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sampling site plan. The plan must include, at a minimum, a brief narrative of the water system components, a map of the distribution system showing the representative routine and repeat sampling sites, and sampling protocols. These plans must be approved by the Department.

(G) Any public water system that uses surface water or groundwater under the direct influence of surface water and does not provide filtration treatment as defined by these rules must collect at least one sample at the first customer for each day the turbidity level of the source water measured as prescribed in OAR 333-061-0036(4)(a)(B) exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance or as early as possible the next business day, unless the Department determines that the system cannot have the sample analyzed within 30 hour of collection due to logistical reasons outside the system's control. Sample results from this coliform monitoring must be included in determining compliance with the microbiological MCL prescribed in OAR 333-061-0030(4).

(c) When a routine sample is total coliform-positive, a set of repeat samples must be collected within 24 hours of being notified of the positive results by the certified laboratory.

(A) Systems which collect more than one routine sample/month must collect at least three repeat samples for each total coliform-positive routine sample found.

(B) Systems which collect one routine sample/month or less must collect at least four repeat samples for each total coliform-positive sample found.

(d) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If the original sampling site is at or near the end of the distribution system, the Department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. All repeat samples must be collected on the same day.

(e) Systems with a single service connection may be allowed by the Department to collect the required set of repeat samples over a four-day period.

(f) The Department may extend the 24-hour limit in subsection (5)(c) of this rule on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control.

(g) Results of all routine and repeat samples not invalidated by the Department must be included in determining compliance with the MCL for total coliforms required in OAR 333-061-0030(4).

(h) If one or more repeat samples in the set is total-coliform positive, the public water system must collect an additional set of repeat samples in the manner specified in subsections (5)(c), (d) and (e) of this rule. The additional samples must be collected within 24 hours of being notified of the positive result, unless the Department extends the limit as provided in subsection (5)(f) of this rule. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or The Department determines that the MCL for total coliforms in OAR 333-061-0030(4) has been exceeded. After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of a routine sample.

(i) If a system collecting fewer than five routine samples/month has one or more total coliform-positive samples and the Department does not invalidate the sample(s) under subsection (5)(k) of this rule, the system must collect at least five routine samples during the next month the system provides water to the public. The Department may waive this requirement if:

(A) The Department performs a site visit before the end of the next month the system provides water to the public and determines that additional monitoring and/or corrective action is not needed; or

(B) The Department determines why the sample was total coliform-positive and establishes that the system has corrected the problem before the end of the next month the system serves water to the public. The Department must document in writing this decision, have it approved and signed by the supervisor of the official who recommends such a decision, and make this document available to the public. The written documentation

must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem. The Department cannot waive this requirement solely on the grounds that all repeat samples are total-coliform negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms required in OAR 333-061-0030(4) unless the Department determines that the system has corrected the contamination problem before the system took the set of repeat samples required in subsection (5)(c)(d) and (e) of this rule, and all repeat samples were total coliform negative.

(j) When the maximum microbiological contaminant level for total coliform is exceeded or when the maximum contaminant level for fecal coliform or fecal and total coliform is exceeded the water supplier shall report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042(2)(b)(A) for total coliform and 333-061-0042(2)(a)(A) for fecal coliform/E.Coli. If the water system has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, the system must report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042;

(k) The Department may invalidate a total coliform-positive samples if:

(A) The laboratory establishes that improper sample analysis caused the total coliform-positive result; or

(B) The Department determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem on the basis of the results of repeat samples collected as required by subsections (5)(c), (d) and (e) of this rule. The Department cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. (The Department cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection); or

(C) The Department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by subsections (5)(c) through (h) of this rule and use them to determine compliance with the microbiological MCL prescribed in OAR 333-061-0030(4). To invalidate a total coliform-positive sample under this paragraph, the decision with its rationale must be documented in writing, approved and signed by the supervisor of the Department official who recommended the decision. The Department must make this document available to the public. The written documentation must state the specific cause of the total coliform-positive sample and what action the system has taken, or will take, to correct this problem. The Department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(l) A certified laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produced a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a certified laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result. The Department may waive the 24-hour time limit on a case-by-case basis.

(m) Any total coliform-positive sample invalidated under subsections (5)(k) or (l) of this rule shall not count towards meeting the minimum monitoring requirements as prescribed in subsections (5)(a) through (e) of this rule.

(n) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system must notify the Department by the end of the day when the system is notified of the test result or, if the Department office is closed, by the end of the next business day.

(o) The Department may allow a water system to forgo testing for fecal coliform or E. coli on total coliform-positive samples as prescribed in subsection (5)(n) of this rule if the system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli positive. The system must notify the Department as specified in subsection (5)(n) of this rule and the provisions of OAR 333-061-0030(4) apply.

(p) Public water systems which do not collect five or more routine samples per month must undergo an initial sanitary survey by June 29, 1994 for Community water systems and June 29, 1999 for Non-Transient and Transient Non-Community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that Non-Transient and Transient Non-Community water systems using only protected and disinfected groundwater as defined by the Department, must undergo subsequent sanitary surveys at least every ten years after the initial survey. The Department must review the results of each survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(6) Radionuclides:

(a) Gross alpha particle activity, Radium 226, Radium 228, and Uranium:

(A) Initial Monitoring. Community Water Systems without acceptable historical data, as defined below, must conduct initial monitoring to determine compliance with OAR 333-061-0030(5) by December 31, 2007.

(i) Samples must be collected from each entry point to the distribution system during 4 consecutive quarters before December 31, 2007 according to the following schedule:

Population — Begin Initial monitoring — Complete initial monitoring by
300 or More — First quarter 2005 — Fourth quarter 2005
100–299 — First quarter 2006 — Fourth quarter 2006
Less than 100 — First quarter 2007 — Fourth quarter 2007

(ii) New systems or systems using a new source must conduct initial monitoring beginning the first quarter of operation, followed by three consecutive quarterly samples.

(iii) The Department may waive the final two quarters of the initial monitoring at an entry point if the results of the samples from the first two quarters are below the method detection limit.

(iv) Grandparenting of historical data. A system may use monitoring data from each source or entry point collected between June 2000 and December 8, 2003 to satisfy the initial monitoring requirements.

(v) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at the entry point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Department.

(B) Reduced Monitoring. Radionuclide monitoring may be reduced to once every three years, once every six years, or once every nine years based on the following criteria:

(i) If the average of the initial monitoring result for each contaminant (gross alpha particle activity, radium-226, radium-228, and uranium) at a given entry point is below the detection limit, sampling for that contaminant may be reduced to once every nine years.

(ii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is at or above the detection limit but at or below 1/2 the MCL, sampling for that contaminant may be reduced to once every six years.

(iii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is above 1/2 the MCL but at or below the MCL, the system must collect one sample at that sampling point at least once every three years.

(iv) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods.

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that entry point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of an formal compliance agreement with the Department.

(C) Compositing of samples. A system may composite up to four consecutive quarterly samples from a single entry point if the analysis is done within a year of the first sample. If the analytical result from the composited sample is greater than 1/2 the MCL, the Department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(D) Substitution of results.

(i) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the gross alpha particle activity does not exceed 5 pCi/L.

(ii) A gross alpha particle activity measurement may be substituted for the required uranium measurement if the gross alpha particle activity does not exceed 15 pCi/L.

(iii) The gross alpha measurement shall have a confidence interval of 95% (1.65$\sigma$ where $\sigma$ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium.

(iv) When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, 1/2 the method detection limit will be used to determine compliance and the future monitoring frequency.

(b) Beta particle and photon radioactivity:

(A) Community water systems designated by the Department as "vulnerable" must sample for beta particle and photon radioactivity as follows. No waivers shall be granted:

(i) Initial samples must be collected by December 31, 2007.

(ii) Quarterly samples for beta emitters and annual samples for tritium and strontium-90 must be taken at each entry point to the distribution system. Systems already designated by the state must continue to sample until the state removes the designation.

(iii) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sample point has a running annual average less than or equal to 50 pCi/l, sampling for contaminants prescribed in paragraph (6)(b)(A)(i) of this rule maybe reduced to once every three years.

(B) Community water systems designated by the Department as "contaminated" by effluents from nuclear facilities and must sample for beta particle and photon radioactivity as follows. No waivers shall be granted.

(i) Systems must collect quarterly samples for beta emitters as detailed below and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system. Sampling must continue until the Department removes the designation.

(ii) Quarterly monitoring for gross beta particle activity is based on the analysis of monthly samples or the analysis of a composite of three monthly samples.

(iii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. More frequent monitoring may be required if iodine-131 is detected.

(iv) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

(v) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an entry point has a running annual average less than or equal to 15 pCi/l, the Department may reduce the frequency of monitoring for contaminants prescribed in paragraph (6)(b)(B)(i) of this rule at that entry point to every three years.

(C) For systems in the vicinity of a nuclear facility, the Department may allow the substitution of appropriate environmental surveillance data taken in conjunction with operation of a nuclear facility for direct monitoring of man-made radioactivity by the water supplier where such data is applicable to a particular Community water system. In the event of a release, monitoring must be done at the water system's entry points.

(D) Systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of 0.82.

(E) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with OAR 333-061-0030(5). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(F) Systems must monitor monthly at the entry point(s) which exceed the MCL listed in OAR 333-061-0030(5) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in (6)(b)(A)(ii) or (6)(b)(B)(v) of this rule.

(c) General monitoring and compliance requirements for radionuclides.

(A) The Department may require more frequent monitoring than specified in subsections (6)(a) and (b) of this rule, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(B) Each system shall monitor at the time designated by the Department during each compliance period. To determine compliance with 333-061-0030(5), averages of data shall be used and shall be rounded to the same number of significant figures as the MCL of the contaminant in question.

(C) Compliance.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any entry point, the system is out of compliance with the MCL immediately.

(iii) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. In that case, if the gross alpha particle activity result is less than detection, 1/2 the detection limit will be used to calculate the annual average.

(D) The Department has the discretion to delete results of obvious sampling or analytical errors.

(E) When the average annual maximum contaminant level for radionuclides as specified in Table 5 is exceeded, the water supplier shall, within 48 hours, report the analysis results to the Department as prescribed in OAR 333-061-0040 and initiate the public notification procedures prescribed in OAR 333-061-0042(2)(b)(A).

(7) Secondary contaminants:

(a) The levels listed in Table 6 of OAR 333-061-0030 represent reasonable goals for drinking water quality, but routine sampling for these secondary contaminants is not required.

(b) The Department may however, require sampling and analysis under the following circumstances:

(A) User complaints of taste, odor or staining of plumbing fixtures.

(B) Where treatment of the water is proposed and the levels of secondary contaminants are needed to determine the method and degree of treatment.

(C) Where levels of secondary contaminants are determined by the Department to present an unreasonable risk to health.

(c) If the results of the analyses do not exceed levels for secondary contaminants, listed in Table 6 of OAR 333-061-0030, subsequent sampling and analysis shall be at the discretion of the Department;

(d) If the results of the analyses indicate that the levels for secondary contaminants, listed in Table 6 of OAR 333-061-0030 are exceeded, the Department shall determine whether the contaminant levels pose an unreasonable risk to health or interfere with the ability of a water treatment facility to produce a quality of water complying with the Maximum Contaminant Levels of these rules and specify follow-up actions to be taken.

(e) During the period while any measures called for in subsection (7)(d) of this rule are being implemented, the water supplier shall follow the procedures relating to variances and permits which are prescribed in OAR 333-061-0045.

(8) Monitoring of disinfectant residuals:

(a) For public water systems where continuous disinfection is practiced, the water supplier shall maintain a detectable residual disinfectant throughout the system and shall measure and record the residual daily at one or more representative points;

(b) Where chlorine is used as the disinfectant, the measurement of residual chlorine shall be by the DPD method in accordance with Standard Methods for the Examination of Water and Waste-water, and shall measure the free chlorine residual or total chlorine residual as applicable;

(c) The water supplier shall maintain a summary report of the daily residual disinfectant measurements and shall retain this summary report at a convenient location within or near the area served by the water system.

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

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 23-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0040**
**Reporting and Record Keeping**

(1) Reporting requirements:

(a) Any person who has reasonable cause to believe that his or her actions have led to contamination of a public water system shall report that fact immediately to the water supplier and the Department.

(b) Results of analyses required by OAR 333-061-0036 and performed by an approved laboratory shall be reported to the Department by the water supplier, unless direct laboratory reporting is authorized by the water supplier, within 10 days after the end of the month, or within 10 days after the end of the required monitoring period. Laboratories that issue final test reports shall report the validated results of any analysis directly to the Department and to the water supplier if the analysis shows that a sample contains contaminant levels in excess of any maximum contaminant level specified in the water quality standards within (24) hours of obtaining the results. Subcontracted laboratories shall report such results to their client laboratory within (24) hours.

(c) If the water system fails to conduct monitoring as required in 333-061-0036 the water system must notify the public as prescribed in 333-061-0042.

(d) The water supplier shall report to the Department within (24) hours the reports on any substance or pathogenic organisms found in the water that has caused or is likely to cause physical suffering or illness.

(e) The water supplier using a surface water source or a groundwater source under direct influence of surface water which provides filtration treatment shall report monthly beginning June 29, 1993 or when filtration is installed, whichever is later, to the Department the results of any test, measurement or analysis required by these rules that is performed on site (e.g., turbidity, "CT" parameters and the lowest disinfectant residual concentrations entering the distribution system and in the distribution system for each day), by trained personnel within 10 days after the end of the month.

(A) All systems using surface water or groundwater under the direct influence of surface water shall consult with the Department within twenty-four (24) hours, after learning:

(i) That the turbidity exceeded 5 NTU;

(ii) Of a waterborne disease outbreak potentially attributable to that water system;

(iii) That the disinfectant residual concentration in the water entering the distribution system fell below 0.2 mg/l and whether or not the residual was restored to at least 0.2 mg/l within four hours.

(B) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration serving at least 10,000 people must report monthly to the Department the information specified in paragraphs (1)(e)(B)(i) and (ii) of this rule. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration, regardless of population served, must also meet the requirements of paragraph (1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (1)(e)(B)(i) of this rule.

(i) Turbidity measurements as required by OAR 333-061-0030(3) must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(I) The total number of filtered water turbidity measurements taken during the month;

(II) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified by OAR 333-061-0030(3)(b)(A) through (D);

(III) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Department specified in OAR 333-061-0030(3)(b)(D).

(IV) The date and value of any turbidity measurements taken during the month which exceed 5 NTU for systems using slow sand filtration or diatomaceous earth filtration.

(ii) Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1)(e)(B)(ii)(I) through (IV) of this rule. Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (1)(e)(B)(ii)(I) through (IV) of this rule if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must either produce a filter profile for the filter within seven days of the exceedance (if the water system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(II) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(III) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(IV) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must arrange to have a comprehensive performance evaluation by the Department or a third party approved by the Department conducted no later than 30 days following the exceedance and have the evaluation completed and submitted to the Department no later than 90 days following the exceedance.

(iii) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the Department as soon as possible, but no later than the end of the next business day.

(iv) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the Department as specified in OAR 333-061-0030(3)(b)(D) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the water system must inform the Department as soon as possible, but no later than the end of the next business day.

(C) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration treatment serving less than 10,000 people must report monthly to the Department the information specified in paragraphs (1)(e)(B)(i) of this rule and beginning January 1, 2005 the information specified in paragraph (1)(e)(C)(i) of this rule. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration regardless of population served must also meet the requirements of paragraph (1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (1)(e)(B)(i) of this rule.

Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1)(e)(C)(i)(I) through (III) of this rule.

(i) Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (1)(e)(C)(i)(I) through (III) of this rule if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report to the Department by the 10th day of the following month the filter number(s), the turbidity value(s) that exceeded 1.0 NTU, the corresponding date(s) of occurrence, and the cause (if known) for the elevated turbidity values. The Department may request the water system produce a turbidity profile for the filter(s) in question.

(II) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart for three consecutive months, the water system must conduct a filter self-assessment within 14 days of the date the turbidity exceeded 1.0 NTU during the third month, unless a CPE is performed in lieu of a filter self-assessment. Systems with two filters monitoring the CFE must conduct a filter self-assessment for both filters. The self-assessment must consist of the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. When a self-assessment is required, the water system must report the date the self-assessment was triggered, the date the self-assessment was completed, and the conclusion(s) of the self-assessment by the 10th of the following month or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month.

(III) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart for two consecutive months, the water system must report these turbidity results to the Department by the 10th of the following month and arrange to have a comprehensive performance evaluation (CPE) by the Department or a third party approved by the Department conducted within 60 days of the date the turbidity exceeded 2.0 NTU during the second month. The CPE report must be submitted to the Department no later than 120 days following the date the turbidity exceeded 2.0 NTU during the second month. A CPE is not needed if the Department or approved third party has conducted a CPE within the last 12 months or the Department and the water system are jointly participating in an on-going Comprehensive Technical Assistance (CTA) project as part of the Composite Correction Program with the water system. When a CPE is required, the water system must report that a CPE is required and the date that the CPE was triggered by the 10th day of the following month.

(f) The water supplier using a surface water source or a groundwater source under direct influence of a surface source which does not provide filtration treatment shall report according to subsection (1)(e) of this rule in addition to the requirements of this subsection. Monthly reporting to the Department will begin January 1, 1991 for systems using surface water sources and January 1, 1991 or six months after the Department determines surface influence for systems using groundwater under the direct influence of surface water.

(A) Report to the Department within 10 days after the end of each month, the results or analysis of:

(i) Fecal coliform and/or total coliform bacteria test results on raw (untreated) source water.

(ii) Daily disinfection "CT" values including parameters such as pH measurements, temperature, and disinfectant residuals at the first customer used to compute the "CT" values.

(iii) Daily determinations using the "CT" values of the adequacy of disinfectant available for inactivation of *Giardia lamblia* or viruses as specified in OAR 333-061-0032(1)(a).

(B) Report to the Department within 10 days after the end of each Federal Fiscal year (September 30), the results of:

(i) The watershed control program requirements as specified in OAR 333-061-0032(2)(c)(B).

(ii) The on-site inspection summary requirements as specified in OAR 333-061-0032(2)(c)(C).

(g) All Community and Non-Transient Non-Community public water systems shall report all of the following information pertaining to lead and copper to the Department in accordance with the requirements of this subsection.

(A) Except as provided in paragraph (1)(g)(A)(vii) of this rule, a public water system shall report the information below for all tap water samples and for all water quality parameter samples within 10 days following the end of each applicable monitoring period.

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool. With the exception of initial tap sampling, the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed. By the applicable date specified in OAR 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Community Water System which does not complete its targeted sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of tier 2 and/or tier 3 sampling sites. By the applicable date specified in OAR 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Non-Transient Non-Community water system which does not complete its sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of sampling sites.

(ii) A certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours. Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures according to OAR 333-061-0036(2)(d)(B)(ii).

(iii) The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica, and the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters according to OAR 333-061-0036(2)(d)(F)(iii) through (vi).

(iv) Each water system that requests that the Department reduce the number and frequency of sampling shall provide the information required in OAR 333-061-0036(2)(d)(D)(iv).

(v) Documentation for each tap water lead and copper sample for which the water system requests invalidation.

(vi) The 90th percentile lead and copper tap water samples collected during each monitoring period.

(vii) A water system shall report the results of all water quality parameter samples collected for follow-up tap monitoring prescribed in OAR 333-061-0036(2)(d)(F)(iv) through (vii) during each six-month monitoring period within 10 days following the end of the monitoring period unless the Department specifies a more frequent monitoring requirement.

(B) A water system shall report the sampling results for all source water samples collected for lead and copper within the first 10 days following the end of each source water monitoring period according to OAR 333-061-0036(2)(d)(G).

(i) With the exception of the first round of source water sampling, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(C) Corrosion control treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(2)(a) through (e), systems shall report the following information: for systems demonstrating that they have already optimized corrosion control, the information required in OAR 333-061-0034(2)(d)(B) or (C); for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment according to OAR 333-061-0034(3)(a); for systems required to evaluate the effectiveness of corrosion control treatments, the information required in OAR 333-061-0034(3)(c) of these rules; for systems required to install optimal corrosion control designated by the Department according to

OAR 333-061-0034(3)(i), a letter certifying that the system has completed the installation.

(D) Source water treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(4)(a), systems shall report the following information to the Department: the system's recommendation regarding source water treatment if required according to OAR 333-061-0034(4)(b)(A); for systems required to install source water treatment according to OAR 333-061-0034(4)(b)(B), a letter certifying that the system has completed the installation of the treatment designated by the Department within 24 months after the Department designated the treatment.

(E) Public education program reporting requirements.

(i) Any water system that is subject to the public education requirements in OAR 333-061-0034(5) shall, within ten days after the end of each period in which the system is required to perform public education tasks in accordance with OAR 333-061-0034(5)(d), send written documentation to the Department that contains:

(I) A demonstration that the system has delivered the public education materials that meet the content and delivery requirements specified in OAR 333-061-0034(5)(a) through (d); and

(II) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(ii) Unless required by the Department, a system that previously has submitted the information in paragraph (1)(g)(E)(i)(II) of this rule need not resubmit the information, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(F) Any system which collects sampling data in addition to that required by this subsection shall report the results to the Department within the first ten days following the end of the applicable monitoring period under OAR 333-061-0036(2)(d)(A) through (H) during which the samples are collected.

(G) Any water system deemed to have optimized corrosion control or any water system subject to reduced monitoring, shall send written documentation to the Department describing the addition of any new source or change in treatment prior to implementation of the change.

(H) Each ground water system that limits water quality parameter monitoring to a subset of entry points shall provide written correspondence to the Department that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. This correspondence must be submitted to the Department prior to commencement of such monitoring.

(h) The water supplier shall report to the Department the results of any test, measurement or analysis required by these rules that is performed on site (e.g. supplemental fluoride) by trained personnel within 10 days after the end of the month, except that reports which indicate that fluoride levels exceed 4.0 mg/l shall be reported within 48 hours:

(i) The water supplier shall submit to the Department within 10 days after completing any public notification action as prescribed in OAR 333-061-0042 a representative copy of each type of notice distributed to the water users or made available to the public and the media along with certification that the system has fully complied with the distribution and public notification requirements.

(j) Water systems required to sample quarterly or more frequently must report to the Department within 10 days after the end of each quarter in which samples were collected. Water systems required to sample less frequently than quarterly must report to the Department within 10 days after the end of each monitoring period in which samples were collected.

(A) Disinfection byproducts. Water systems must report the information specified in Table 25 as follows: [Table not included. See ED. NOTE.]

(B) Disinfectants. Water systems must report the information specified in Table 26 as follows: [Table not included. See ED. NOTE.]

(C) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Water systems must report the information specified in Table 27 as follows: [Table not included. See ED. NOTE.]

(k) Systems using surface water or GWUDI sources must report to the Department or local county health department within 45 days of receiving a sanitary survey report or comprehensive performance evaluation report. Failure to report to the Department requires a Tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(D).

(2) Record Maintenance by Water Suppliers:

(a) Water suppliers of public water systems shall retain records relating to the quality of the water produced and the condition of the physical components of the system. These records shall be kept at a convenient location within or near the area served by the water system;

(b) Records of bacteriological analyses shall be kept for at least five years and records of chemical analyses, secondary contaminants, turbidity and radioactive substances shall be kept for at least 10 years. Data may be transferred to tabular summaries provided the following information is included:

(A) Date, place and time of sampling, and the name of the person who collected the sample;

(B) Identification of the sample as to whether it was a routine finished water sample, repeat sample, raw water sample or special purpose sample;

(C) Date and time of the analysis, the laboratory and person performing the analysis; and

(D) Analytical method used and results of the analysis.

(c) Records of actions taken to correct items of non-compliance shall be kept for at least three years after the last action taken with respect to the particular violation;

(d) Reports, summaries or communications on sanitary surveys shall be kept for at least 10 years;

(e) Records concerning variances or permits shall be kept for at least five years after the expiration of the variance or permit;

(f) Records of residual disinfectant measurements shall be kept for at least two years.

(g) All public water systems subject to the requirements of subsection (1)(f) of this rule shall retain the original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required for no fewer than 12 years.

(h) Copies of public notices issued pursuant to OAR 333-061-0042 and certifications made to the Department must be kept for three years after issuance.

(i) Water systems using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener, supernatant, or liquids from dewatering processes must collect and retain on file recycle flow information specified in paragraphs (2)(i)(A) through (F) of this rule for review and evaluation by the Department beginning June 8, 2004:

(A) Copy of the recycle notification and information submitted to the Department as required by OAR 333-061-0032(10)(b);

(B) List of all recycle flows and the frequency with which they are returned;

(C) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

(D) Typical filter run length and a written summary of how filter run length is determined;

(E) The type of treatment provided for the recycle flow;

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(j) For systems required to compile a disinfection profile, the results of the profile (including raw data and analysis) must be kept indefinitely as well as the disinfection benchmark (including raw data and analysis) determined from the profile.

(3) Records Kept by the Department.

(a) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified by OAR 333-061-0030, 0032, and 0036.

(b) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with OAR 333-061-0032(3) or (4), 0036(4)(a)(C) through (F), or 0036(4)(b)(B) through (C) of these rules must be kept for not less than one year. Records of decisions made on a system-by-system and case-by-case basis must be made in writing and kept by the Department.

(c) Any decisions made in accordance with consultations made with the Department concerning modifications to disinfection practices including the status of the consultation.

(d) Records of decisions that a water system using alternative filtration technologies, as determined by OAR 333-061-0030(3)(b)(D), can consistently achieve a 99.9 percent removal and/or inactivation of Giardia

lamblia cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts. The decisions must include enforceable turbidity limits for each water system by the Department. A copy of the decision must be kept until the decision is reversed or revised. The Department must provide a copy of the decision to the water system.

(e) Records of water systems required to do a filter self-assessment, required to conduct a comprehensive performance evaluation as required by section (1)(d) of this rule, or required to participate in the Composite Correction Program.

(f) Records of the Department's determinations, including all supporting information and an explanation of the technical basis for the control of disinfectants and disinfection byproducts. These records must also include interim measures toward installation.

(A) Records of water systems that are installing GAC or membrane technology in accordance with OAR 333-061-0030(2)(b)(D). These records must include the date by which the water system is required to have completed installation.

(B) Records of water systems required to meet alternative minimum TOC removal requirements or for whom the Department has determined that the source water is not amenable to enhanced coagulation in accordance with OAR 333-061-0032(9)(e)(C) and (D), respectively. These records must include the alternative limits and rationale for establishing the alternative limits.

(C) Records of water systems using surface water or groundwater under the direct influence of surface water using conventional treatment meeting any of the alternative compliance criteria specified in OAR 333-061-0032(9)(d)(A).

(g) Monitoring plans for water systems using surface water or groundwater under the direct influence of surface water serving more than 3,300 persons in accordance with OAR 333-061-0036(3)(b)(G).

(h) Records of decisions made on a water system-by-water system and case-by-case basis under provisions of these rules must be made in writing and kept by the Department.

(A) Records of decisions made under this paragraph shall be kept for 40 years (or until one year after the decision is reversed or revised) and a copy of the decision must be provided to the water system:

(i) Any decisions made to approve alternate recycle locations, require modifications to recycle return locations, or require modifications to recycle practices.

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0212, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0042**
**Public Notice**

(1) The owner or operator of a public water system must provide public notice to persons served by the water system for all violations and situations established by these rules.

(a) Public water systems that provide drinking water to purchasing water systems are required to give public notice to the owner or operator of the purchasing water system who is responsible for providing public notice to the persons it serves.

(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Department may, in writing, allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance.

(c) A copy of any public notice must be sent to the Department as required in OAR 333-061-0040(1)(i).

(2) Public notice requirements are divided into three tiers to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved:

(a) Tier 1: A Tier 1 notice is required for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure and include the following:

(A) Violation of the MCL for total coliforms when fecal coliforms or E.Coli are present in the water distribution system as specified in OAR 333-061-0030(4)(b) or when the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in OAR 333-061-0036(5)(n);

(B) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL;

(C) Violation of the MRDL for chlorine dioxide as prescribed in OAR 333-061-0031(1) when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system;

(D) Violation of the interim operating plan for turbidity for a surface water system that does not meet the exception criteria for avoiding filtration under OAR 333-061-0032 nor has installed filtration treatment as defined by these rules when the Department determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(E) Violation of the Surface Water Treatment Rule (SWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), or Interim Enhanced Surface Water Treatment Rule (IESWTR) treatment technique requirement as prescribed in OAR 333-061-0032, resulting from a single exceedance of the maximum allowable turbidity limit, where the Department determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(F) Occurrence of a waterborne disease outbreak or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination;

(G) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure, as determined by the Department.

(b) Tier 2: required for all violations and situations with potential to have serious adverse effects on human health and include:

(A) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required or where the Department determines that a Tier 1 notice is required.

(B) Violations of the monitoring and testing procedure requirements, where the Department determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(C) Failure to comply with the terms and conditions of any variance or permit in place.

(D) Failure to respond to sanitary survey reports or comprehensive performance evaluation reports prepared by the Department as required in OAR 333-061-0076 and 333-061-0077.

(E) Use of an emergency groundwater source that has been identified as potentially under the direct influence of surface water, but has not been fully evaluated.

(c) Tier 3: required for other violations or situations not included in Tier 1 and 2 and include:

(A) Monitoring violations prescribed in these rules except where a Tier 1 notice is required or where the Department determines that a Tier 2 notice is required;

(B) Failure to comply with a testing procedure established in these rules except where a Tier 1 notice is required or where the Department determines that a Tier 2 notice is required;

(C) Operation under a variance or permit granted by the Department;

(D) Availability of unregulated contaminant monitoring results as required under section (6) of this rule;

(E) Exceedance of the fluoride secondary MCL as required under section (7) of this rule; and

(F) Disinfection profiling and benchmarking monitoring and testing violations.

(3) All public notices established by these rules shall be distributed in the form, manner and frequency as described in this section:

(a) Tier 1 notices: public water systems required to distribute Tier 1 notices must:

(A) Provide the notice as soon as practical, but no later than 24 hours after learning of the violation or situation;

(B) Initiate consultation with the Department as soon as practical, but no later than 24 hours after learning of the violation or situation;

(C) Comply with any additional notification requirements established as a result of consultation with the Department;

(D) The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, one or more of the following forms of delivery must be used:

(i) Appropriate broadcast media such as radio and television;

(ii) Posting of the notice in conspicuous locations throughout the area served by the water system;

(iii) Hand delivery of the notice to persons served by the water system; or

(iv) Another delivery method approved in writing by the Department.

(b) Tier 2 notices: public water systems required to distribute Tier 2 notices must:

(A) Provide the public notice as soon as practical, but no later than 30 days after learning of the violation or situation. The Department may, in writing, extend additional time for the initial notice of up to three months in appropriate circumstances;

(B) If the public notice is posted, leave the notice in place as long as the violation or situation exists, but in no case for less than seven days, even if the violation or situation is resolved;

(C) Repeat the notice every three months as long as the violation or situation persists unless the Department determines in writing that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year.

(D) For the turbidity violations specified in paragraphs (3)(b)(D)(i) and (ii) of this rule, public water systems must consult with the Department as soon as practical, but no later than 24 hours after learning of the violation to determine whether a Tier 1 public notice is required to protect public health. When consultation with the Department does not take place within the 24 hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours as prescribed in subsection (3)(a) of this rule:

(i) Violation of the interim operating plan for turbidity for a surface water system that does not meet the exception criteria for avoiding filtration under OAR 333-061-0032 nor has installed treatment as defined by these rules; or

(ii) Violation of the SWTR, LT1ESWTR, or IESWTR treatment technique requirement as prescribed in OAR 333-061-0032, resulting from a single exceedance of the maximum allowable turbidity limit.

(E) The form and manner used by the public water system for initial and repeat notices must be calculated to reach persons served by the system in the required time period. The form and manner may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(i) Unless directed otherwise by the Department in writing, community water systems must provide notice by:

(I) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(II) Any other method reasonably calculated to reach other persons regularly served by the water system who would not normally be reached by mail or direct delivery. Other methods may include: local newspapers, delivery of multiple copies for distribution, posting, e-mail and community organizations.

(ii) Unless directed otherwise by the Department in writing, non-community water systems must provide notice by:

(I) Posting the notice in conspicuous locations frequented by users throughout the distribution system, or by mail or direct delivery to each customer or connection; and

(II) Any other method reasonably calculated to reach other persons not normally reached by posting, mail or direct delivery. Other methods may include: local newspaper, newsletter, e-mail and multiple copies in central locations.

(c) Tier 3 notices: public water systems required to distribute Tier 3 notices must:

(A) Provide the public notice not later than one year after learning of the violation or situation or begins operating under a variance or permit. Following the initial notice, the system must repeat the notice annually for as long as the violation, variance, permit or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, permit, or other situation persists, but in no case less than seven days even if the violation or situation is resolved.

(B) Instead of individual Tier 3 public notices, a community public water system may use its annual Consumer Confidence Report (CCR) for the initial and all repeat notices detailing all violations and situations that occurred during the previous twelve months. This method may be used as long as it is distributed within the one year requirement in paragraph (3)(c)(A) of this rule, follows the public notice content required under section (4) of this rule and is delivered to users as required under paragraph (3)(c)(C) of this rule.

(C) The form and manner used by the public water system for initial and repeat notices must be calculated to reach persons served by the system in the required time period. The form and manner may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(i) Unless directed otherwise by the Department in writing, community water systems must provide notice by:

(I) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(II) Any other method reasonably calculated to reach other persons regularly served by the water system who would not normally be reached by mail or direct delivery. Other methods may include: local newspapers, delivery of multiple copies for distribution, posting, e-mail and community organizations.

(ii) Unless directed otherwise by the Department in writing, non-community water systems must provide notice by:

(I) Posting the notice in conspicuous locations frequented by users throughout the distribution system, or by mail or direct delivery to each customer or connection; and

(II) Any other method reasonably calculated to reach other persons not normally reached by posting, mail or direct delivery. Other methods may include: local newspaper, newsletter, e-mail and delivery of multiple copies in central locations.

(4) Content of Public Notice:

(a) When a public water system has a violation or situation prescribed in these rules requiring a public notice, each public notice must include the following elements:

(A) A description of the violation or situation, including the contaminant(s) of concern, and the contaminant level;

(B) When the violation or situation occurred;

(C) Any potential adverse health effects including the standard language required under paragraphs (4)(d)(A) and (B) of this rule;

(D) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(E) Whether alternative water supplies should be used;

(F) What actions consumers should take, including when they should seek medical help, if known;

(G) What the system is doing to correct the violation or situation;

(H) When the water system expects to return to compliance or resolve the situation;

(I) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(J) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (4)(d)(C) of this rule.

(b) Content of public notices for public water systems operating under a variance or permit:

(A) If a public water system has been granted a variance or permit, the public notice must contain:

(i) An explanation of the reasons for the variance or permit;

(ii) The date on which the variance of permit was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water or otherwise comply with the terms and schedules of the variance or permit; and

(iv) A notice of any opportunity for public input in the review of the variance or permit.

(B) If a public water system violates the conditions of a variance or permit, the public notice must contain the ten elements listed in subsection (4)(a) of this rule.

(c) Public notice presentation:

(A) Each public notice required by these rules must:

(i) Be displayed in a conspicuous way when printed or posted;

(ii) Not contain overly technical language or very small print;

(iii) Not be formatted in a way that defeats the purpose of the notice;

(iv) Not contain language which nullifies the purpose of the notice.

(B) Each public notice required by these rules must comply with multilingual requirements as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Department, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) In cases where the Department has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information required in paragraph (4)(c)(B)(i) of this rule where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(d) Standard language: public water systems are required to include the following standard language in their public notice:

(A) Public water systems must include in each public notice the specific health effects language as prescribed in OAR 333-061-0097 for each MCL, MRDL, and treatment technique violation and for each violation of a condition of a variance or permit.

(B) Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations:

**We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During {compliance period}, we "did not monitor or test" or "did not complete all monitoring or testing" for {contaminants(s)}, and therefore cannot be sure of the quality of your drinking water during that time.**

(C) Public water systems are required where applicable to include the following standard language to encourage the distribution of the public notice to all persons served:

**Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.**

(5) Notice to new billing units or new customers:

(a) Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or permit, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(b) Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or permit, or other situations requiring a public notice for as long as the violation, variance, permit, or other situation persists.

(6) Special notice of availability of unregulated contaminant monitoring results:

(a) The owner or operator of a community water system or non-transient, non-community water systems required by EPA to monitor for unregulated contaminants must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(b) The form and manner of the public notice must follow the requirements for a tier 3 public notice as prescribed in paragraphs (3)(c)(B) and (C) of this rule. The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(7) Special notice for exceedance of the SMCL for fluoride:

(a) Community water systems that exceed the fluoride secondary MCL of 2 mg/l, determined by the last single sample taken in accordance with OAR 333-061-0036(2), but do not exceed the MCL of 4 mg/l for fluoride must provide the public notice in subsection (7)(d) of this rule to persons served by the water system. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. The public water system must repeat the notice at least annually for as long as the exceedance persists. The Department may require an initial notice sooner than 12 months and repeat notices more frequently than annually on a case-by-case basis;

(b) A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the Department. If the public notice is posted, the notice must remain in place for as long as the secondary MCL is exceeded, but in no case less than 7 days, even if the exceedance is eliminated;

(c) The form and manner of the public notice, including repeat notices must follow the requirements for tier 3 public notice;

(d) The notice must contain the following language, including the language necessary to fill in the blanks:

**This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 mg/l of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system {name} has a fluoride concentration of {insert value} mg/l.**

**Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.**

**Drinking water containing more than 4 mg/l of fluoride (the U.S. EPA's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.**

**For more information, please call {name of water system contact} of {name of community water system} at {phone number}. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP.**

(8) Public notification by the Department. The Department may give notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements of this section are met.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0043**

**Consumer Confidence Reports**

This rule establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. For the purpose of this rule, customers are defined as billing units or service connections to which water is delivered by a Community Water System.

(1) Delivery deadlines:

(a) Community water systems must deliver their first report by October 19, 1999, its second report by July 1, 2000, and subsequent reports by July 1, annually thereafter. The first report, and all subsequent reports, must contain data collected during, or prior to, the previous calendar year;

(b) A new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter;

(c) A community water system that sells water to another community water system must deliver the applicable information to the buyer system:

(A) No later than April 19, 1999, by April 1, 2000, and by April 1 annually thereafter; or

(B) On a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

(2) Content of the Reports:

(a) Each community water system must provide to its customers an annual report that contains the information specified in sections (2), (3) and (4) of this rule;

(b) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(A) The type of water: e.g., surface water, ground water; and

(B) The commonly used name (if any) and location of the body (or bodies) of water.

(c) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant potential sources of contamination in the drinking water protection area if they have readily available information. Where a system has received a source water assessment from the Department, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Department or written by the operator;

(d) Each report must contain the following definitions:

(A) Maximum Contaminant Level Goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety;

(B) Maximum Contaminant Level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(C) Variance: A system operating under a variance as prescribed in OAR 333-061-0045 must include the following definition in its report: Variances: State permission not to meet an MCL or a treatment technique under certain conditions;

(D) Treatment Technique or Action Level: A system which has a detection for a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions as applicable:

(i) Treatment Technique: A required process intended to reduce the level of a contaminant in drinking water;

(ii) Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(E) Maximum Residual Disinfectant Level Goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(F) Maximum Residual Disinfectant Level or MRDL: The highest level of disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(3) Detected Contaminants:

(a) The following information must be included in each report for contaminants subject to mandatory monitoring (except Cryptosporidium). Detected means at or above the detection level prescribed by each EPA approved analytical method set forth in 40 CFR 141:

(A) Contaminants subject to an MCL, action level, MRDL, or treatment technique (regulated contaminants);

(B) Unregulated contaminants for which monitoring is required; and

(C) Disinfection by-products or microbial contaminants for which monitoring is required under the **Federal Information Collection Rule CFR 141.142 and 141.143** except as required by paragraph (3)(m)(A) of this rule, and which are detected in the finished water.

(b) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(c) The data must be derived from data collected to comply with state monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter except that:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulation. No data older than 5 years need be included.

(B) Results of monitoring in compliance with the **Federal Information Collection Rule CFR 141.142 and 141.143** need only be included for 5 years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(d) For detected regulated contaminants (listed in Table 28 of this rule), the table(s) in the report must contain:

(A) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in Table 28);

(B) The MCLG for that contaminant expressed in the same units as the MCL;

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph (2)(d)(D) of this rule;

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with OAR 333-061 and the range of detected levels, as follows:

(i) When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL;

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL;

(iii) When compliance with the MCL is determined on a system wide basis by calculating a running annual average of all samples at all sampling points: the average and range of detection expressed in the same units as the MCL;

(iv) When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in Table 28 of this rule. [Table not included. See ED. NOTE.]

(e) Turbidity:

(A) When it is reported pursuant to OAR 333-061-0030(3)(a), 333-061-0032(2), and 333-061-0036(4)(a): the highest monthly value. The report should include an explanation of the reasons for measuring turbidity. This includes water systems currently without filtration treatment, but required to install filtration through a Notice of Violation and Remedial Order.

(B) When it is reported pursuant to OAR 333-061-0030(3): The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in OAR 333-061-0030(3) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(f) Lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(g) Total coliform:

(A) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(B) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(h) Fecal coliform: the total number of positive samples.

(i) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in Table 29 which are most applicable to the system.

(j) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(k) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation, the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language in Table 29 of this rule.

(l) For detected unregulated contaminants for which monitoring is required (except Cryptosporidium), the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

(m) Information on Cryptosporidium, radon, and other contaminants:

(A) If the system has performed any monitoring for cryptosporidium, including monitoring performed to satisfy the requirements of the **Federal Information Collection Rule CFR 141.142 and 141.143** (microbials) which indicates that Cryptosporidium may be present in the source water or the finished water, the report must include:

(i) A summary of the results of the monitoring; and

(ii) An explanation of the significance of the results.

(B) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results.

(C) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system is strongly encouraged to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed a National Primary

Drinking Water Regulation or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation. [Table not included. See ED. NOTE.]

(n) Compliance with OAR 333-061: In addition to subsection (3)(k) of this rule, the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(A) Monitoring and reporting of compliance data;

(B) Filtration and disinfection prescribed by OAR 333-061-0032: For systems which have failed to install adequate filtration or disinfection equipment or processes which constitutes a violation or have an equipment failure constituting a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(C) Lead and copper control requirements: For systems which fail to take one or more actions prescribed by OAR 333-061-0034 the report must include the applicable language in Table 29 of this rule for lead, copper, or both;

(D) Treatment techniques for Acrylamide and Epichlorohydrin: For systems which violate the requirements of OAR 333-061-0030(7), the report must include the relevant health effects language in Table 29 of this rule.

(E) Recordkeeping of compliance data;

(F) Special monitoring requirements prescribed by OAR 333-061-0036(3)(b), and 333-061-0036(2)(b), (g);

(G) Violation of the terms of a variance, administrative order or judicial order.

(o) Variances: If a system is operating under the terms of a variance as prescribed in OAR 333-061-0045, the report must contain:

(A) An explanation of the reasons for the variance;

(B) The date on which the variance was issued;

(C) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance; and

(D) A notice of any opportunity for public input in the review, or renewal, of the variance.

(p) Additional information:

(A) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language in paragraphs (3)(p)(A)(i), (ii) and (iii) of this rule, or systems may use their own comparable language. The report also must include the language of paragraph (3)(p)(A)(iv) of this rule.

(i) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity;

(ii) Contaminants that may be present in source water include:

(I) Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(II) Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(III) Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

(IV) Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems;

(V) Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

(iii) In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health;

(iv) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(B) The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report;

(C) In communities with a large proportion of non-English speaking residents the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language;

(D) The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water;

(E) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

(4) Required additional health information:

(a) All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(b) A system which detects nitrate at levels above 5 mg/l, but does not exceed the MCL:

(A) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 mg/l is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

(B) May write its own educational statement, but only in consultation with the Department.

(c) Systems which detect lead above the action level in more than 5%, and up to and including 10%, of homes sampled:

(A) Must include a short informational statement about the special impact of lead on children using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

(B) May write its own educational statement, but only in consultation with the Department.

(d) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL prescribed in OAR 333-061-0030(2), and monitor as prescribed in OAR 333-061-0036(3)(b), must include health effects language for TTHMs prescribed in paragraph (6)(e)(S) of this rule.

(5) Report delivery and recordkeeping:

(a) Except as provided in subsection (5)(g) of this rule, each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(b) The system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the Department. EPA expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the Internet; mailing to postal patrons in metropolitan areas;

advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers; delivery to community organizations.

(c) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the Department, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Department.

(d) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the Department.

(e) Each community water system must make its reports available to the public upon request.

(f) Each community water system serving 100,000 or more persons must post its current year's report to a publicly-accessible site on the Internet.

(g) The Governor of a State or his designee, can waive the requirement of subsection (5)(a) of this rule for community water systems serving fewer than 10,000 persons.

(A) Such systems must:

(i) Publish the reports in one or more local newspapers serving the area in which the system is located;

(ii) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the State; and

(iii) Make the reports available to the public upon request.

(B) Systems serving 500 or fewer persons may forego the requirements of paragraphs (5)(g)(A)(i) and (ii) of this rule if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.

(h) Any system subject to this rule must retain copies of its consumer confidence report for no less than 5 years.

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268 & 448.273

Hist.: OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0057**

**Voluntary Drinking Water Protection Program**

(1) In accordance with OAR 340-040-0140 through 0200, a public water system or other responsible management authority that wishes to have a state certified drinking water protection program shall comply with the requirements prescribed in this rule.

(2) Delineation of the drinking water protection area (DWPA):

(a) Delineations will be accomplished for all Community, Non-transient Non Community and Transient Non Community water systems as part of the Safe Drinking Water Act's Source Water Assessment Program. Water systems may choose to complete or upgrade the delineations themselves. If so, they must comply with subsection (2)(b) of this rule;

(b) Delineation requirements for all groundwater sources are as follow:

(A) Delineations will be accomplished using a minimum TOT criterion of 10 years unless a hydrogeologic boundary is encountered at a shorter time of travel or as specified in subsection (2)(c) of this rule;

(B) Delineations will be accomplished by a registered geologist, engineering geologist or other licensed professional with demonstrated experience and competence in hydrogeology in accordance with ORS 672.505 through 672.705;

(C) Except as noted in subsection (2)(c) of this rule, a conceptual ground water model shall be developed for all public water systems participating in the voluntary drinking water protection program. The model shall be based on available information including, but not limited to, well reports, published reports and available unpublished reports and theses, etc. Sources of this information include the Water Resources Department, U. S. Geological Survey, Department of Geology and Mineral Industries, Department of Environmental Quality, university libraries and the Department. The model shall include, but not be limited to, the identification and characterization of hydrogeologic units, determination of hydrogeologic boundaries, if any, areas of discharge and recharge and distribution of hydraulic head for the aquifer(s) of concern. The model shall also evaluate whether or not the porous media assumption is valid;

(D) The delineated DWPA and supporting documentation shall be submitted to the Department for review and certification;

(E) Within 60 days of the receipt of the delineated drinking water protection area and supporting documentation, the Department shall send a written acknowledgment of that receipt and an estimated date for review and certification of the delineation;

(F) The delineation techniques stipulated in this rule represent the minimum acceptable effort required for a state certified program. The use of a more sophisticated technique is acceptable.

(c) Springs. For water systems served by springs, hydrogeologic mapping shall be used to delineate the recharge area to the spring(s).

(d) Wells.

(A) All delineations for groundwater derived from wells shall use an adjusted pump rate ($Q_a$) that allows for potential growth using one of the methods described below, whichever yields the smallest value for $Q_a$:

(i) 125 percent of average pump rate as determined from the three months representing the highest usage; or

(ii) 125 percent of average pump rate as determined using a comparable community; or

(iii) The design capacity of the pump; or

(iv) 90 percent of the safe yield of the well.

(v) The water system's population times 200 gallons per day.

(B) For water systems serving a population _500 and using a single well, the minimum acceptable delineation method is a calculated fixed radius. Parameters considered in this technique include $Q_a$, effective porosity, open (screened or perforated) interval or thickness of the water-bearing zone(s), whichever is less, and a TOT of 15 years.

(C) For water systems serving a population of 501 to 3,300 or systems serving _ 500 with multiple wells, the DWPA(s) shall be delineated using a combination of an analytical technique and hydrogeologic mapping.

(D) For water systems serving a population >3,300, the conceptual model shall be refined using site-specific collected data. Data collected shall include, but not be limited to, measured static water levels for the purpose of generating a map of the appropriate potentiometric-or water table surface, and at a minimum a 24-hour constant-rate aquifer test. The well to be tested should remain idle for a period of 24 hours prior to the test. Water levels in the well should be monitored at appropriate intervals during the pre-pumping, pumping and recovery phases. Additional technical information is given in the **Oregon Wellhead Protection Guidance Manual** and the **1996 Oregon Source Water Assessment Guidance.**

(E) For water systems serving a population of 3,301 to 50,000, the DWPA(s) shall be delineated as provided in subsection (2)(c) of this rule, with the exception of using the site specific data collected in accordance with subsection (2)(c) of this rule.

(F) For water systems serving a population >50,000 and using wells, the DWPA(s) shall be delineated using numerical models or comparable analytical methods. The model must be calibrated using field observations and measurements of appropriate hydrogeologic parameters.

(e) Susceptibility Analysis. To guide the development of management strategies, the aquifer's susceptibility within the DWPA may be determined using the methods described in the Use and Susceptibility Waiver Guidance Document, the **1996 Oregon Source Water Assessment Guidance** or another pre-approved process. Additional technical information is available in the Oregon Wellhead Protection Guidance Manual.

(f) Delineation Update. The water system's DWPA delineation shall be re-examined every five years or during the sanitary survey for that system for potential revisions (OAR 340-040-0190). Factors that may require revision of a DWPA boundary include, but are not limited to the following:

(A) A significant change in the pumping rate;

(B) A significant change in recharge to the aquifer;

(C) Wells outside the control of the water system placed in a manner that could significantly modify the shape and/or orientation of the original DWPA.

(3) New and Future Groundwater Sources:

(a) New sources. With regard to the voluntary wellhead protection program, a new source is defined as an additional or modified well(s) and/or spring(s) that will be used by the water system.

(A) For new wells or springs outside an existing DWPA or deriving water from a different aquifer than that supplying other already delineated DWPAs, the following steps shall be completed:

(i) If more than one potential site is available, the water system or other responsible management authority shall conduct a provisional delineation and a preliminary potential contaminant source inventory for each site being considered in order to evaluate the long-term viability of each of the sites available; and

(ii) Delineate the chosen site as prescribed in section (2) of this rule. Further technical information is provided in the **Oregon Wellhead Protection Guidance Manual.**

(B) For new wells or springs inside an existing DWPA or potentially influencing an existing DWPA, the following steps shall be completed:

(i) Evaluate sites and delineate DWPA(s) as prescribed in paragraphs (3)(a)(A)(i) and (ii) of this rule; and

(ii) Modify the existing wellhead protection plan to encompass modifications resulting from the new delineation.

(C) New wells or springs as defined in subsection (3)(a) of this rule shall comply with all appropriate construction standards as prescribed in OAR 333-061-0050 and shall comply with plan submission requirements as prescribed in OAR 333-061-0060.

(b) Future sources. A public water system or other responsible management authority that has recognized the need for future groundwater supplies beyond their current capacity may choose to identify the area where this future supply will be obtained in accordance with paragraph (3)(a)(A)(i) of this rule.

(4) Contingency Planning:

(a) Public water systems shall develop or revise contingency plans for response to potential loss or reduction of their drinking water source(s). Key elements of the plan shall include, but not be limited to, the following:

(A) Inventory/prioritize all threats to the drinking water supply;

(B) Prioritize water usage;

(C) Anticipate responses to potential incidents;

(D) Identify key personnel and development of notification roster;

(E) Identify short-term and long-term replacement potable water supplies;

(F) Identify short-term and long-term conservation measures;

(G) Provide for plan testing, review and update;

(H) Provide for new and on-going training of appropriate individuals;

(I) Provide for education of the public; and

(J) Identify logistical and financial resources.

(b) Public water systems shall coordinate their contingency plan with the emergency response plans of the appropriate county and/or city and with the contingency plans developed by industries using hazardous materials within the wellhead protection area.

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0060**

**Plan Submission and Review Requirements**

(1) Plan Submission:

(a) Construction and installation plans shall be submitted to and approved by the Department before construction begins on new systems or major additions or modifications, as determined by the Department, are made to existing systems. Plans shall be drawn to scale;

(b) Preliminary plans, pilot studies, master plans and construction plans shall be prepared by a Professional Engineer registered in Oregon, and submitted to the Department unless exempted by the Department (See OAR 333-061-0060(4));

(c) Plans shall set forth the following:

(A) Sufficient detail, including specifications, to completely and clearly illustrate what is to be constructed and how those facilities will meet the construction standards set forth in these regulations. Elevation or section views shall be provided where required for clarity;

(B) Supporting information attesting to the quality of the proposed source of water;

(C) Vicinity map of the proposed project relative to the existing system or established landmarks of the area;

(D) Name of the owner of the water system facilities during construction and the name of the owner and operator of the facilities after completion of the project;

(E) Procedures for cleaning and disinfecting those facilities which will be in contact with the potable water.

(d) Prior to drilling a well, a site plan shall be submitted which shows the site location, topography, drainage, surface water sources, specifications for well drilling, location of the well relative to sanitary hazards, dimensions of the area reserved to be kept free of potential sources of contamination, evidence of ownership or control of the reserve area and the anticipated depth of the aquifer from which the water is to be derived. The Department will review well reports from the area and in consultation with the local watermaster and the well constructor as appropriate will recommend the depth of placement of the casing seal. After the well is drilled, the following documents shall be submitted to the Department for review and approval: Well driller's report, report of the pump test which indicates that the well has been pumped for a sufficient length of time to establish the reliable yield of the well on a sustained basis, including data on the static water level, the pumping rate(s), the changes in drawdown over the duration of the test, the rate of recovery after the pump was turned off, reports on physical, chemical and microbiological quality of the well water, performance data on the well pump, a plan of the structure for protecting above-ground controls and appurtenances, and a plan showing how the well will be connected to the water system. (See OAR 333-061-0050(2).)

(e) Any community water system or non-transient noncommunity water system that treats surface water or groundwater under the influence of surface water that desires to make a significant change to the disinfection treatment process and is required to develop a disinfection profile according to OAR 333-061-0030(2)(b)(B) through (D) must consult with and provide any additional information requested by the Department prior to making such a change. The water system must develop a disinfection profile for *Giardia lamblia* (and, if necessary, viruses), calculate a disinfection benchmark, describe the proposed change in the disinfection process, and analyze the effect(s) of the proposed change on current levels of disinfection according to the USEPA Disinfection Profiling and Benchmarking Guidance Manual and/or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual and submit the information to the Department for review and approval. Significant changes to the disinfection treatment process include:

(A) Changes to the point of application:

(B) Changes to the disinfectants used in the treatment process;

(C) Changes to the disinfection process;

(D) Any other modification identified by the Department.

(f) A water system subject to paragraph (1)(e) of this rule must calculate a disinfection benchmark using the following procedure:

(A) From data collected to develop the disinfection profile, determine the average *Giardia lamblia* inactivation for each calendar month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

(B) Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

(g) A water system that uses either chloramines, chlorine dioxide or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the Department in addition to the disinfection profile for *Giardia lamblia.* This viral benchmark must be calculated in the same manner as is used for the *Giardia lamblia* disinfection benchmark described in subsection (1)(f) of this rule.

(2) Plan review.

(a) Upon receipt of plans, the Department shall review the plans and either approve them or advise that correction or clarification is required. When the correction or clarification is received, and the item(s) in question are resolved, the Department shall then approve the plans;

(b) Upon completion of a project, a professional engineer registered in Oregon shall submit to the Department a statement certifying that the project has been constructed in compliance with the approved plans and specifications. When substantial deviations from the approved plans are made, as-built plans showing compliance with these rules shall be submitted to the Department;

(c) Plans shall not be required for emergency repair of existing facilities. In lieu of plans, written notice shall be submitted to the Department immediately after the emergency work is completed stating the nature of the emergency, the extent of the work and whether or not any threats to the water quality exists or existed during the emergency.

(3) Plan review fees: Plans submitted to the Department shall be accompanied by a fee as indicated in Table 31. Those plans not accompanied by a fee will not be reviewed. [Table not included. See ED. NOTE.]

(4) Plan review exemptions:

(a) Water suppliers may be exempted from submitting plans of main extensions, providing they:

(A) Have provided the Department with a current master plan; and

(B) Certify that the work will be carried out in conformance with the construction standards of these rules; and

(C) Submit to the Department an annual summary of the projects completed; and

(D) Certify that they have staff qualified to effectively supervise the projects.

(b) Those water suppliers certifying that they have staff qualified to effectively plan, design and supervise their projects, may request the Department for further exemption from this rule. Such requests must be

accompanied by a listing of staff proposed to accomplish the work and a current master plan. To maintain the exemption, the foregoing must be annually updated;

(c) At the discretion of the Department, Community, Transient and Non-Transient Non-Community and State Regulated water systems may be exempted from submitting engineered plans. They shall, however, submit adequate plans indicating that the project meets the minimum construction standards of these rules.

(5) Master plans.

(a) Community water systems with 300 or more service connections shall maintain a current master plan. Master plans shall be prepared by a professional engineer registered in Oregon and submitted to the Department for review and approval.

(b) Each master plan shall evaluate the needs of the water system for at least a twenty year period and shall include but is not limited to the following elements:

(A) A summary of the overall plan that includes the water quality and service goals, identified present and future water system deficiencies, the engineer's recommended alternative for achieving the goals and correcting the deficiencies, and the recommended implementation schedule and financing program for constructing improvements.

(B) A description of the existing water system which includes the service area, source(s) of supply, status of water rights, current status of drinking water quality and compliance with regulatory standards, maps or schematics of the water system showing size and location of facilities, estimates of water use, and operation and maintenance requirements.

(C) A description of water quality and level of service goals for the water system, considering, as appropriate, existing and future regulatory requirements, nonregulatory water quality needs of water users, flow and pressure requirements, and capacity needs related to water use and fire flow needs.

(D) An estimate of the projected growth of the water system during the master plan period and the impacts on the service area boundaries, water supply source(s) and availability, and customer water use.

(E) An engineering evaluation of the ability of the existing water system facilities to meet the water quality and level of service goals, identification of any existing water system deficiencies, and deficiencies likely to develop within the master plan period. The evaluation shall include the water supply source, water treatment, storage, distribution facilities, and operation and maintenance requirements. The evaluation shall also include a description of the water rights with a determination of additional water availability, and the impacts of present and probable future drinking water quality regulations.

(F) Identification of alternative engineering solutions, environmental impacts, and associated capital and operation and maintenance costs, to correct water system deficiencies and achieve system expansion to meet anticipated growth, including identification of available options for cooperative or coordinated water system improvements with other local water suppliers.

(G) A description of alternatives to finance water system improvements including local financing (such as user rates and system development charges) and financing assistance programs.

(H) A recommended water system improvement program including the recommended engineering alternative and associated costs, maps or schematics showing size and location of proposed facilities, the recommended financing alternative, and a recommended schedule for water system design and construction.

(I) If required as a condition of a water use permit issued by the Water Resources Department, the Master Plan shall address the requirements of OAR 690-086-0120 (Water Management and Conservation Plans).

(c) The implementation of any portion of a water system master plan must be consistent with OAR 333-061 (Public Drinking Water Systems, DHS), OAR 660-011 (Public Facilities Planning, Department of Land Conservation and Development ) and OAR 690-086 (Water Management and Conservation Plans, Water Resources Department).

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273 & 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0220, HD 2-1983, f. & ef. 2-23-83; HD 13-1985, f. & ef. 8-1-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0070**

**Cross Connection Control Requirements**

(1) Water suppliers shall undertake cross connection control programs to protect the public water systems from pollution and contamination.

(2) The water supplier's responsibility for cross connection control shall begin at the water supply source, include all public treatment, storage, and distribution facilities under the water supplier's control, and end at the point of delivery to the water user's premise.

(3) Water suppliers shall develop and implement cross connection control programs that meet the minimum requirements set forth in these rules.

(4) Water suppliers shall develop a procedure to coordinate cross connection control requirements with the appropriate local administrative authority having jurisdiction.

(5) The water supplier shall ensure that inspections of approved air gaps, approved devices, and inspections and tests of approved backflow prevention assemblies protecting the public water system are conducted:

(a) At the time of installation, any repair or relocation;

(b) At least annually;

(c) More frequently than annually for approved backflow prevention assemblies that repeatedly fail, or are protecting health hazard cross connections, as determined by the water supplier;

(d) After a backflow incident; or

(e) After an approved air gap is re-plumbed.

(6) Approved air gaps, approved devices, or approved backflow prevention assemblies, found not to be functioning properly shall be repaired, replaced or re-plumbed by the water user or premise owner, as defined in the water supplier's local ordinance or enabling authority, or the water supplier may take action in accordance with subsection (9)(a) of these rules.

(7) A water user or premise owner who obtains water from a water supplier must notify the water supplier if they add any chemical or substance to the water.

(8) Premise isolation requirements:

(a) For service connections to premises listed or defined in Table 32 (Premises Requiring Isolation), the water supplier shall ensure an approved backflow prevention assembly or an approved air gap is installed;

(A) Premises with cross connections not listed or defined in Table 32 (Premises Requiring Isolation), shall be individually evaluated. The water supplier shall require the installation of an approved backflow prevention assembly or an approved air gap commensurate with the degree of hazard on the premise, as defined in Table 33 (Backflow Prevention Methods);

(B) In lieu of premise isolation, the water supplier may accept an in-premise approved backflow prevention assembly as protection for the public water system when the approved backflow prevention assembly is installed, maintained and tested in accordance with the Oregon Plumbing Specialty Code and these rules.

(b) Where premise isolation is used to protect against a cross connection, the following requirements apply:

(A) The water supplier shall:

(i) Ensure the approved backflow prevention assembly is installed at a location adjacent to the service connection or point of delivery;

(ii) Ensure any alternate location used must be with the approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(iii) Notify the premise owner and water user, in writing, of thermal expansion concerns.

(B) The premise owner shall:

(i) Ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assemblies, when these are installed in an alternate location; and

(ii) Assume responsibility for testing, maintenance, and repair of the installed approved backflow prevention assembly to protect against the hazard.

(c) Where unique conditions exist, but not limited to, extreme terrain or pipe elevation changes, or structures greater than three stories in height, even with no actual or potential health hazard, an approved backflow prevention assembly may be installed at the point of delivery; and

(d) Where the water supplier chooses to use premise isolation by the installation of an approved backflow prevention assembly on a one- or two-family dwelling under the jurisdiction of the Oregon Plumbing Specialty Code and there is no actual or potential cross connection, the water supplier shall:

(A) Install the approved backflow prevention assembly at the point of delivery;

(B) Notify the premise owner and water user in writing of thermal expansion concerns; and

(C) Take responsibility for testing, maintenance and repair of the installed approved backflow prevention assembly.

(9) In community water systems, water suppliers shall implement a cross connection control program directly, or by written agreement with another agency experienced in cross connection control. The local cross connection program shall consist of the following elements:

(a) Local ordinance or enabling authority that authorizes discontinuing water service to premises for:

(A) Failure to remove or eliminate an existing unprotected or potential cross connection;

(B) Failure to install a required approved backflow prevention assembly;

(C) Failure to maintain an approved backflow prevention assembly; or

(D) Failure to conduct the required testing of an approved backflow prevention assembly.

(b) A written program plan for community water systems with 300 or more service connections shall include the following:

(A) A list of premises where health hazard cross connections exist, including, but not limited to, those listed in Table 32 (Premises Requiring Isolation);

(B) A current list of certified cross connection control staff members;

(C) Procedures for evaluating the degree of hazard posed by a water user's premise;

(D) A procedure for notifying the water user if a non-health hazard or health hazard is identified, and for informing the water user of any corrective action required;

(E) The type of protection required to prevent backflow into the public water supply, commensurate with the degree of hazard that exists on the water user's premise, as defined in Table 33 (Backflow Prevention Methods);

(F) A description of what corrective actions will be taken if a water user fails to comply with the water supplier's cross connection control requirements;

(G) Current records of approved backflow prevention assemblies installed, inspections completed, backflow prevention assembly test results on backflow prevention assemblies and verification of current Backflow Assembly Tester certification; and

(H) A public education program about cross connection control.

(c) The water supplier shall prepare and submit a cross connection control Annual Summary Report to the Department, on forms provided by the Department, before the last working day of March each year.

(d) In community water systems having 300 or more service connections, water suppliers shall ensure at least one person is certified as a Cross Connection Control Specialist, unless specifically exempted from this requirement by the Department.

(10) Fees: Community water systems shall submit to the Department an annual cross connection program implementation fee, based on the number of service connections, as follows:

Service Connections: — Fee:
15–99 — $30.
100–999 — $75.
1,000–9,999 — $200.
10,000 or more — $350.

(a) Billing invoices will be mailed to water systems in the first week of November each year and are due by January first of the following year;

(b) Fees are payable to Department of Human Services by check or money order;

(c) A late fee of 50% of the original amount will be added to the total amount due and will be assessed after January 31 of each year.

(11) In transient or non-transient non-community water systems, the water supplier that owns and/or operates the system shall:

(a) Ensure no cross connections exist, or are isolated from the potable water system with an approved backflow prevention assembly, as required in section (12) of these rules;

(b) Ensure approved backflow prevention assemblies are installed at, or near, the cross connection; and

(c) Conduct a cross connection survey and inspection to ensure compliance with these rules. All building permits and related inspections are to be made by the Department of Consumer and Business Services, Building Codes Division, as required by ORS 447.020.

(12) Approved backflow prevention assemblies required under these rules shall be assemblies approved by the University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, or other equivalent testing laboratories approved by the Department.

(13) Backflow prevention assemblies installed before the effective date of these rules that were approved at the time of installation, but are not currently approved, shall be permitted to remain in service provided the assemblies are not moved, the piping systems are not significantly remodeled or modified, the assemblies are properly maintained, and they are commensurate with the degree of hazard they were installed to protect. The assemblies must be tested at least annually and perform satisfactorily to the testing procedures set forth in these rules.

(14) Tests performed by Department-certified Backflow Assembly Testers shall be in conformance with procedures established by the University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, Manual of Cross Connection Control, 9th Edition, December 1993, or other equivalent testing procedures approved by the Department.

(15) Backflow prevention assemblies shall be tested by Department-certified Backflow Assembly Testers, except as otherwise provided for journeyman plumbers or apprentice plumbers in OAR 333-061-0072 of these rules (Backflow Assembly Tester Certification). The Backflow Assembly Tester shall provide a copy of each completed test report to the water user or premise owner, and the water supplier:

(a) Within 10 working days; and

(b) The test reports will be in a manner and form acceptable to the water supplier.

(16) All approved backflow prevention assemblies subject to these rules shall be installed in accordance with OAR 333-061-0071 and the Oregon Plumbing Specialty Code.

(17) The Department shall establish an advisory board for cross connection control issues consisting of not more than nine members, and including representation from the following:

(a) Oregon-licensed Plumbers;

(b) Department-certified Backflow Assembly Testers;

(c) Department-certified Cross Connection Specialists;

(d) Water Suppliers;

(e) The general public;

(f) Department-certified Instructors of Backflow Assembly Testers or Cross Connection Specialists;

(g) Backflow assembly manufacturers or authorized representatives;

(h) Engineers experienced in water systems, cross connection control and/or backflow prevention; and

(i) Oregon-certified Plumbing Inspectors. [Table not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.271, 448.273, 448.279, 448.295 & 448.300

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0230, HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 1-1988, f. & cert. ef. 1-6-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 1-1994, f. & cert. ef. 1-7-94; HD 1-1996, f. 1-2-96, cert. ef. 1-2-96; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0071**

**Backflow Prevention Assembly Installation and Operation Standards**

(1) Any approved backflow prevention assembly required by OAR 333-061-0070 shall be installed in a manner that:

(a) Facilitates its proper operation, maintenance, inspection, and in-line testing using standard installation procedures approved by the Department, such as, but not limited to, University of Southern California, Manual of Cross-Connection Control, 9th Edition, the Pacific Northwest Section American Water Works Association, Cross Connection Control Manual, 6th Edition, or the local administrative authority having jurisdiction;

(b) Precludes the possibility of continuous submersion of an approved backflow prevention assembly, and precludes the possibility of any submersion of the relief valve on a reduced pressure principle backflow prevention assembly; and

(c) Maintains compliance with all applicable safety regulations and the Oregon Plumbing Specialty Code.

(2) For premise isolation installation:

(a) The approved backflow prevention assembly shall be installed at a location adjacent to the service connection or point of delivery; or

(b) Any alternate location must be with the advance approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(c) The premise owner shall ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assembly.

(3) Bypass piping installed around any approved backflow prevention assembly must be equipped with an approved backflow prevention assembly to:

(a) Afford at least the same level of protection as the approved backflow prevention assembly being bypassed; and

(b) Comply with all requirements of these rules.

(4) All Oregon Plumbing Specialty Code approved residential multipurpose fire suppression systems constructed of potable water piping and materials do not require a backflow prevention assembly.

(5) Stand-alone fire suppression systems shall be protected commensurate with the degree of hazard, as defined in Table 33 (Backflow Prevention Methods).

(6) Stand-alone irrigation systems shall be protected commensurate with the degree of hazard, as defined in Table 33 (Backflow Prevention Methods).

(7) An Atmospheric Vacuum Breaker (AVB) shall: [Figure not included. See ED. NOTE.]

(a) Have absolutely no means of shut-off on the downstream or discharge side of the atmospheric vacuum breaker;

(b) Not be installed in dusty or corrosive atmospheres;

(c) Not be installed where subject to flooding;

(d) Be installed a minimum of 6 inches above the highest downstream piping and outlets;

(e) Be used intermittently;

(f) Have product and material approval under the Oregon Plumbing Specialty Code for non-testable devices.

(g) Not be pressurized for more than 12 hours in any 24-hour period; and

(h) Be used to protect against backsiphonage only, not backpressure.

(8) A Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB) or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB) shall: [Figure not included. See ED. NOTE.]

(a) Be installed where occasional water discharge from the assembly caused by pressure fluctuations will not be objectionable;

(b) Have adequate spacing available for maintenance and testing;

(c) Not be subject to flooding;

(d) Be installed a minimum of 12 inches above the highest downstream piping and outlets;

(e) Have absolutely no means of imposing backpressure by a pump or other means. The downstream side of the pressure vacuum breaker backsiphonage prevention assembly or spill-resistant pressure vacuum breaker backsiphonage prevention assembly may be maintained under pressure by a valve; and

(f) Be used to protect against backsiphonage only, not backpressure.

(9) A Double Check Valve Backflow Prevention Assembly (DC) or Double Check Detector Backflow Prevention Assembly (DCDA): [Figure not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building;

(b) May be installed vertically as well as horizontally provided the assembly is specifically listed for that orientation in the Department's Approved Backflow Prevention Assembly List.

(c) May be installed below grade in a vault, provided that water-tight fitted plugs or caps are installed in the test cocks, and the assembly shall not be subject to continuous immersion;

(d) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly;

(e) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, provided that they are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(f) Shall have adequate drainage provided except that the drain shall not be directly connected to a sanitary or storm water drain. Installers shall check with the water supplier and appropriate local administrative authority having jurisdiction for additional requirements;

(g) Shall be protected from freezing when necessary; and

(h) Be used to protect against non-health hazards under backsiphonage and backpressure conditions.

(10) A Reduced Pressure Principle Backflow Prevention Assembly (RP) or Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA): [Figure not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building. Access doors may be provided on the side of an above-ground vault;

(b) Shall always be installed horizontally, never vertically, unless they are specifically approved for vertical installation;

(c) Shall always be installed above the 100-year (1%) flood level unless approved by the appropriate local administrative authority having jurisdiction;

(d) Shall never have extended or plugged relief valves;

(e) Shall be protected from freezing when necessary;

(f) Shall be provided with an approved air gap drain;

(g) Shall not be installed in an enclosed vault or box unless a boresighted drain to daylight is provided;

(h) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(i) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly; and

(j) Be used to protect against a non-health hazard or health hazard for backsiphonage or backpressure conditions.

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

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented:: ORS 431.110, 431.150, 448.131, 448.150, 448.268 & 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 1-1994, f. & cert. ef. 1-7-94, Renumbered from 333-061-0099; HD 1-1996, f. 1-2-96, cer.t. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0072**

**Backflow Assembly Tester Certification**

(1) The Department shall certify individuals who successfully complete all the requirements of these rules for testing backflow prevention assemblies. Only persons certified by the Department to test backflow prevention assemblies shall perform the required field-testing on backflow prevention assemblies, except as otherwise provided that:

(a) Journeyman plumbers defined as those who hold a certificate of competency issued under ORS 693 or apprentice plumbers, as defined under ORS 693.010; and

(b) Journeyman plumbers or apprentice plumbers who test backflow prevention assemblies shall satisfactorily complete a Department-approved Backflow Assembly Tester training course, according to rules adopted by the Director of Consumer and Business Services.

(2) Requirements for initial application for Backflow Assembly Tester certification shall include:

(a) Satisfactory completion of a Department-approved Backflow Assembly Tester training course within 12 months prior to the Department receiving the applicant's completed application;

(b) Satisfactory completion of all written and physical-performance examinations, including questions specific to OAR 333-061-0070 through 333-061-0073, administered by a Department-approved certification agency;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of proof of high school graduation or equivalent;

(e) Submission of a completed initial application with all required documentation as specified on the initial application form and in these rules; and

(f) Submission of an initial application fee as defined in OAR 333-061-0072(5).

(3) Requirements for Backflow Assembly Tester certification renewal shall include:

(a) All Backflow Assembly Tester certificates will expire on June 30 of every odd-numbered year, beginning June 30, 2005. Backflow Assembly Testers can only perform tests if they possess a current, valid certificate;

(b) Satisfactory completion of 0.5 CEU in backflow prevention-related fields taken at a Department-approved certification training agency within the 2-year period immediately prior to the date of the certification renewal application;

(c) Satisfactory completion of all written and physical-performance examinations, including questions specific to OAR 333-061-0070 through 333-061-0073, administered by a Department-approved certification agency;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(d) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(e) Submission of yearly test gauge calibration reports performed in the same month every year, as determined by the Backflow Assembly Tester;

(f) Submission of a completed renewal application with all required documentation as specified on the renewal application form and in these rules;

(g) Submission of a renewal application fee, as defined in OAR 333-061-0072(5);

(h) The Department may grant certification renewal without a reinstatement fee for up to 30 days after the expiration date of a certificate. A reinstatement fee of $50 will be added to the renewal fee for all renewal application fees received after the 30-day period; and

(i) A Backflow Assembly Tester who does not renew within 12 months of the expiration date of his or her certificate will be required to meet all requirements of an initial applicant in section (2) of these rules.

(4) The Department may issue Backflow Assembly Tester certification based on reciprocity if the Department determines the issuing state or entity has certification training and testing standards and qualifications substantially equivalent to the Department's certification training and testing standards and qualifications, and the applicant/Backflow Assembly Tester meets all requirements set forth in these rules, including:

(a) Submission of current certification from a state or entity having substantially equivalent certification training and testing standards, as determined by the Department;

(b) Submission of attendance and successful completion of an Oregon Department-approved Backflow Assembly Tester certification renewal class, including questions specific to OAR 333-061-0070 through 333-061-0073, within the 12 months prior to submitting the completed reciprocity application;

(A) A minimum score of 75% is required to pass the Department-approved Backflow Assembly Tester written examination;

(B) A minimum score of 90% is required to pass the Department-approved Backflow Assembly Tester physical-performance examination; and

(C) The Department will make available a list of approved certification training and testing sources.

(c) Registration with the Construction Contractor's Board or licensure with the Landscape Contractor's Board, as required by ORS 448.279(2);

(d) Submission of proof of high school graduation or equivalent;

(e) Submission of yearly test gauge calibration reports performed in the same month every year, as determined by the Backflow Assembly Tester;

(f) Submission of a completed reciprocity application form with all required documentation as specified on the reciprocity application form and in these rules; and

(g) Submission of a reciprocity application fee, as defined in OAR 333-061-0072(5).

(5) Application fees for Backflow Assembly Tester certification.

(a) Applicants for certification shall pay an application fee, made payable to the Department of Human Services, Health Services;

(b) The Department will not refund any fees once it has initiated processing an application;

(c) The application fees are:

(A) Initial Certification (2-years) $70;

(B) Certificate Renewal (2-years) $70;

(C) Reciprocity Review $35 + Initial Certification fee;

(D) Reinstatement $50 + Certificate Renewal fee; and

(E) Combination Certificate Renewal $110.

(d) Initial certification fees shall be prorated to the nearest year for the remainder of the 2-year certification period; and

(e) The Department shall apply the Combination Certificate Renewal fee when an applicant simultaneously applies for renewal of his or her Backflow Assembly Tester and Cross Connection Specialist certifications.

(6) Enforcement actions for applicant/Backflow Assembly Tester.

(a) The Department may deny an initial application for certification, an application for renewal of certification, an application for certification based on reciprocity, or revoke a certification if the Department determines:

(A) The applicant/Backflow Assembly Tester provided false information to the Department;

(B) The applicant/Backflow Assembly Tester certification issued by another state or entity was revoked;

(C) The applicant/Backflow Assembly Tester has permitted another person to use his or her certificate number;

(D) The applicant/Backflow Assembly Tester has failed to properly perform backflow prevention assembly testing;

(E) The applicant/Backflow Assembly Tester has falsified a backflow assembly test report;

(F) The applicant/Backflow Assembly Tester has failed to obtain and maintain a Construction Contractor's Board registration or a Landscape Contractor's Board license, as required by ORS 448.279(2);

(G) The applicant/Backflow Assembly Tester has failed to comply with these rules or other applicable Federal, State or local laws or regulations; or

(H) The applicant/Backflow Assembly Tester performs backflow assembly tests with a gauge that was not calibrated for accuracy within the 12-month period prior to testing the assembly.

(b) A person whose initial or renewal application has been denied, whose application for reciprocity has been denied, or whose certification has been revoked, has the right to appeal under the provisions of Chapter 183, Oregon Revised Statutes;

(c) Applicants or Backflow Assembly Testers who have been denied initial, renewal, or reciprocity certification or whose certifications have been revoked, may not reapply for certification for 1 year from the date of denial or revocation of certification; and

(d) Applicants or Backflow Assembly Testers may petition the Department prior to a year from the date of denial or revocation and may be allowed to reapply at an earlier date, at the discretion of the Department.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.273 & 448.279

Hist.: HD 1-1994, f. & cert. ef. 1-7-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0090**
**Penalties**

(1) Violation of these rules shall be punishable as set forth in ORS 448.990 which stipulates that violation of any section of these rules is a Class A misdemeanor.

(2) Pursuant to ORS 448.280, 448.285 and 448.290, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense, and each day's violation is a separate and distinct violation.

(3) Under ORS 448.290, only the Administrator can impose penalties and the penalties shall not become effective until after the person is given an opportunity for a hearing.

(4) The civil penalty for the following violations shall not exceed $1,000 per day for each violation:

(a) Failure to obtain approval of plans prior to the construction of water system facilities;

(b) Failure to construct water system facilities in compliance with approved plans;

(c) Failure to take immediate action to correct maximum contaminant level violations;

(d) Failure to comply with sampling and analytical requirements;

(e) Failure to comply with reporting and public notification requirements;

(f) Failure to meet the conditions of a compliance schedule developed under a variance or permit;

(g) Failure to comply with cross connection control requirements;

(h) Failure to comply with the operation and maintenance requirements;

(i) Failure to comply with an order issued by the Administrator.

(5) Civil penalties shall be based on the population served by public water systems and shall be in accordance with Table 34 below: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.280, 285 & 290

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0245, HD 2-1983, f. & ef. 2-23-83; HD 3-1987, f. & ef. 2-17-87; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0097**

**Adverse Health Effects Language**

When providing the information on potential adverse health effects required by these rules in notices of violations of maximum contaminant levels, maximum residual disinfectant levels, treatment technique requirements, or notices of the granting or the continued existence of variances or permits, or notices of failure to comply with a variance or permit schedule, the owner or operator of a public water system shall include the language specified below for each contaminant.

(1) Adverse Health Effects for Organic Chemicals:

(a) Volatile Organic Chemicals (VOCs):

(A) **Benzene.** Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(B) **Carbon tetrachloride.** Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(C) **Chlorobenzene.** Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(D) **o-Dichlorobenzene.** Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(E) **p-Dichlorobenzene.** Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(F) **1,2-Dichloroethane.** Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(G) **1,1-Dichloroethylene.** Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(H) **Cis-1,2-Dichloroethylene.** Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(I) **Trans-1,2-Dichloroethylene.** Some people who drink water containing trans-1,2- dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(J) **Dichloromethane(methylene chloride).** Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(K) **1,2-Dichloropropane.** Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(L) **Ethylbenzene.** Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(M) **Styrene.** Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(N) **Tetrachloroethylene(PCE).** Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(O) **1,2,4-trichlorobenzene.** Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(P) **1,1,1-Trichloroethane.** Some people who drink water containing 1,1,1- trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(Q) **1,1,2-Trichloroethane.** Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(R) **Trichloroethylene.** Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(S) **Toluene.** Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(T) **Vinyl chloride.** Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(U) **Xylenes.** Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(b) Synthetic Organic Chemicals (SOCs):

(A) **2,4-D.** Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(B) **2,4,5-TP(Silvex).** Some people who drink water containing 2,4,5-TP in excess of the MCL over many years could experience liver problems.

(C) **Alachlor.** Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(D) **Atrazine.** Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(E) **Benzo(a)pyrene.** Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(F) **Carbofuran.** Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(G) **Chlordane.** Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(H) **Dalapon.** Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(I) **Di(2-ethylhexyl)adipate.** Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.

(J) **Di(2-ethylhexyl)phthalate.** Some people who drink water containing di(2-ethylhexyl)phthalate well in excess of the MCL over many years may have problems with their liver or experience reproductive difficulties, and may have an increased risk of getting cancer.

(K) **Dibromochloropropane (DBCP).** Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(L) **Dinoseb.** Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(M) **Diquat.** Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(N) **Dioxin (2,3,7,8-TCDD).** Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(O) **Endothall.** Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(P) **Endrin.** Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(Q) **Ethylene dibromide (EDB).** Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(R) **Glyphosate.** Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(S) **Heptachlor.** Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(T) **Heptachlor epoxide.** Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(U) **Hexachlorobenzene.** Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys or adverse reproductive effects, and may have an increased risk of getting cancer.

(V) **Hexachlorocyclopentadiene.** Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(W) **Lindane.** Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(X) **Methoxychlor.** Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(Y) **Oxamyl.** Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(Z) **Polychlorinated biphenyls (PCBs).** Some people who drink water containing polychlorinated biphenyls in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(AA) **Pentachlorophenol.** Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(BB) **Picloram.** Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(CC) **Simazine.** Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(DD) **Toxaphene.** Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

(2) Special Notice for Lead and Copper.

(a) Mandatory health effects information. When providing the information in public notices on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

**"Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure."**

(b) Mandatory health effects information. When providing information on the potential adverse health effects of copper in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

**"Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor."**

(3) Inorganics — public notice language.

(a) **Antimony.** Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(b) **Arsenic.** Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) **Asbestos.** Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) **Barium.** Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(e) **Beryllium.** Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(f) **Cadmium.** Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) **Chromium.** Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(h) **Cyanide.** Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) **Fluoride.** Some people who drink water containing fluoride in excess of the MCL (4.0 mg/l) over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL (2.0mg/l) or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(j) **Mercury.** Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(k) **Nitrate (as nitrogen).** Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) **Nitrite.** Infants below the age of 6 months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) **Total Nitrate and Nitrite.** Infants below the age of 6 months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) **Selenium.** Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(o) **Thallium.** Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(4) Special Notice for microbiological contaminants.

(a) When providing information in public notices required under OAR 333-061-0042(2)(b)(A) for a violation of total coliform bacteria (OAR 333-061-0030(4)(a)), the owner or operator of the water system shall include the following specific language in the notice:

**"Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems."**

(b) When providing information in Public Notices required under OAR 333-061-0042(2)(a)(A) for a violation of fecal coliform/E. coli bacteria (OAR 333-061-0030(4)(b)), the owner or operator of the water system shall include the following specific language in the notice:

**"Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems."**

(c) When providing information under OAR 333-061-0042(2)(b)(A) and 333-061-0030(4)(a) for a violation of total coliform bacteria maximum contaminant level, where the violation has been shown to result from persistent coliform growth in the distribution system, the owner or operator may include the following specific language in the notice with approval from the Department. This language may be used in addition to, but not in place of, the mandatory language contained in OAR 333-061-0097(4)(a):

**"In this case, coliforms are present on inside surfaces of water mains and piping even in the presence of a disinfectant and even though proper water treatment and water system operation has taken place. This presence of coliforms presents no hazard to the health of water users, but does interfere with the water system's sampling program. Correction of the problem is difficult and may involve temporary treatment changes that may cause noticeable changes in the water's taste, odor, or appearance. These corrective actions will be carried out after the water system submits a plan which is approved by the Department of Human Services."**

(d) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include, bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

(5) Treatment Techniques — Public Notice Language.

(a) **Acrylamide.** Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(b) **Epichlorohydrin.** Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(c) **Surface Water Treatment Rule (*Giardia,* viruses, heterothrophic plate count bacteria, *Legionella*), Interim Enhanced Surface Water Treatment Rule (*Giardia,* viruses, heterotrophic plate count bacteria, *Legionella* and *Cryptosporidium*), Long Term 1 Enhanced Surface Water Treatment Rule (*Giardia,* viruses, heterothrophic plate count bacteria, *Legionella* and *Cryptosporidium*) and Filter Backwash Recycling Rule (*Cryptosporidium*).** Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(d) Use of an emergency groundwater source that has been identified as potentially groundwater under direct influence of surface water, but has not been fully evaluated. This type of source may not be treated sufficiently to inactivate pathogens such as *Giardia lamblia* and *Cryptosporidium.*

(6) Disinfectant and Disinfection Byproducts — Special Adverse Health Effects Language.

(a) **Total Trihalomethanes (TTHMs).** Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

(b) **Haloacetic Acids (HAA).** Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(c) **Chlorine.** Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(d) **Chloramines.** Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(e) **Chlorine dioxide.** (where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL). Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

**NOTE: In addition to the language in this introductory text of subsection (6)(e) of this rule, water systems must include either the language in paragraphs (6)(e)(A) or (6)(e)(B) of this rule. Water systems with a violation at the treatment plant, but not in the distribution system, are required to use the language in paragraph (6)(e)(A) of this rule and treat the violation as a non-acute violation. Water systems with a violation in the distribution system are required to use the language in paragraph (6)(e)(B) of this rule and treat the violation as an acute violation.**

(A) The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

(B) The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local and State health authorities are the best sources for information concerning alternate drinking water.

(f) **Bromate.** Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(g) **Chlorite.** Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(h) **Total Organic Carbon (TOC).** Total Organic Carbon (TOC) has no health effects. However, TOC provides a medium for the formation of disinfection byproducts (DBPs). These byproducts include trihalomethanes and haloacetic acids. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(7) Adverse health effects for radionuclides:

(a) **Beta/photon emitters.** Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(b) **Alpha emitters.** Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(c) **Combined Radium-226/228.** Some people who drink water containing radium-226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.

(d) **Uranium.** Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Stat. Auth.: ORS 448.131
Stats. Implemented: ORS 431.110, 431.150, 448.131. 448.150, 448.273 & 448.279
Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0215**
**Definitions**

(1) "Available" means on-site or able to be contacted as needed, to initiate the appropriate action in a timely manner.

(2) "Certificate" means a certificate of competency issued by the Department stating that the operator meets the requirements for a specific operator classification and level.

(3) "Continuing Education Unit (CEU)" — A nationally recognized unit of measurement for assigning credits for education or training that provides the participant with advanced or post high school learning. One CEU is awarded for every ten classroom hours of lecture or the equivalent of participation in an organized education experience, conducted under responsible sponsorship, capable direction and qualified instruction as determined by the Department or its designee.

(4) "Conventional Filtration Treatment Plant" means a water system using conventional or direct filtration to treat surface water or groundwater under the direct influence of surface water.

(5) "Department" means the Department of Human Services.

(6) "Direct Responsible Charge" (DRC) means an individual designated by the owner to make decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality and/or quantity of drinking water.

(7) "Filtration Endorsement" means a special provision added to a Water Treatment Operator's certification that includes experience in and knowledge of the operational decision making of a Conventional Filtration Treatment Plant.

(8) "Industrial/Commercial Water Treatment" means treatment for the production of high purity and/or process water for industrial or commercial use.

(9) "On Call" means available to respond immediately by radio or telephone.

(10) "Operator" means an individual with responsibilities that directly impact the quality of drinking water including individuals making process control or system integrity decisions about water quality or quantity that affect public health. This term does not include officials, managers, engineers, directors of public works, or equivalent whose duties do not include the actual "hands-on" operation or supervision on-site of water system facilities or operators.

(11) "Operating Experience" means the routine performance of duties, tasks, and responsibilities at a drinking water system or in a related field as allowed under OAR 333-061-0245(6)(b).

(12) "Operational Decision Making" means having responsibility for making decisions among the alternatives in the performance of the water treatment plant of the water distribution system regarding water quality or quantity which affect public health.

(13) "Post High School Education" means, that education acquired through programs such as short schools, bona fide correspondence courses, trade schools, colleges, universities, formalized workshops or seminars that

are acceptable to the Department and for which college or continuing education credit is issued by the training sponsor.

(14) "Small Water System" means a community or non-transient non-community water system serving fewer than 150 connections and either uses groundwater as its only source or purchases its water from another public water system without adding any additional treatment.

(15) "Water System" means potable water treatment plants and water distribution systems:

(a) That have 15 or more service connections used by year-round residents or that regularly serve 25 or more year-round residents; or

(b) That regularly serve at least 25 of the same persons for more than six months per year;

(c) That are defined as a community or nontransient noncommunity water systems in OAR 333-061-0020.

(16) "Water Treatment" means a process of altering water quality by physical or chemical means and may include domestic, industrial and/or commercial applications.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 16-2001(Temp), f. 7-31-01, cert. ef. 8-1-01 thru 1-28-02; Administrative correction 3-14-02; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0220**
**Classification of Water Systems**

Water systems are classified as small water, water distribution, and water treatment based on size and complexity, as determined by the Department. The classification of these systems and treatment plants is as follows:

(1) A water system is classified, for certification purposes, as a Small Water System if it is a community or nontransient non community water system with fewer than 150 connections and either uses only groundwater as its source or purchases its water from a community or non-transient non-community public water system without adding any additional treatment.

(2) Water distribution classification is based on the population served, as follows:

Classification: — Population Served:

Water Distribution 1 — 1 to 1,500
Water Distribution 2 — 1,501 to 5,000
Water Distribution 3 — 15,001 to 50,000
Water Distribution 4 — 50,001 or more

(3) Water treatment plant classification shall be based on a point system assigned to reflect the complexity of treatment as follows: [Table not included. See ED. NOTE.]

(4) Systems using a Conventional Filtration Treatment Plant to treat surface water or groundwater under the influence of surface water are classified as Water Filtration and shall have an operator who has a valid Water Treatment 2 or higher certification and a Filtration Endorsement.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0230**
**Contracting For Services**

(1) Water systems may contract with a certified operator or a water system having certified operators to provide supervision. The contract operator must be certified at the level equal to or greater than the classification of the water system.

(2) The written contract must assure that the contracted operator will:

(a) Be available on 24-hour call and able to respond on-site upon request;

(b) Specify corrective action when the results of analyses or measurements indicate maximum contaminant levels have been exceeded or minimum treatment levels are not maintained and report the results of these analyses as prescribed by OAR 333-061-0040; and

(c) Assure that all operational decisions that affect public health are made in accordance with OAR 333-061-0225.

(3) Proof of the contract must be submitted to the Department by the water system owner within 30 days of hire.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0235**
**Operator Requirements Levels 1–4**

Certificates are awarded at four (4) levels in each classification of water treatment (WT) and water distribution (WD), as well as a Filtration Endorsement, and are subject to the following requirements:

(1) Water Treatment or Distribution Level 1 Operator Certification qualifications:

(a) Education: High School Diploma or equivalent;

(b) Experience: 12 months of qualifying operating experience;

(c) An Associate Degree in Water Technology may be substituted for 6 months of experience. No other education or substitution will be credited for this level.

(d) Successful completion of a Water Treatment or Distribution Level 1 examination.

(2) Water Treatment or Distribution Level 2 Operator Certification qualifications:

(a) Education: High School Diploma or equivalent plus post high school education and/or qualifying operating experience in one of the following combinations:

(A) 3 years of experience; or

(B) 2 years of experience and 1 year of post high school education; and

(b) Successful completion of the Water Treatment or Distribution Level 2 or the Level 2 multiple-entry examination.

(3) Water Treatment or Distribution Level 3 Operator Certification qualifications:

(a) Education: High school Diploma or equivalent plus post high school education and/or qualifying operating experience in one of the following combinations:

(A) 1 year post high school education and 5 years experience, of which 2.5 years must have been involved in operational decision making; or

(B) 2 years of post high school education and 4 years of experience, of which at least 2 years must have been involved in operational decision making; or

(C) 3 years of post high school education and 3 years of experience, of which 1.5 years must have been involved in operational decision making; or

(D) For Distribution Level 3 only, 8 years of experience, of which 2.5 years must have been involved in operational decision making; and

(b) Successful completion of the Water Treatment or Distribution Level 3 or the Level 3 multiple-entry examination.

(4) Water Treatment or Distribution Level 4 Operator Certification qualifications:

(a) Must be Oregon certified at Level 3; and

(b) Must have post high school education and/or qualifying operating experience in one of the following combinations:

(A) 4 years post high school education and 4 years of experience, of which 2 years must have been involved in operational decision making; or

(B) 3 years post high school education and 5 years experience, of which 2.5 years must have been involved in operational decision making; or

(C) 2 years post high school education and 6 years experience, of which 3 years must have been involved in operational decision making; or

(D) For Distribution Level 4 only, 10 years of experience, of which 3 years must have been involved in operational decision making; and

(c) Successful completion of the Water Treatment or Distribution Level 4 examination.

(5) Filtration Endorsement qualifications:

(a) Must be certified at Water Treatment Level 2 or higher; and

(b) Must have one year qualifying experience in operational decision making at a Conventional Filtration Treatment Plant; and

(c) Must successfully pass an examination on conventional filtration treatment.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0245**
**Applications For Certification Levels 1–4**

(1) Certification will be granted to applicants on the following basis:

(a) The information submitted on the application form as well as any information already on file with the Department;

(b) An evaluation of the applicant's qualifications to take the exam by the Department; and

(c) Successfully passing an examination approved and administered by the Department.

(2) Certification by reciprocity is based on current, valid certification in another state or province which has a recognized certification program. Certification may be granted at the level where the examination, experience, and education requirements are equivalent to those outlined in these rules.

(a) Individuals requesting reciprocity must submit a complete exam/reciprocity application and pay the reciprocity application fee for each certificate desired.

(b) Reciprocity applications are reviewed on a case-by-case basis.

(c) The Department may issue a certificate without examination, when, in the judgment of the Department, the certification examination requirements in the other state or province are substantially equivalent to, and the person's education and experience meet the requirements set forth herein.

(d) The applicant must pay an exam fee for any examination required.

(e) When reciprocity is granted, the person will be subject to the same requirements of renewal as any other persons certified under these rules.

(3) Each applicant for certification must meet the minimum requirements of experience and education as listed under 333-061-0235 "Operator Requirements Levels 1–4" in order to be eligible for admission to an examination.

(4) Applicants denied admission to the certification examination or denied certification by reciprocity have the right to appeal such a decision to the Department.

(5) Transcripts or proof of satisfactory completion of all education and documentation of experience claimed must be submitted with the application.

(6) Experience and education qualifications are based on the following:

(a) One year of experience is equivalent to 12 months full-time with 100% of time spent on activities directly relating to the certificate type for which application is made.

(b) The Department may credit substitute experience, not to exceed one-half of the qualifying operating experience required in any of the following areas:

(A) When applying for a Water Distribution Certificate:

(i) Wastewater Collection experience;

(ii) Water Treatment Plant experience; and

(iii) Cross Connection Control experience.

(B) When applying for a Water Treatment Certificate:

(i) Wastewater Treatment Plant experience;

(ii) Wastewater Treatment Laboratory experience;

(iii) Water Distribution System experience; and

(iv) Industrial/commercial process water treatment experience.

(c) Post High School Education must be directly related to the field of water treatment/water distribution and either acceptable as college transfer or valid Continuing Education Units (CEUs).

(A) Each year of college education completed, (one year of college education is 30 semester hours or 45 quarter hours, or the equivalent) in the fields of engineering, chemistry, water/wastewater technology, or allied sciences.

(B) Forty-Five (45) valid CEUs is equivalent to one year of post high school education.

(C) Any combination of 45 college credits and CEUs can be used to total one year of post high school education.

(D) Any degree or accumulation of college credit hours must be from an educational institution accredited through an agency recognized by the U.S. Department of Education to be acceptable.

(d) Where education credit is earned for on-the-job training, the Department will consider experience or education, but not both, in qualifying experience for an applicant.

(7) All applications for a new certificate or certificate at a higher grade, and some applications for reciprocity, require an examination and must be accompanied by a fee payment equal to the sum of the appropriate application fee and exam fee as prescribed in OAR 333-061-0265.

(8) All applications for exams, regularly scheduled by the Department, must be accompanied by the appropriate exam fee, application fee, and documentation and be postmarked to the Department by the first day of the month preceding the month of scheduled examination.

(9) The Department will review the qualifications of each applicant for the purpose of determining whether the applicant has met the minimum requirements for experience, education, and special training as described in these rules.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0250**
**Examinations Levels 1–4**

(1) Examinations will be given at least twice annually at locations and at times designated by the Department.

(2) The applicant must submit an exam fee and an application fee with all applications submitted to the Department.

(3) The applicant must include documentation of all claims of education and experience.

(4) The applicant must obtain a minimum score of 70% in order to pass the examination.

(5) If an applicant needs to take an examination at a time other than when regularly scheduled by the Department, the applicant will submit an application fee and a special exam fee. The Department will act upon these requests at its earliest opportunity. The regular exam fee will apply to special exams needing disability accommodation under the Federal American's With Disabilities Act.

(6) An applicant may not take the same examination more than twice in a twelve month period unless they can demonstrate to the satisfaction of the Department specific education completed in the subject area since taking the second examination.

(7) The Department will deny any application for examination or reciprocity if the certificate requested is of the same type as an expired Oregon certificate that is still under the one-year reinstatement period. Once the expired certificate is reinstated, the application may be processed.

(8) The Department will not accept incomplete, unsigned, or improperly signed applications or applications not accompanied by appropriate fee(s) and documentation for all claims of education and experience.

(9) The Department or its designee will score all examinations and notify applicants of the results. Examinations will not be returned to the applicant.

(10) After passing an examination, the Department will certify operators and issue a wall and a wallet certificate valid for the remainder of the year.

Stat. Auth.: ORS 488
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 4-2003, f. & cert. ef. 3-28-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0260**
**Certificate Renewal Levels 1–4**

(1) All certificates expire on December 31 each year. An applicant may renew the certificate upon the payment of a renewal fee and satisfactory evidence presented to the Department that the operator has demonstrated the accumulation of two college credits or Continuing Education Units every two years as described below:

(a) The Department, or its designee, shall determine the relevance of the subject matter to the public health objectives of certification when determining the number of CEUs allowed for specialized operator training using the following criteria:

(A) Technical capacity includes: water treatment facilities construction and performance, source construction and protection, capacity, storage, pumping and distribution facility construction and protection, water distribution integrity/leakage and water quality issues related to public/user health.

(B) Managerial capacity includes: water system operation, planning, system governance, development and implementation of system policies, professional support, record keeping, Drinking Water and related regulations to insure protection of public health, communication and involvement with water users.

(C) Financial capacity includes: adequacy of revenues to meet expenses, revenue sources, affordability of user charges, rate setting process, budgeting, production and utilization of a capital improvement plan, periodic financial audits, bond ratings, debt and borrowing.

(b) Two college credits in the fields of engineering, chemistry, water/wastewater technology, or allied sciences will meet continuing education requirements.

(c) CEUs from other states having standards equal to or greater than these rules may be accepted by the Department.

(d) Maintaining CEU records is the responsibility of the operator.

(2) The Department will send a notice of certificate expiration to each certificate holder at the last address of record. Operators are not relieved of responsibility to reinstate their certificates if they do not receive the notice.

(3) An operator who fails to renew the certificate pursuant to the provisions of this section by the expiration date cannot be in direct responsible charge of a water system. The suspension may be lifted by paying the late fee, the renewal fee, and documentation of CEUs (when required), if received by March 31 following the date of expiration.

(4) An operator who has failed to renew the certificate by March 31 following the date of expiration must apply for reinstatement of certification by submitting a Renewal Form accompanied by a reinstatement fee plus the annual renewal fee, and provide documentation of CEUs (when needed).

(5) If an operator fails to renew for a year following the date of expiration, the requirements established for new applicants must be met by passing an examination and paying a reinstatement fee.

Stat. Auth.: ORS 488
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 4-2003, f. & cert. ef. 3-28-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0265**
**Fees**

(1) All fees are to be made payable to the Department of Human Services.

(2) Fees are not refundable unless:

(a) The Department has taken no action on a certification application;

(b) The Department determines the wrong application has been filed;

(c) The Department determines that no fee is required; or

(d) An overpayment has been made.

(3) Applicants for initial certification by exam must submit the exam fee and application fee, along with a complete application.

(4) Applications will be accepted for processing only when accompanied by the appropriate fees as indicated below. Fee Schedule:

(a) Certification Renewal — $40;

(b) Combination Certification-each additional — $20;

(c) Exam Fee-all — $35;

(d) Special Exam Fee — $70;

(e) Application Fee:

(A) Level 1 Distribution or Treatment — $50;

(B) Level 2 Distribution or Treament — $70;

(C) Level 3 Distribution or Treatment — $90;

(D) Level 4 Distribution or Treatment — $110;

(E) Filtration Endorsement — $50;

(f) Reciprocity Review (each certification) — $100;

(g) Reinstatement $50 + Certificate Renewal Fee;

(h) Late Fee $30 + Certificate Renewal Fee;

(i) Document Replacement Fee — $25.

(5) Operators having more than one certification pertaining to water systems (water treatment and water distribution) may receive a combination certification. The fee is the full certification renewal fee for one certification and a lesser fee for each additional certification.

(6) The filtration endorsement is an extension of an operator's water treatment certification, and no additional annual fee is required to maintain the endorsement.

(7) A document Replacement Fee must be paid at the time of request for a replacement document.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0270**
**Refusal or Revocation of Certification**

(1) The Department may deny an applicant or revoke a certification of competency for violation of any of these rules:

(a) The applicant obtained the certificate by fraud, deceit, or misrepresentation.

(b) The applicant has been grossly negligent, incompetent or has demonstrated misconduct in the performance of the duties of an operator or supervisor of a water distribution system or water treatment plant in Oregon or any other state, province or country.

(c) The applicant/operator has violated or failed to comply with any Department rule or order.

(d) The applicant/operator fails to comply with any Department investigation.

(e) Any person who knowingly makes any false statement or misrepresentation in any application, record, or other document filed with the Department.

(2) Any applicant whose application or certificate has been denied or revoked has the right to appeal pursuant to ORS Chapter 183.

(3) No person whose certificate has been revoked under this rule is eligible to apply for certification for one year from the effective date of the final order of revocation. Any such person who applies for certification must meet all the requirements established for new applicants and pay a reinstatement fee.

Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 431.110, 431.150, 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

**333-061-0290**
**Penalties**

(1) Violations of these rules shall be punishable as set forth in ORS 448.994, which states that any person who knowingly and willfully violates ORS 448.455(2) and any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under any of these rules shall upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both.

(2) Pursuant to ORS 448.280, 448.285 and 448.290, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense, and each day's violation is a separate and distinct violation.

(3) Under ORS 448.290, only the Administrator can impose penalties.

(4) The civil penalty for the following violations shall not exceed $1,000 per day for each violation.

(a) Failure to employ or otherwise utilize an operator to be in direct responsible charge who has an appropriate valid operators certificate as prescribed in these rules.

(b) Failure to employ or otherwise utilize an operator to be in direct responsible charge who has maintained the required continuing education units.

(c) Failure to comply with an order issued by the Department.

(5) Civil penalties shall be based on the population served by the public water system and shall be in accordance with the following schedule:

Daily Population Served: — Maximum Civil Penalty:
10 to 100 — $50/day
101 to 300 — $100/day
301 to 1,500 — $200/day
1,501 to 10,000 — $500/day
Over 10,000 — $1,000/day
Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.280, 448.285, 448.290 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2002, f. & cert. ef. 5-2-02; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06

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**Rule Caption:** Retroactive amendment of 333-064-0060 relating to the ORELAP fee schedule.
**Adm. Order No.:** PH 3-2006(Temp)
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06 thru 7-30-06
**Notice Publication Date:**
**Rules Amended:** 333-064-0060
**Subject:** The Department of Human Services (DHS), Public Health, must temporarily and retroactively amend Oregon Administrative Rule (OAR), 333-064-0060, relating to the ORELAP fee schedule to correct rule language that was inadvertently left out of the final rulemaking adopted on October 10, 2002 to specify that, when

accredited laboratories requesting additions to their fields of testing during the accreditation period must pay the difference in cost of the application fee, there is a minimum fee of $200. This rule will have a retroactive effective date of October 10, 2002.
**Rules Coordinator:** Christina Hartman—(971) 673-1291

**333-064-0060**
**Fee Schedule**

Fees will be charged to environmental laboratories according to the following schedule.

(1) Payment of a non-refundable application fee must accompany each application.

(a) For laboratories located in Oregon, one of three levels of fees, Tier 1 at $450, Tier 2 at $900 and Tier 3 at $1,600 will be charged. The Tiers will be determined by the total number of points derived from the number of Fields of Testing requested for accreditation listed in section (2)(a) through (c) of this rule.

(A) Each Basic Field of Testing has a multiplier of 1.

(B) Each Moderate Field of Testing has a multiplier of 3.

(C) Each Complex Field of Testing has a multiplier of 5.

(D) The total number of points is determined by first summing the number of Fields of Testing within each category (Basic, Moderate or Complex) and then multiplying the sums by their appropriate multiplier as given in this rule. The sum of these results determines the total number of points for each laboratory. Laboratories with a total of 1-10 points are to be considered Tier 1 laboratories, 11 to 25 points are Tier 2 laboratories and 26 or more points are Tier 3 laboratories.

(b) For each out-of-state laboratory requesting primary or secondary accreditation through Oregon, one of three levels of fees, Tier 1 at $1,250, Tier 2 at $2,000 and Tier 3 at $3,000 will be charged with each Tier determined according to section (1)(a) of this rule.

(c) If a laboratory fails to submit an acceptable application after two attempts, the application will be rejected and the laboratory may reapply and must pay a new non-refundable application fee as determined in this rule.

(d) If a new owner acquires the laboratory and wishes the laboratory to remain accredited, the laboratory must submit a new application, pay the application fee and be subject to a new on-site inspection and payment of assessment and on-site fees as described in this rule.

(2) Upon ORELAP's review of a laboratory's application, each laboratory requesting primary accreditation through ORELAP, when ORELAP personnel will be used for the assessment, the laboratory will be charged an assessment fee based on the number Fields of Testing and Programs as follows:

(a) $90 will be charged for each of the following Basic Fields of Testing requested for accreditation:

(A) Gravimetric;

(B) Chromofluorogenic (Microbiology);

(C) Membrane Filter and/or Heterotrophic Plate Count (Microbiology);

(D) Multiple Tube Fermentation/Most Probable Number (MPN) (Microbiology);

(E) Microscopy;

(F) Physical;

(G) Probe.

(b) $350 will be charged for each of the following Moderate Fields of Testing requested for accreditation:

(A) Atomic absorption — flame;

(B) Atomic absorption — furnace;

(C) Automated colorimetric;

(D) Gas chromatography — volatiles;

(E) Gas chromatography — extractables;

(F) High pressure liquid chromatography;

(G) Immunoassay;

(H) Instrumental;

(I) Ion chromatography;

(J) Manual colorimetric;

(K) Radiation;

(L) Toxicity testing.

(c) $500 will be charged for each of the following Complex Fields of Testing requested for accreditation:

(A) Gas chromatography/mass spectrometry — volatiles;

(B) Gas chromatography/mass spectrometry — extractables;

(C) Inductively coupled plasma;

(D) Inductively coupled plasma/mass spectrometry;

(E) X-ray.

(d) An additional cost of $10 for Basic Fields of Testing, $40 for Moderate Fields of Testing and $75 for Complex Fields of Testing will be charged for each additional Program per Field of Testing for which the laboratory has requested approval. The Programs are:

(A) CAA;

(B) CWA;

(C) SDWA;

(D) RCRA.

(e) Assessment fees must be paid during the accreditation period in which the on-site assessment is to be performed but must be paid before the on-site assessment will be scheduled.

(3) All Oregon environmental laboratories requesting primary accreditation through ORELAP where Oregon state assessor(s) will perform the on-site assessment, must pay an on-site trip fee for each on-site assessment.

(a) On-site trip fees are $350 for Tier 1, $500 for Tier 2 and $1,000 for Tier 3 laboratories with the Tiers determined according to section (1)(a) of this rule.

(b) All laboratories must pay the appropriate on-site trip fee prior to scheduling and performing each required on-site assessment and additional assessments as requested by the laboratory for approval for additional Fields of Testing and/or Program.

(c) All laboratories must pay the appropriate on-site trip fee per on-site assessment performed due to just cause according to NELAC Standards.

(4) All environmental laboratories located in Oregon requesting primary accreditation through ORELAP where ORELAP has determined that third party assessors will be used, must pay all ORELAP assessment fees plus all third party assessors costs. ORELAP may require the laboratory to pay the on-site assessment costs directly to the third party assessor according to the schedule of the assessor for all required on-site assessments.

(5) All out of-state environmental laboratories must pay all on-site assessment costs incurred by ORELAP approved assessors to perform the on-site assessment including but not limited to transportation, per diem and wages during travel. If third party assessors are used, ORELAP may require the lab to pay the on-site assessment costs directly to the assessor according to the schedule of the assessor for all required inspections.

(6) Accredited laboratories requesting additions to their fields of testing during the accreditation period must pay:

(a) The difference in cost of the application fee with a minimum fee of $200;

(b) The difference in cost of the assessment fee;

(c) An on-site trip fee, as described in 3(a) and 5 of this rule, based only on the additional parameters if ORELAP determines that an on-site assessment is required.

Stat. Auth.: ORS 438.605, 438.610, 438.615, 438.620, 448.280(1)(b) & (2)
Stats. Implemented: ORS 438.605, 438.610, 438.615 & 438.620
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 3-2006(Temp), f. & cert. ef. 2-8-06 thru 7-30-06

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

**Rule Caption:** Changing OARs to reflect the annual increase in the federal poverty levels.
**Adm. Order No.:** SSP 1-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 461-155-0225, 461-155-0235
**Subject:** OARs 461-155-0225 and 461-155-0235 are being amended to reflect the annual increase in the federal poverty levels published in the Federal Register. These rules include income and premium standards based on the federal poverty levels.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**461-155-0225**
**Income Standard; OHP**

(1) If a financial group contains a person with significant authority in a business entity — a "principal" as defined in OAR 461-140-0040 — the group is ineligible for the OHP program if the gross income of the business entity exceeds $10,000. If the need group is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the 2006 federal poverty level. [Table not included. See ED. NOTE.]

(b) The countable income standard for OHP-OP6 is 133 percent of the 2006 federal poverty level. [Table not included. See ED. NOTE.]

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the 2006 federal poverty level (see section (2)(a) of this rule). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06

**461-155-0235**

**OHP Premium Standards**

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group:

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The financial group's countable income is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non-exempt OHP-OPU client in the benefit group is determined from the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 2-2006(Temp)

**Filed with Sec. of State:** 2-1-2006

**Certified to be Effective:** 2-1-06 thru 2-20-06

**Notice Publication Date:**

**Rules Suspended:** 461-105-0004(T)

**Subject:** Rule 461-105-004 is being suspended because federal approval (and funding) to provide medical assistance to Hurricane Katrina evacuees under the provisions of this rule expires on January 31, 2006, and this remaining non-medical provisions of the rule are no longer necessary.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

**461-105-0004**

**Hurricane Evacuees**

Notwithstanding any other rule in chapter 461:

(1) For purposes of this rule, an *evacuee* refers to a person living in Oregon on the filing date or date of request who *qualifies as a resident* (under section (2) or (3) of this rule) of one of the following Hurricane Katrina disaster areas:

(a) Alabama counties: Baldwin, Clarke, Choctaw, Mobile, Sumter, and Washington.

(b) Louisiana parishes: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, Sr. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana.

(c) Mississippi Counties: Amite, Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, Walthall, and Wilkinson.

(2) In the FS program, a person *qualifies as a resident* based on their residency as of August 29, 2005, including a person who was living in this designated disaster area and fled either before the storm or after the storm, and is unable to return to that residence on the filing date.

(3) For all programs except FS, a person *qualifies as a resident* if the person was a resident of the designated disaster area on August 24, 2005.

(4) In the FS program, an *evacuee* with a filing date in September or October of 2005 may receive the following benefits:

(a) Enhanced benefits during the month of filing, upon verification that there is an adult in the filing group, without consideration of the financial or nonfinancial eligibility criteria in the chapter 461 rules.

(A) An *evacuee* receives a maximum allotment (as if there were no income) for the household size for the full month without the proration otherwise required in OAR 461-115-0040 and 461-160-0070.

(B) An *evacuee* is eligible for one month of enhanced benefits. An *evacuee* is not eligible for enhanced benefits if one month of enhanced benefits were received from another state.

(b) Expanded disaster *evacuee* benefits begin the month following receipt of enhanced benefits as described in subsection (4)(a) of this rule:

(A) Benefits are certified through December 31, 2005 and processed using *expedited service* criteria under OAR 461-115-0210 and 461-115-0690, including postponed verification through December 2005.

(B) An *evacuee* group is considered homeless, even if temporarily sharing a residence with others, and is certified as a separate filing group, notwithstanding OAR 461-110-0370.

(C) An *evacuee* aged 18 through 59 is exempt from the requirements of OAR 461-130-0320.

(5) In the BCCM, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, and SAC programs:

(a) An *evacuee* applicant must meet all financial and nonfinancial eligibility criteria identified in chapter 461 rules, except verification and residency requirements are waived.

(b) Regardless of the date of request or when the *evacuee* arrived in Oregon:

(A) In the QMB program, medical coverage for an eligible *evacuee* has an effective date of September 1, 2005.

(B) In the BCCM, EXT, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, and SAC programs, medical coverage for an eligible *evacuee* has an effective date of August 24, 2005.

(c) The closure rule, OAR 461-135-0701, for the GA and GAM programs remains in effect.

(6) In the TANF program, verification of eligibility for an *evacuee* is based on whatever information is available.

(7) In the ERDC program, an *evacuee* with a date of request in September or October 2005 who is employed and has dependent children receives benefits during the month of request without consideration of the other financial or nonfinancial eligibility criteria in chapter 461 rules. Verification of eligibility is based on whatever information is available.

(8) This temporary rule has a retroactive effective date of August 24, 2005.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: SSP 13-2005(Temp), f. & cert. ef. 9-28-05 thru 2-20-06; Suspended by SSP 2-2006(Temp), f. & cert. ef. 2-1-06 thru 2-20-06

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients

**Adm. Order No.:** SSP 3-2006(Temp)

**Filed with Sec. of State:** 2-6-2006

**Certified to be Effective:** 2-6-06 thru 6-30-06

**Notice Publication Date:**

**Rules Amended:** 461-135-0730

**Subject:** Rule 461-135-0730 is being amended to re-open the QI-1 program in Oregon. QI-1 is a program that pays the Part B Medicare premium for eligible clients. Each state has a fixed allocation from the federal government to pay these premiums. In April 2004, the program was closed to new clients because Oregon exceeded its allocation. Subsequently, the number of individuals in the program has dropped (from 5,800 to 4,100) and a new allocation allows the Department to have significantly more clients (about 6,100 depending on the application rate) enrolled. The allocation has recently risen from $4,424,000 to $5,339,000 and is 100% federal funding for the

program benefits. These two changes allow the Department to open the program once again.
**Rules Coordinator:** Annette Tesch—(503) 945-6067

**461-135-0730**
**Specific Requirements; QMB**

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for QMB-DW program, a person must be eligible for Part A of Medicare as a qualified disabled worker under Section 1818(A) of the Social Security Act. These are people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They are not eligible for MAA, MAF, or OSIPM at the same time they are eligible for QMB benefits.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) are not eligible for QMB-SMB if they have income equal to or greater than 120% of the Federal Poverty Level (FPL).

(d) A need group with income equal to or greater than 120% of the FPL (see OAR 461-155-0295) may receive QMB-SMB benefits on or after December 1, 2005, except as provided in subsection (3)(e) of this rule.

(e) The QMB-SMB program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program (of clients with income greater than 120% of the FPL) exceeds the federal allocation for that group, the program may be closed.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06

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

**Rule Caption:** Allows discharge of residents with sexual conviction and who are a risk of harm.
**Adm. Order No.:** SPD 2-2006(Temp)
**Filed with Sec. of State:** 1-18-2006
**Certified to be Effective:** 1-18-06 thru 7-1-06
**Notice Publication Date:**
**Rules Amended:** 411-055-0190
**Subject:** OAR 411-055-0190 is being amended to implement Senate Bill 106 which allows a licensed Residential Care Facility to immediately discharge a resident who has had a sexual conviction and is a current risk of harm to others.

Senate Bill 106 was imposed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate at the request of Governor Kulongoski.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-055-0190**
**Involuntary Move-out Criteria**

The Department of Human Services, Seniors and People with Disabilities encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the community based care setting due to safety and medical limitations.

(1) Residents will be given a minimum of 30 days written notice when they are requested to move-out. A resident may, but is not required to be, asked to leave under the following circumstances:

(a) The resident's needs exceed the level of ADL services the facility provides. The minimum required services identified in OAR 411-055-0210 will be provided before a resident can be asked to move-out for this reason;

(b) The resident exhibits behavior or actions that repeatedly and substantially interfere with the rights or well being of other residents and the facility has tried prudent and reasonable interventions. There will be documentation of the interventions attempted;

(c) The resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed and implemented in the residential care environment. There will be documentation of the facility's efforts to obtain appropriate care for the resident;

(d) Non-payment of charges;

(e) The facility is unable to accomplish resident evacuation in accordance with OAR 411-055-0081(4).

(2) A resident who leaves to receive urgent medical or psychiatric care will have the right of return to the facility unless, at the time the resident is to return, facility staff have re-evaluated the resident's needs and have determined that the resident's needs cannot be met at the facility.

(a) A resident who is refused the right of return will be immediately notified in writing of their right to an informal conference and hearing.

(b) If the resident appeals the notification to move out, the facility will not rent the resident's unit pending completion of the appeals process.

(3) A resident or his/her legal representative will be given at least 30 days notice if a facility has had it's license revoked, not renewed or voluntarily surrendered.

(4) The written move-out notice will be completed on a Department approved form. The form will be filled out in its entirety and a copy of the notice will be sent by certified mail or delivered in person to the resident, the resident's legal representative, or any person designated by the resident, guardian, or conservator and if applicable, the case manager. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out will be faxed or sent next-day delivery to the State Long Term Care Ombudsman, who may request an informal conference for the resident.

(5) The Department will hold an informal conference as promptly as possible after the request is received. Participants will include the resident and others as requested by the resident. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, no formal hearing will be held. If a resolution is not reached at the informal conference, the resident or resident's representative may request a formal hearing.

(6) The resident has the right to a formal administrative hearing prior to an involuntary move-out.

(7) Intra-facility move policy will be included in the facility's disclosure statement. In the case of a facility requested move, the facility will provide 30 days written notice and pay all associated costs with the move. Residents will not be relocated from one unit to another for the convenience of the facility.

(8) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:

(a) The facility was not notified prior to admission that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, and

(b) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, and

(c) The resident presents a current risk of harm to another resident, staff or visitor in the facility, as evidenced by:

(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; and

(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

(d) Prior to the move, the facility must contact DHS Central Office by telephone and review the criteria in paragraph (8)(c)(A)(B) of this rule. DHS will respond within one working day of contact by the facility. The Department of Corrections parole or probation officer will be included in the review, if available. DHS will advise the facility if rule criteria for immediate move out are not met. DHS will assist in locating placement options.

(e) A written move-out notice must be completed on a Department approved form. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(f) Prior to the move, the facility must orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility will immediately telephone DHS Central Office when a hearing is requested. The hearing will be held within five business days of the resident's move. No informal conference will be held prior to the hearing.

Stat. Auth.: ORS 443.410
Stats. Implemented: ORS 443.410 & 181.586
Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94, Renumbered from 411-055-0090; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04; SPD 2-2006(Temp). f. & cert. ef. 1-18-06 thru 7-1-06

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**Rule Caption:** Extends licensing moratorium and amends current language to require a fee in certain circumstances.
**Adm. Order No.:** SPD 3-2006
**Filed with Sec. of State:** 1-25-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 411-055-0003
**Rules Repealed:** 411-055-0003(T)
**Subject:** The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new residential care facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-055-0003**
**Licensing Moratorium**

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2009. The Department of Human Services may issue a license to an applicant for operation of a residential care facility who complies with OAR chapter 411, division 055 under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-055-0029 and is not seeking an increase in license capacity;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a targeted population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) Effective August 3, 2005, a non-refundable fee of $5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2005. This $5000 fee does not apply to any applicant who has begun construction by December 31, 2005.

(a) If, on or before December 31, 2005, the original applicant has sold or transferred the business rights on a project submitte before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2006.

(b) The Department must receive the $5000 fee no later than January 31, 2006. If payment is not received, the project will be considered to be withdrawn.

(3) In addition to a fee paid by January 31, 2006, a non-refundable fee of $5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2006. This $5000 fee does not apply to any applicant who has begun construction by December 31, 2006.

(a) If, on or before December 31, 2006, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2007.

(b) The Department must receive the $5000 fee no later than January 31, 2007. If payment is not received, the project will be considered to be withdrawn.

(4) A construction permit, building permit, or other permit necessary to begin construction must be secured by the applicant, or the entity to whom the business rights on the project has been sold or transferred, no later than August 3, 2007, and must be submitted to the Department no later than September 4, 2007, or the project will be considered withdrawn.

(5) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis, completed by a third party professional, that validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area that have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities, (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400–443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(6) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area, and;

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(7) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100 may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SDSD 1-2002, f. & cert. ef. 4-23-02; SPD 1-2004 f. & cert. ef. 2-4-04; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04; SPD 13-2005(Temp), f. & cert. ef. 10-26-05 thru 4-24-06; SPD 3-2006, f. 1-25-06, cert. ef. 2-1-06

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**Rule Caption:** Extends licensing moratorium and amends current language to require a fee in certain circumstances.
**Adm. Order No.:** SPD 4-2006
**Filed with Sec. of State:** 1-25-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 411-056-0007
**Rules Repealed:** 411-056-0007(T)
**Subject:** The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new assisted living facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-056-0007**
**Licensing Moratorium**

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2009. The Department of Human Services may issue a license to an applicant for operation of an assisted living facility who complies with OAR chapter 411, division 056 under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-056-0008(9) and is not seeking an increase in licensed units;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a targeted population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) Effective August 3, 2005, a non-refundable fee of $5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2005. This $5000 fee does not apply to any applicant who has begun construction by December 31, 2005.

(a) If, on or before December 31, 2005, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2006.

(b) The Department must receive the $5000 fee no later than January 31, 2006. If payment is not received, the project will be considered to be withdrawn.

(3) In addition to a fee paid by January 31, 2006, a non-refundable fee of $5000 must be paid to the Department by the applicant who submitted schematic plans or drawings before August 16, 2001, and has not yet begun construction on the project by December 31, 2006. This $5000 fee does not apply to any applicant who has begun construction by December 31, 2006.

(a) If, on or before December 31, 2006, the original applicant has sold or transferred the business rights on a project submitted before August 16, 2001 to another entity, notification of this transaction must be submitted to the Department as soon as possible but no later than January 30, 2007.

(b) The Department must receive the $5000 fee no later than January 31, 2007. If payment is not received, the project will be considered to be withdrawn.

(4) A construction permit, building permit, or other permit necessary to begin construction must be secured by the applicant or the entity to whom the business rights on the project has been sold or transferred, no later than August 3, 2007, and must be submitted to the Department no later than September 4, 2007, or the project will be considered withdrawn.

(5) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area, and;

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(6) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis, completed by a third party professional, that validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area that have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities, (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400–443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(7) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100 may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SDSD 2-2002, f. & cert. ef. 4-23-02; SPD 2-2004, f. & cert. ef. 2-4-04; SPD 14-2005(Temp), f. & cert. ef. 10-26-05 thru 4-24-06; SPD 4-2006, f. 1-25-06, cert. ef. 2-1-06

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**Rule Caption:** Implements SB1064; Developmental Disability Eligibility Criteria; and Grievance Process.
**Adm. Order No.:** SPD 5-2006
**Filed with Sec. of State:** 1-25-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 411-320-0020, 411-320-0030, 411-320-0040, 411-320-0050, 411-320-0060, 411-320-0070, 411-320-0080, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0140, 411-320-0160, 411-320-0170
**Rules Repealed:** 411-320-0020(T), 411-320-0030(T), 411-320-0040(T), 411-320-0050(T), 411-320-0070(T), 411-320-0080(T), 411-320-0090(T), 411-320-0100(T), 411-320-0110(T), 411-320-0120(T), 411-320-0130(T), 411-320-0140(T), 411-320-0160(T), 411-320-0170(T)
**Subject:** The passage of SB1064 during the 2005 Legislative Session directed Seniors and People with Disabilities to establish by rule a process that implements the reconnection of family members with an individual with a developmental disability.

Permanently adopts the changes that were submitted as temporary rulemaking related to: a) adding a definition for adaptive behavior and clarifying language for consistency and understanding; b) restoring Grievance Committee process for consumer grievances left out of last rulemaking process; and c) restores specific rules of mental retardation and developmentally disabled eligibility left out of the August 2004 amendment.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-320-0020**
**Definitions**

(1) "24-Hour residential program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748 and 418.749. This includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites that are deliberately inflicted;

(C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message that is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an adult. Except for those additional circumstances listed in OAR 411-320-0020(2)(c)(A–F) abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and wellbeing.

(c) Abuse in other circumstances. When the Department directly operates any licensed 24-Hour Residential Program; or the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes but is not limited to, the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services.

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate or unauthorized physical intervention that results in injury.

(i) A physical intervention is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A physical intervention is not authorized if:

(I) There is not a written physician's order when intervention is used as a health related protection; or

(II) It is applied without ISP Team approval as identified on the ISP or as described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation that may include, but is not limited to, an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or the person's legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.

(G) The definitions of abuse described in OAR 411-320-0020 (2)(b)(A–E) also apply to homes or facilities licensed to provide 24-Hour Residential Services for children with developmental disabilities or to agencies licensed or certified by the Department to provide Proctor Foster Care for children with developmental disabilities.

(H) The definitions of abuse described in OAR 411-320-0020(2)(c)(A–F) also apply to the staff of the CMHDDP or a Support Services Brokerage.

(3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 410-009-0100 and any subsequent services or supports necessary to prevent further abuse.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event. Examples of accidents include, but are not limited to: incidents involving vehicles, bicycles or other modes of transportation that result in a collision or impact; falls, e.g., on ice, snow, water, stairs, uneven surfaces such as rugs, clutter, uneven ground; or other impact with an object, furniture, sports equipment, etc.

(5) "Adaptive Behavior" means the degree that an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include, but are not limited to: adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills, including but not limited to: walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means minus two standard deviations below the norm in two or more areas of functioning including but not limited to: communication, mobility, self-care, socialization, self-direction, functional academics or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Care" means supportive services including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(11) "Chemical restraints" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior or treatment plan.

(12) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(13) "Choice" means the individual's expression of preference, as well as the opportunity for an active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated through verbal, sign language, or other communication methods.

(14) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(15) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(16) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a County Financial Assistance Contract with the Department of Human Services.

(17) "Complaint" means an allegation of abuse of an individual; a grievance against a CDDP or CDDP subcontractor's contract, policies or

procedures; or other significant problem or dissatisfaction with the CDDP or CDDP subcontractor that could impact individual(s) health and safety, or significantly impact community relations with the CDDP or the CDDP subcontractor.

(18) "Complaint investigation" means an investigation of any allegation that has been made to a proper authority that the program has taken an action that is alleged to be contrary to law, Oregon Administrative Rule or policy that is not covered by an abuse investigation or a grievance procedure.

(19) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department: a 24-hour program, a foster home, a supported living program or comprehensive in-home supports for adults in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services, (with an annual plan for less than $20,000), or Children's Intensive In-Home Services.

(20) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(21) "Crisis or Diversion Services" means a short-term service(s) for up to 90 days provided to, or on behalf of, an adult to prevent civil court commitment under ORS 427.215 through 427.300 or a child to prevent out-of-home placement through the arrangement for or facilitation of the purchase or provision of goods and services, directly related to resolving a crisis, and provided to or on behalf of individuals eligible to receive such services.

(22) "Crisis plan" means the CDDP or Regional Crisis Program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(23) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department, that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(24) "Developmental disability" for the purposes of these rules means a disability that originates in childhood, that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling condition that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder or sensory impairment.

(25) "Entry" means admission to a Department funded developmental disability service provider.

(26) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(27) "Family member" for the purposes of these rules, means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(28) "Grievance" means a formal complaint by the individual or a person acting on his or her behalf about any aspect of the program or an employee of the program.

(29) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(30) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession and includes a health care facility.

(31) "Health care representative" means:

(a) A health care representative as defined in ORS 127.505(12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.

(32) "Home" means the actual physical structure in which a child has been living.

(33) "Imminent Risk" means that within 60 days and without the use of Crisis Services, the adult will be civilly court-committed to the Department of Human Services under ORS 427, or the child will require out-of-home placement.

(34) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(35) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(36) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator or Support Specialist.

(37) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(38) "Individualized Education Plan" or "IEP" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student and a representative of the school district.

(39) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual, (if appropriate for in-home supports), the guardian, if any, relatives of the individual, the Services Coordinator and any other persons who are well liked by the individual and requested by the individual to serve on the team.

(40) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community, resources that are used by and available to other persons in the community, and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

(41) "Legal representative" means the parent, if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(42) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(43) "Long Term Diversion Services" means new or enhanced services provided to an individual who is eligible for crisis/diversion services and is needed on a long-term or on-going basis to resolve the crisis.

(44) "Majority agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Representatives from service provider(s), families, the CDDP, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(45) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(46) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(47) "Mechanical restraints" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.

(48) "Mental Retardation" means significantly sub-average general intellectual functioning defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of mental retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70-75 range can be considered as having mental retardation if there is significant impairment in adaptive behavior as described in 411-320-0020(5).

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(49) "Monitoring" means the periodic review of the implementation of services identified in the annual service plan or annual summary, and the quality of services delivered by other organizations.

(50) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.

(51) "Physical intervention" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(52) "Plan of Care" means the written details of the supports, services and resources provided or accessed to address the needs of the individual. The plan of care is to be developed by the support team, using a person-centered approach.

(53) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(54) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property and funds as possible.

(55) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property, and funds as soon as possible.

(56) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes but is not limited to, anti-psychotic, antidepressant, anxiolytic, and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(57) "Regional Crisis/Diversion Program" means the regional coordination of the management of crisis/diversion services for a group of designated counties.

(58) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(59) "Restraint" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(60) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with Services Coordinator.

(61) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider" or "program" is synonymous with "service provider."

(62) "Short Term Crisis Services" means service(s) to address a crisis, provided for up to 90 days, or on a one-time basis, to or on behalf of, an individual eligible to receive crisis services.

(63) "State Training Center" means Fairview Training Center or Eastern Oregon Training Center.

(64) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(65) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of resources for individuals with developmental disabilities served by a Support Services Brokerage. The term Title XIX specialist may be synonymous with Support Specialist.

(66) "Support Team" means a group composed of members as determined by an individual receiving services or the individual's legal guardian, to participate in the development of the individual's plan of care.

(67) "Transfer" means movement of an individual from a service site to another within a county, administered by the same service provider and that has not been addressed within the ISP.

(68) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(69) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(70) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the CDDP.

Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 430.610 -430.670 & 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0030**
**Organization and Program Management**

The CDDP must ensure the provision of the following services and system supports.

(1) Access to services:

(a) Nondiscrimination. In accordance with the Civil Rights Act of 1964, (codified as 42 USC 2000d et seq.), community mental health and developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin or duration of residence. Community developmental disability contractors must comply with Section 504 of the Rehabilitation Act of 1973, (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4), that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Acceptance of eligibility. Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services provided unless admission to the service is subject to diagnostic or disability category or age restrictions based on predetermined criteria or contract limitations.

(2) Coordination of community services. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the community mental health and developmental disability program, other local and state human service agencies and any other service providers as appropriate for the needs of the individual.

(3) Case management services. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of residence must be responsible for case management services unless otherwise negotiated.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring monitoring as well as investigating. Except as allowed under subsection 411-320-0040(3)(e), the case management program will be provided under an organizational structure that separates case management from other direct services for individuals with developmental disabilities. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

(A) When the CDDP coordinates the delivery of Child and Family Support Services for children under 18 years old, living at home with their family or Comprehensive In-Home Supports for adults.

(B) When the CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) Exception. If a CDDP intends to perform a direct service, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP will provide Child and Family Support Services or Comprehensive In-Home Supports described in OAR 411-320-0040(3)(e)(A) above. If the CDDP does not provide one or both of these services they must propose a variance to the Department for approval describing how those services will be provided.

(B) If the circumstance described in OAR 411-320-0040(3)(e)(B) above exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e)(C) above exists, the organization must propose a variance to the Department for prior approval including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e), it must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in OAR 411-320-0040(3)(g), the CDDP must submit a written variance for prior approval by the Department that describes how conflict of roles will be managed within the CDDP.

(4) Family support. The CDDP must ensure the availability of a program for Child and Family Support Services in accordance with OAR 411-340-0010 through 0180.

(5) Title XIX administration. The CDDP must ensure the availability of staff to provide the required administrative review of program services funded by the Medicaid waiver(s). This must include the availability of Support Specialists as described in OAR 411-320-0030(3)(b)(A–B)&(D).

(a) If an individual is receiving services in more than one county, the county of residence must provide the services of a Support Specialist unless otherwise negotiated.

(b) If a CDDP also operates a Support Services Brokerage the CDDP must submit a variance in writing for prior approval to the Department including the mechanism for addressing potential conflicts of interest.

(6) Abuse and protective services. The CDDP must assure that abuse investigations for adults are appropriately reported and conducted according to statute and administrative rules by trained staff. When there is reason to believe a crime has been committed there must be a report to law enforcement. Any suspected or observed abuse of children should be reported directly to the Child Welfare child protective services unit or local law enforcement, when appropriate.

(7) Foster homes. The CDDP will recruit foster home applicants and maintain forms and procedures necessary to license or certify homes. This will include copies of the following records:

(a) Initial and renewal applications to be a foster home;

(b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(c) General facility information;

(d) Documentation of references, classification information, credit check, if necessary, criminal history clearance and training for provider and substitute caregivers.

(e) Documentation of foster care exams for adult foster home caregivers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denial or revocation (if any); and

(k) Copies of the annual license or certificate.

(8) Contract monitoring. The CDDP will monitor all community developmental disability subcontractors to assure that:

(a) Service element services are provided as specified in the contract with the Department; and

(b) Service elements are in compliance with these rules and other applicable Department administrative rules.

(9) Local quality assurance program. Each CDDP must implement and maintain a local quality assurance system in accordance with these rules.

(a) QA system purpose and scope. The local quality assurance system will:

(A) Ensure the development and implementation of a quality assurance system by:

(i) Providing direct support to DHS in implementation of its quality assurance (QA) plan; and

(ii) Generally improving the quality of services by evaluating service delivery and outcomes and adjusting local planning and performance where needed.

(B) Include all Department funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities; and those developmental disability services operating under a direct contract with the Department; and

(C) Include, at a minimum, the quality indicators and all activities that are to be carried out at the local level according to the most recent edition of the Department's Quality Assurance Plan for Developmental Disability Services (Department's QA Plan).

(b) Quality assurance activities. The CDDP will perform quality assurance activities that include, but are not limited to, the following:

(A) Develop and maintain a local QA plan that describes the major activities to be performed by the CDDP, including the timelines for each of those activities.

(i) These activities must include all activities that are to be carried out at the local level according to the most current edition of the Department's QA plan.

(ii) The local QA plan must be updated whenever changes are made, but at least annually.

(B) Develop CDDP policies and procedures needed to implement the local QA plan.

(C) Implement the activities defined in the local QA plan, including the timely delivery of data and information to the Department as required in the Department's QA plan.

(D) Maintain data and information that has been gathered through implementation of the local QA plan.

(E) Maintain a record of conclusions and recommendations that have been drawn from analysis of the information gathered.

(F) Take management actions as needed to improve service quality or to correct deficiencies; and

(G) Maintain records that document:

(i) The CDDP's performance of the activities described in the local QA plan;

(ii) The CDDP's performance measured against statewide performance requirements as specified in the Department's QA Plan;

(iii) The CDDP's findings, corrective actions and the impact of its corrective actions that have been reviewed at a policy level within the CDDP's department structure within the County; and

(iv) The timely submission of information to the Department, as required in the Department's QA Plan.

(c) Performance requirements. The CDDP will meet or exceed the minimum performance requirements established for all CDDP's in the Department's QA Plan.

(A) The CDDP will collect and analyze information concerning performance of the activities represented in OAR 411-320-0040(9)(a)(A), in the manner specified in the Department's QA Plan.

(B) Data concerning the CDDP's performance will be sent to the Department in the format and within the timelines established by the Department.

(C) The CDDP must cooperate in all reviews, by the Department or its designee, of CDDP performance in accordance with these rules.

(D) Records that document the CDDP's performance will be maintained and be made available to the Department or its designee, for audit purposes, upon request.

(d) Corrective actions. The CDDP will act to correct deficiencies and poor performance through management actions.

(A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county will be resolved through direct action by the CDDP.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts will be resolved through collaboration with the Department.

(C) Deficiencies and substandard performance found in services provided through a Region will be resolved through collaboration between the regional management entity and the affected CDDPs.

(e) Local quality assurance committee. The CDDP will utilize a committee of stakeholders to assist in the development and review of local quality assurance plans and activities.

(A) Committee membership will include persons representing self-advocates, service providers, advocates, family members of individuals with developmental disabilities and Services Coordinators.

(B) Activities of the committee will include:

(i) Providing review and comment on CDDP plans for local QA plan activities;

(ii) Providing review and comment on data gathering instruments and methods; and

(iii) Providing review and comment on the results of information gathered by the CDDP and the effectiveness of corrective actions.

(f) Quality assurance resources. The CDDP must allocate resources to implement the local QA plan.

(A) Individuals employed to carry out implementation activities will have the training and education, as well as the rank or classification within the organization that is appropriate for the tasks assigned.

(B) One position within the CDDP will be designated as the QA Coordinator. The minimum requirements must include:

(i) The QA Coordinator must be a full time CDDP employee, unless prior approval of an alternative plan has been obtained from the Department;

(ii) At a minimum the position must meet the qualifications for a Services Coordinator for individual with developmental disabilities as described in OAR 411-320-0030(3)(b)(A)(i-iii); and

(iii) The purpose of the QA Coordinator is to facilitate the CDDP's quality assurance process through activities such as the following:

(I) Participate in Department sponsored activities such as planning and training that are intended to assist in development and implementation of Department's QA plan requirements, compliance monitoring procedures, corrective action plans and other similar activities.

(II) Draft local quality assurance plans and procedures that both meet QA requirements established by the Department and consider the unique organizational structure, policies and procedures of the CDDP.

(III) Keep CDDP administrative staff informed concerning new or changing requirements being considered by the Department.

(IV) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.

(V) Monitor the implementation of the local QA plan to determine the level of county compliance with Department requirements. Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(VI) Coordinate delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

(VII) Assure record systems to store information and document activities are established and maintained.

(VIII) Perform abuse investigations, if approved by the Department as part of the CDDP's QA plan.

(10) Information and referral. The CDDP must provide information and referral services to individuals, their families and interested others.

(11) Agency coordination. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(12) Maintenance of centralized waiting list. The CDDP must maintain a current unduplicated central waiting list of eligible individuals appropriate for admission to Comprehensive Services for adults living within the geographical area of the CDDP. Individuals will be placed on a waiting list after written determination of their specific service and support needs, and such information must be provided to the Department upon request. The CDDP must assure that individuals are admitted to programs from the waiting list consistent with Department policies using a fair and equitable process that considers the individual's preferences, circumstances and needs.

(13) Service delivery grievances. The CDDP must implement procedures to address individual or family grievances regarding service delivery that have not been resolved using the CDDP subcontractor's grievance procedures, (informal or formal). Such procedures must be consistent with requirements outlined in OAR 411-320-0170.

(14) Comprehensive in-home supports. The CDDP must ensure the availability of Comprehensive In-Home Supports for those individuals with developmental disabilities for whom the Department has funded such services. These services must be in compliance with OAR 411-330-0010 through 0170.

(15) Emergency planning. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The plan must be immediately available to the program manager and employees. The plan must:

(a) Be integrated with the County emergency preparedness plan where appropriate.

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate.

(c) Include provisions for identifying individuals most vulnerable and any plans for health and safety checks; and emergency assistance;

(d) Other plans that are specific to the type of emergency.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0040**

**Community Developmental Disability Program Responsibilities**

The CDDP must ensure the provision of the following services and system supports.

(1) Access to services:

(a) Nondiscrimination. In accordance with the Civil Rights Act of 1964, (codified as 42 USC 2000d et seq.), community mental health and developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin or duration of residence. Community developmental disability contractors must comply with Section 504 of the Rehabilitation Act of 1973, (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4), that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Acceptance of eligibility. Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services provided unless admission to the service is subject to diagnostic or disability category or age restrictions based on predetermined criteria or contract limitations.

(2) Coordination of community services. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the community mental health and developmental disability program, other local and state human service agencies and any other service providers as appropriate for the needs of the individual.

(3) Case management services. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of residence must be responsible for case management services unless otherwise negotiated.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring monitoring as well as investigating. Except as allowed under subsection 411-320-0040(3)(e), the case management program will be provided under an organizational structure that separates case management from other direct services for individuals with developmental disabilities. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

(A) When the CDDP coordinates the delivery of Child and Family Support Services for children under 18 years old, living at home with their family or Comprehensive In-Home Supports for adults.

(B) When the CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) Exception. If a CDDP intends to perform a direct service, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP will provide Child and Family Support Services or Comprehensive In-Home Supports described in OAR 411-320-0040(3)(e)(A) above. If the CDDP does not provide one or both of these services they must propose a variance to the Department for approval describing how those services will be provided.

(B) If the circumstance described in OAR 411-320-0040(3)(e)(B) above exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e)(C) above exists, the organization must propose a variance to the Department for prior approval including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e), it must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in OAR 411-320-0040(3)(g), the CDDP must submit a written variance for prior approval by the Department that describes how conflict of roles will be managed within the CDDP.

(4) Family support. The CDDP must ensure the availability of a program for Child and Family Support Services in accordance with OAR 411-340-0010 through 0180.

(5) Title XIX administration. The CDDP must ensure the availability of staff to provide the required administrative review of program services funded by the Medicaid waiver(s). This must include the availability of Support Specialists as described in OAR 411-320-0030(3)(b)(A-B)&(D).

(a) If an individual is receiving services in more than one county, the county of residence must provide the services of a Support Specialist unless otherwise negotiated.

(b) If a CDDP also operates a Support Services Brokerage the CDDP must submit a variance in writing for prior approval to the Department including the mechanism for addressing potential conflicts of interest.

(6) Abuse and protective services. The CDDP must assure that abuse investigations for adults are appropriately reported and conducted according to statute and administrative rules by trained staff. When there is reason to believe a crime has been committed there must be a report to law enforcement. Any suspected or observed abuse of children should be reported directly to the Child Welfare child protective services unit or local law enforcement, when appropriate.

(7) Foster homes. The CDDP will recruit foster home applicants and maintain forms and procedures necessary to license or certify homes. This will include copies of the following records:

(a) Initial and renewal applications to be a foster home;

(b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(c) General facility information;

(d) Documentation of references, classification information, credit check, if necessary, criminal history clearance and training for provider and substitute caregivers.

(e) Documentation of foster care exams for adult foster home caregivers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denial or revocation (if any); and

(k) Copies of the annual license or certificate.

(8) Contract monitoring. The CDDP will monitor all community developmental disability subcontractors to assure that:

(a) Service element services are provided as specified in the contract with the Department; and

(b) Service elements are in compliance with these rules and other applicable Department administrative rules.

(9) Local quality assurance program. Each CDDP must implement and maintain a local quality assurance system in accordance with these rules.

(a) QA system purpose and scope. The local quality assurance system will:

(A) Ensure the development and implementation of a quality assurance system by:

(i) Providing direct support to DHS in implementation of its quality assurance (QA) plan; and

(ii) Generally improving the quality of services by evaluating service delivery and outcomes and adjusting local planning and performance where needed.

(B) Include all Department funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities; and those developmental disability services operating under a direct contract with the Department; and

(C) Include, at a minimum, the quality indicators and all activities that are to be carried out at the local level according to the most recent edition of the Department's Quality Assurance Plan for Developmental Disability Services (Department's QA Plan).

(b) Quality assurance activities. The CDDP will perform quality assurance activities that include, but are not limited to, the following:

(A) Develop and maintain a local QA plan that describes the major activities to be performed by the CDDP, including the timelines for each of those activities.

(i) These activities must include all activities that are to be carried out at the local level according to the most current edition of the Department's QA plan.

(ii) The local QA plan must be updated whenever changes are made, but at least annually.

(B) Develop CDDP policies and procedures needed to implement the local QA plan.

(C) Implement the activities defined in the local QA plan, including the timely delivery of data and information to the Department as required in the Department's QA plan.

(D) Maintain data and information that has been gathered through implementation of the local QA plan.

(E) Maintain a record of conclusions and recommendations that have been drawn from analysis of the information gathered.

(F) Take management actions as needed to improve service quality or to correct deficiencies; and

(G) Maintain records that document:

(i) The CDDP's performance of the activities described in the local QA plan;

(ii) The CDDP's performance measured against statewide performance requirements as specified in the Department's QA Plan;

(iii) The CDDP's findings, corrective actions and the impact of its corrective actions that have been reviewed at a policy level within the CDDP's department structure within the County; and

(iv) The timely submission of information to the Department, as required in the Department's QA Plan.

(c) Performance requirements. The CDDP will meet or exceed the minimum performance requirements established for all CDDP's in the Department's QA Plan.

(A) The CDDP will collect and analyze information concerning performance of the activities represented in OAR 411-320-0040(9)(a)(A), in the manner specified in the Department's QA Plan.

(B) Data concerning the CDDP's performance will be sent to the Department in the format and within the timelines established by the Department.

(C) The CDDP must cooperate in all reviews, by the Department or its designee, of CDDP performance in accordance with these rules.

(D) Records that document the CDDP's performance will be maintained and be made available to the Department or its designee, for audit purposes, upon request.

(d) Corrective actions. The CDDP will act to correct deficiencies and poor performance through management actions.

(A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county will be resolved through direct action by the CDDP.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts will be resolved through collaboration with the Department.

(C) Deficiencies and substandard performance found in services provided through a Region will be resolved through collaboration between the regional management entity and the affected CDDPs.

(e) Local quality assurance committee. The CDDP will utilize a committee of stakeholders to assist in the development and review of local quality assurance plans and activities.

(A) Committee membership will include persons representing self-advocates, service providers, advocates, family members of individuals with developmental disabilities and Services Coordinators.

(B) Activities of the committee will include:

(i) Providing review and comment on CDDP plans for local QA plan activities;

(ii) Providing review and comment on data gathering instruments and methods; and

(iii) Providing review and comment on the results of information gathered by the CDDP and the effectiveness of corrective actions.

(f) Quality assurance resources. The CDDP must allocate resources to implement the local QA plan.

(A) Individuals employed to carry out implementation activities will have the training and education, as well as the rank or classification within the organization that is appropriate for the tasks assigned.

(B) One position within the CDDP will be designated as the QA Coordinator. The minimum requirements must include:

(i) The QA Coordinator must be a full time CDDP employee, unless prior approval of an alternative plan has been obtained from the Department;

(ii) At a minimum the position must meet the qualifications for a Services Coordinator for individual with developmental disabilities as described in OAR 411-320-0030(3)(b)(A)(i-iii); and

(iii) The purpose of the QA Coordinator is to facilitate the CDDP's quality assurance process through activities such as the following:

(I) Participate in Department sponsored activities such as planning and training that are intended to assist in development and implementation of Department's QA plan requirements, compliance monitoring procedures, corrective action plans and other similar activities.

(II) Draft local quality assurance plans and procedures that both meet QA requirements established by the Department and consider the unique organizational structure, policies and procedures of the CDDP.

(III) Keep CDDP administrative staff informed concerning new or changing requirements being considered by the Department.

(IV) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.

(V) Monitor the implementation of the local QA plan to determine the level of county compliance with Department requirements. Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(VI) Coordinate delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

(VII) Assure record systems to store information and document activities are established and maintained.

(VIII) Perform abuse investigations, if approved by the Department as part of the CDDP's QA plan.

(10) Information and referral. The CDDP must provide information and referral services to individuals, their families and interested others.

(11) Agency coordination. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(12) Maintenance of centralized waiting list. The CDDP must maintain a current unduplicated central waiting list of eligible individuals appropriate for admission to Comprehensive Services for adults living within the geographical area of the CDDP. Individuals will be placed on a waiting list after written determination of their specific service and support needs, and such information must be provided to the Department upon request. The CDDP must assure that individuals are admitted to programs from the waiting list consistent with Department policies using a fair and equitable process that considers the individual's preferences, circumstances and needs.

(13) Service delivery grievances. The CDDP must implement procedures to address individual or family grievances regarding service delivery that have not been resolved using the CDDP subcontractor's grievance procedures, (informal or formal). Such procedures must be consistent with requirements outlined in OAR 411-320-0170.

(14) Comprehensive in-home supports. The CDDP must ensure the availability of Comprehensive In-Home Supports for those individuals with developmental disabilities for whom the Department has funded such services. These services must be in compliance with OAR 411-330-0010 through 0170.

(15) Emergency planning. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The plan must be immediately available to the program manager and employees. The plan must:

(a) Be integrated with the County emergency preparedness plan where appropriate.

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate.

(c) Include provisions for identifying individuals most vulnerable and any plans for health and safety checks; and emergency assistance;

(d) Other plans that are specific to the type of emergency.

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

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0050**

**Management of Regional Services**

(1) Intergovernmental agreement. A CDDP that acts as the management entity for a group of counties to deliver long-term crisis/diversion, community training, quality assurance activities, or other services must

have an intergovernmental agreement with each affiliated local mental health authority.

(2) Regional plan. The CDDP, acting as the management entity for the region, must prepare in conjunction with affiliated CDDP's, a plan detailing the services that will be administered regionally. The plan must be updated when needed and submitted to the Department for approval and must include:

(a) A description of how services will be administered;

(b) An organizational chart and staffing plan; and

(c) A detailed budget, on forms provided by the Department.

(3) Implement plan. The CDDP, acting as the management entity for the region, must work in conjunction with its affiliated CDDP's to implement the Regional plan as approved by the Department, within available resources.

(4) Management standards. The region, through the CDDP management entity and its CDDP partners, must maintain compliance with management standards outlined in OAR 411-320-0030 and 0050.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0060**

**Rights of the Individual Receiving Developmental Disability Services**

(1) Civil rights. The rights described in this section are in addition to and do not limit any other statutory and constitutional rights that are afforded all citizens, including but not limited to, the right to vote, marry, have or not have children, own and dispose of property, enter into contracts and execute documents unless specifically prohibited by law in the case of children under 18 years of age.

(2) Rights of individuals receiving services. Each agency providing any community developmental disability service must have written policies and procedures to provide for and assure individuals the following rights while receiving services:

(a) Protections and well being. A humane service environment that affords reasonable protection from harm and affords reasonable privacy. This includes provisions ensuring that individuals:

(A) Must not be abused or neglected, nor must abuse or neglect be tolerated by any employee, staff or volunteer of the program;

(B) Are free to report any incident of abuse without being subject to retaliation;

(C) Have the freedom to choose whether or not to participate in religious activity and for children, according to parent or guardian preference;

(D) Have contact and visits with family members, friends, advocates, (except where prohibited by court order), and visits with legal and medical professionals;

(E) Have access to and communicate privately with any public or private rights protection program rights advocate, Services Coordinator, or CDDP representative;

(F) Be free from unauthorized mechanical restraint or physical restraint; and

(G) Must not be subject to any chemical restraint and assured that medication is administered only for the person's individual clinical needs as prescribed by a physician.

(b) Choice. Individuals must be able to choose from available services those that are appropriate and consistent with the plan, developed in accordance with OAR 411-320-0060(2)(c) and (d) of this rule. Services will promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult. They must be provided in a setting and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for decision-making and control of personal affairs appropriate to age.

(c) A plan. Have a written and individualized service plan with services delivered according to the plan and having periodic review and reassessment of service needs.

(d) Participation. Have an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph © of this subsection, and the right to be provided with a reasonable explanation of all service considerations.

(e) Informed consent. Have informed voluntary written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.

(f) Written prior consent for experimental programs. Have informed voluntary written consent prior to participating in any experimental programs.

(g) Notice and grievances. Prior notice of any involuntary termination or transfer from services and notification of available sources of necessary continued services and exercise of a grievance procedure.

(h) Compensation. Reasonable and lawful compensation for performance of labor, except personal housekeeping duties.

(i) Due process in civil commitment. Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department.

(j) Be informed. Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedures for reporting abuse; and to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's guardian and any representative designated by the individual.

(k) Grievance. Be informed of and have the opportunity to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure.

(l) Free from reprisal. Have the freedom to exercise all rights described in this section without any form of reprisal or punishment.

(m) Reconnection with family members. To have the individual or the individual's guardian and any representative designated by the individual be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information, if known, of the family member.

(3) Assert rights. The rights described in this section may be asserted and exercised by the individual, the individual's guardian and any legal representative designated by the individual.

(4) Children. Nothing in this section should be construed to alter any legal rights and responsibilities between parent and child.

(5) Adults with guardians. Guardians are appointed for an adult only as is necessary to promote and protect the well being of the protected person. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations. An adult protected person for whom a guardian has been appointed is not presumed to be incompetent. A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

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

Stat. Auth. ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0070**

**Records of Service**

(1) Confidentiality of individual service records. Records of services to individuals with developmental disabilities must be kept confidential in accordance with ORS 179.505, 192.515-517, 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.

(2) Information sharing. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the agency must be available to other community mental health and developmental disability service agencies responsible for the individual's services, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) Record requirement. In order to meet Department and federal record documentation requirements, the CDDP through its employees must maintain a record for each individual who receives services from the CDDP.

(a) Information contained in the record for all individuals receiving services from a Services Coordinator or a Support Specialist must include:

(A) Documentation of any initial referral to the CDDP for services;

(B) An application for developmental disability services must be completed prior to an eligibility determination;

(C) The application will be on the form required by the Department or it may be transferred onto CDDP letterhead;

(D) Sufficient documentation to conform to Department eligibility requirements including letter(s) of determination;

(E) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;

(F) Referral information or documentation of referral materials sent to a developmental disability service provider or another CDDP,

(G) Case notes written by a Services Coordinator or a Support Specialist;

(H) Medical information, as appropriate;

(I) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis/diversion or other plans developed as a result of the meeting;

(J) Individual service plans, (ISP), or child and family support plans, (CFSP), documenting that the plan is authorized by a Services Coordinator or a Support Specialist;

(K) Copies of any incident reports initiated by a CDDP representative for any incident that occurred at the CDDP or in the presence of the CDDP representative;

(L) Documentation of a review of unusual incidents received from service providers either in case notes or by electronically entering review of the information into the SERT system and referencing in case notes or placing a copy in the file;

(M) Initial and annual review of Title XIX waiver forms;

(N) Documentation of Medicaid eligibility, if applicable; and

(O) Legal records, such as guardianship papers, civil commitment records, court orders, probation and parole information as is appropriate to the individual in question.

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually, for each individual enrolled in comprehensive services, child and family support services, or living with family or independently and not enrolled in a support services brokerage and receiving case management services from the program. Information will include:

(A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status, (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and

(B) The names, addresses and telephone numbers of:

(i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable;

(v) Other agency representatives providing services to the individual;

(vi) Any court ordered or guardian authorized contacts or limitations from contact for anyone living in a foster home, supported living program, or 24-hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage and assigned to a Support Specialist from the program. The current information will include information listed in OAR 411-320-0070(3)(b)(A) and (B)(i) of this rule.

(4) Case notes. Documentation of the delivery of service by a Services Coordinator or Support Specialist through case notes sufficient to support each case service provided. Case notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. This documentation, at a minimum, must consist of material in individual files that includes:

(a) The month, day and year the services were rendered and the month, day and year the entry was made if different from the date service was rendered;

(b) The name of the person receiving service;

(c) The name of the CDDP, the person providing the service, (i.e., the Services Coordinator's or Support Specialist's signature and title), and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. This means the county where the CDDP or agency providing case management services is located, including the address. This may be a standard heading on each page of the progress notes; and

(f) The names of other participants, including titles and agency representation, if any, in notes pertaining to meetings with or discussions about the service recipient.

(5) Retention of records. The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and OAR 166-150-0055. This plan must be made available upon request of the public or the Department.

(a) Financial records, supporting documents, statistical records, must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records will be kept for 7 years after date of death, if known. If case is closed, inactive, or death date is unknown, 70 years. Copies of annual ISPs must be kept for 10 years.

(6) Transfer of records. In the event an individual moves from one county to another county in Oregon, the complete case record as described in OAR 411-320-0070(3) must be transferred to the receiving CDDP. The sending CDDP will ensure that the original records required by this rule will be maintained in permanent record transferred to the CDDP having jurisdiction for services. The sending CDDP will retain copies of information necessary to document that services were provided to the individual while enrolled in CDDP services. This includes:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including Waiver eligibility;

(b) Service enrollment and termination forms;

(c) CDDP case notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the state.

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

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 -430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0080**

**Diagnosis and Eligibility Determination**

(1) Qualified professional diagnosis. Diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with OAR 309-042-0050.

(2) Eligibility for Mental Retardation. A history demonstrating mental retardation must be in place by the 18th birth date. Diagnosing mental retardation is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by qualified professionals per OAR 309-042-0050.

(a) Mental retardation is defined as IQ's under 70 with significant impairments in adaptive behavior directly related to the issues of mental retardation. Individuals with an IQ pattern of 70 to 75 with significant impairments to adaptive behavior directly related to the issues of mental retardation can be considered as having mental retardation.

(b) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive assessment may be needed.

(c) IQ patterns of 66-75 require an adaptive assessment indicating significant impairments in adaptive behavior to verify mental retardation.

(3) Eligibility for Other Developmental Disabilities. A developmental disability other than mental retardation must be in place prior to the 22nd birth date. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairments in adaptive behavior related to the diagnosis as described in 411-320-0020(5). The disability must have originated in the brain;

(b) The support needs of individuals must be similar to that required by individuals with mental retardation; and

(c) IQ scores are not used in verifying the presence of a non-mental retardation developmental disability.

(4) Eligibility for developmental disabilities, including mental retardation, also requires documentation of:

(a) Significant impairments in adaptive behavior (two standard deviations below the norm in two or more of the following areas of functioning, including but not limited to: communication, mobility, self-care, socialization, self- direction, functional academics, or self-sufficiency); and

(b) The adaptive impairments must be directly related to the developmental disability and cannot be primarily attributed to: mental/emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability or Attention Deficit Hyperactivity Disorder; and

(c) The disability has continued, or can be expected to continue, indefinitely.

(5) Eligibility for children 5 years of age or younger is always provisional. This means eligibility could change in the future if new information is obtained. Eligibility documentation for children 5 years old or younger must include:

(a) Standardized testing that demonstrates significant impairments in adaptive behavior (at least two standard deviations below the norm in two or more of the following areas, including but not limited to: self-care, receptive and expressive language, learning, mobility and self-direction); or

(b) A medical statement by a licensed medical practitioner of a neurological condition or syndrome (that originates in the brain) that causes or is likely to cause significant impairments in adaptive skills or behavior.

(c) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder, or sensory impairment; and

(d) Can be expected to continue indefinitely.

(6) Eligibility for children 6 years of age and older is always provisional. This means eligibility could change in the future if new information is obtained. Eligibility documentation for children 6 years old and older must meet requirements as described in 411-320-0080(2)(3):

(a) A diagnosis of mental retardation; or

(b) A diagnosis of a developmental disability; and

(c) Documentation of significant impairments in adaptive behavior (at least two standard deviations below the norm in two or more of the following areas, including but not limited to: self-care, receptive and expressive language, learning, mobility, self-direction; and

(d) The condition or impairment must not be primarily related to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder, or sensory impairment; and

(e) The condition or impairment must be expected to last indefinitely.

(7) Current evaluation. Evaluation information used in determining eligibility for individuals under age 21 must be no more than three years old. An eligibility determination for an individual age 21 or older must be based on the information obtained after the individual's 17th birthday. At or after age 18, adult evaluation instruments must be used.

(8) Absence of data in developmental years. In the absence of sufficient data during the developmental years, current data may be used if there is no evidence of head trauma, mental or emotional disorder or substance abuse after the developmental years to contribute to the assessment results. In the event head trauma, mental or emotional disorder or substance abuse is a factor for denying eligibility, a clinical impression should be obtained to determine if the assessment results are related to the developmental disability.

(9) Review of eligibility. Eligibility for children under 18 years of age is always provisional. Eligibility for young children should be reviewed at least at ages 6 or no later than age 7 and between age 16 and 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.

(a) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive assessment may be needed. However, there may be a need for an adaptive assessment to verify mental retardation. For example, if there is an inconsistent IQ pattern or mental/emotional issues, sensory impairments or substance abuse that may have an effect on cognitive functioning.

(b) IQ patterns of 66-75 require an adaptive assessment indicating significant impairments in adaptive behavior to verify mental retardation.

(c) An informal adaptive assessment can be completed for individuals who have been diagnosed with a developmental disability, who are obviously adaptively impaired and who require an adaptive assessment to redetermine eligibility. A services coordinator with at least two years experience working with people with developmental disabilities can record their observations of the adaptive impairments in client progress notes.

(d) A Vineland Adaptive Behavior Scale or other acceptable measurement of adaptive behavior may be administered and scored by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities.

(10) Securing evaluations. In the event that the Services Coordinator has exhausted all local resources to secure the necessary evaluations for eligibility determination, the Department's Diagnosis and Evaluation Coordinator will assist in determining if evaluations are necessary.

(11) Notice. Individuals and their legal representative, family members, or advocates must receive an eligibility statement and written notice, on forms prescribed by the Department, of the eligibility determination or redetermination. Such notice must include:

(a) The rationale for the decision, including what reports, documents or other information that were relied upon in making the eligibility determination;

(b) Notice that the documents relied upon may be reviewed by the individual or his or her legal representative or advocate; and

(c) Notice of the right to file a grievance to appeal a denial of eligibility, including the timeline for filing a grievance, where to file a grievance and that assistance is available in filing grievances.

(12) Processing eligibility determination. The CDDP of residency of an adult applying for services must process the application and make the determination of eligibility for developmental disability services. In the case of an application for services for a child, the CDDP where the parent(s) resides or alternately the county court having jurisdiction for the child, must be responsible for making the eligibility determination. The CDDP must process the application for developmental disability services in a timely manner.

(a) Within ten working days after receiving an application for services from an individual, his or her guardian or legal representative, the CDDP will begin the process to determine eligibility.

(b) A determination of eligibility must be made within 15 working days of receipt of information from which eligibility can be established.

(c) Grievances of a denial of eligibility must be conducted in accordance with OAR 411-320-0170(2)(c)(B).

(13) Financial status. The Services Coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Children or their custodial parent or legal guardian, (if not a State agency), should be referred to the appropriate resources if it appears that they or their parent may be eligible for financial assistance.

(14) Transfer between CDDP's. The eligibility determination by a CDDP must be accepted by other CDDP's when an individual moves from one county to another. If the receiving county has reason to question the determination and cannot resolve it between the two CDDPs, the receiving CDDP will promptly refer the matter for a review and further determination by the Department's Diagnosis and Evaluation Coordinator. The receiving county will continue services for the individual while the review is occurring. If an adult transfers to another CDDP and is subsequently found to be not eligible the CDDP responsible for making the determination may be responsible for the services authorized on the basis of that determination.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0090**

**Developmental Disabilities Case Management Program Responsibilities**

(1) Availability of Services Coordinator(s). The CDDP must assure the availability of either a Services Coordinator and or Support Specialist as required by these rules to meet the service need(s) of the individual and any emergencies or crisis. This assignment must be appropriately documented in individual service records and accurately report enrollment in CPMS.

(2) Policies and procedures. The CDDP must adopt written procedures to assure that the delivery services meets the standards set forth in 411-320-0090(4)(a) through (u) of this rule.

(a) Involvement in planning and review of services. The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP;

(b) Available for review. Copies of the procedures for planning and review of case management services, consumer satisfaction and grievances, must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department;

(3) Notice of Services. Individuals, family member(s), legal representatives and advocates must be informed of minimum case management services that are set out in 411-320-0090(4)(b) through (u) of this rule.

(4) Minimum standards for case management services. The following are the minimum standards for case management services for individuals with developmental disabilities:

(a) Eligibility. The CDDP must ensure that eligibility for services is determined in accordance with OAR 411-320-0080 by a qualified Services Coordinator;

(b) Plans and annual summaries. An annual plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1);

(A) The Services Coordinator must assure that there is an annual plan. He or she must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The Services Coordinator is responsible for the development of the plan for children receiving family support services in coordination with the child and the family.

(B) An annual summary must be completed for each individual that is not enrolled in any Department funded service other than case management.

(C) Support Specialists will review ISP's of individuals enrolled in Support Service Brokerages as part of service authorization in OAR 411-320-0120(3).

(c) Service authorization. Program services must be authorized in accordance with OAR 411-320-0120(3);

(d) Monitoring. Services Coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130. Support Specialists may participate in monitoring a brokerage service to an individual as part of the CDDP quality assurance plan as approved by the Department;

(e) Entry, exit, or transfer. Entry, exit and transfers from comprehensive program services must be in accordance with OAR 411-320-0110;

(f) Crisis services. Crisis services must be assessed, identified, planned, monitored and evaluated by the Services Coordinator in accordance with OAR 411-320-0160;

(g) Investigations and protective services. Abuse investigations and provision of protective services for adults must be provided as described in OAR 410-009-0050 through 0160, (Abuse Reporting and Protective Services in Community Programs and Community Facilities). This includes investigation of complaints of abuse, writing investigation reports and monitoring for implementation of report recommendations;

(h) Civil commitment. Civil commitment services must be provided in accordance with ORS 427.215 through 427.306 and 427.205(4);

(i) Information and referral. The Services Coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county;

(j) Access. The Services Coordinator must assist individuals and their families in accessing services and resources;

(k) Child welfare cases. Services Coordinators must coordinate services with the Child Welfare, (CW), caseworker assigned to a child to ensure the provision of required supports from the CDDP, the Department and CW, according to guidelines published by the Department;

(l) Services Coordinator role for children in school. Services Coordinators may attend IEP planning meetings for children when the Services Coordinator is invited by the family or guardian to participate;

(A) The Services Coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible the Services Coordinator may act as a proponent for the child or family at IEP meetings.

(C) The Services Coordinator will participate in transition planning by attending Individualized Education Program, (IEP), meetings of students 16 years of age or older to discuss the individual's transition to adult living and work situations unless such attendance is refused by the parent or legal guardian.

(m) Enrollment on CPMS. The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in CPMS. The county of residence must enroll the individual on CPMS for all developmental disability service providers except in the following circumstances:

(A) The Department's children's residential Services Coordinator will complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the state; or

(B) Department Services Coordinators must complete the CPMS enrollment, termination, and billing forms for children entering or leaving the Children's In-home Intensive Services Program (CIIS); or as part of an interagency agreement for purposes of billing for crisis/diversion services by a region.

(n) Nursing home services. Services Coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043;

(o) Specialized services. The Services Coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150;

(p) Adult case management only. If an adult is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with the most current published guidelines for access to brokerage services;

(q) Serious events. The Services Coordinator or Support Specialist must ensure that all serious events related to an individual are reported to the Department using the Department's Serious Event Review Team (SERT) system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends;

(r) Medicaid waiver(s). Except for children being served by CIIS or in a Department direct contracted 24-hour residential home, the Services Coordinator or Support Specialist will ensure that Medicaid eligible individuals are offered the choice of home and community based waiver services, provided a notice of fair hearing rights and have a completed Title XIX Waiver form that is reviewed annually or at anytime there is a significant change;

(s) Health care representative. Participate in the appointment of a Health Care Representative per OAR 309-041-1500 through 309-041-1610;

(t) Interagency coordination. Coordinate with other state, public and private agencies regarding services to individuals with developmental disabilities;

(u) In-home services. The CDDP must ensure that a Services Coordinator is available to provide or arrange for Comprehensive In-Home Supports for Adults or Child and Family Supports, as required, to meet the support needs of eligible individuals. This includes:

(A) Assistance in determining needs and plan supports,

(B) Assistance in finding and arranging resources and supports,

(C) Education and TA to make informed decisions about support need and direct support providers,

(D) Arranging fiscal intermediary services,

(E) Employer-related supports, and

(F) Assistance with monitoring and improving the quality of supports.

(5) Service priorities. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval for a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request. The variance request must document the reason the service prioritization is necessary (including any alternatives considered) detail the specific service priorities being proposed and provide assurances that the basic health and safety of individuals will continue to be addressed and monitored.

(6) Family reconnection. The CDDP and the services coordinator will provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from a State Training Center or is receiving developmental disability services.

(a) Referral to SPD. If a family member contacts a CDDP for assistance in locating a family member they will be referred to SPD. A family member may contact SPD directly.

(b) SPD will send the family member an SPD form requesting further information to be used in providing notification to the individual. The form will include the following information:

(A) Name of requestor;

(B) Address and other contact information;

(C) Relationship to individual with developmental disabilities;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) SPD will determine if the individual was previously a resident of a State Training Center and also determine:

(A) If the person is deceased or living;

(B) Whether currently or previously enrolled in Department services; and

(C) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request SPD will notify the family:

(A) If the individual is enrolled in Department services. SPD will send the completed Family information form to the individual or the individual's guardian and the individual's services coordinator; or

(B) If the individual is no longer enrolled in DHS services.

(e) If the individual is deceased, SPD will follow the process for identifying the personal representative of the deceased as provided for in Oregon Law 253, Section 3.

(A) If the personal representative and the requesting family member are the same, the family member will be informed that the person is deceased.

(B) If the personal representative is different from the requesting family member, the personal representative will be contacted for permission to share the information. In the event of this situation the Department must make a good faith effort at finding the personal representative and obtaining a decision concerning the sharing of information as soon as practicable.

(f) When a person with developmental disabilities is located, the services coordinator will facilitate a meeting with the individual or the guardian to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator will assist the individual or the guardian in evaluating the information to make a decision regarding initiating contact. This should include the information from the form and any relevant history with the family member that might support contact or present a risk to the individual.

(B) If the individual does not have a guardian or is unable to express his or her wishes the ISP Team will be convened to review factors and choose the best response for the individual after evaluating the situation.

(g) If the individual or the guardian wishes to have contact, the individual or team designee can directly contact family to make arrangements for the contact.

(h) If the individual or the guardian does not wish to have contact, the services coordinator will notify SPD with the information and SPD must inform the family member in writing that no contact is requested.

(i) The notification to the family member regarding the decision of the individual or the guardian should be within 60 business days of the receipt of the information form from the family member.

(j) The decision by the individual or the guardian is not appealable.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0100**
**Assignment of Services Coordinator or a Support Specialist**

(1) Initial designation of Services Coordinator or Support Specialist. For individuals determined eligible for developmental disability services, a Services Coordinator must be designated within ten working days after eligibility determination. In the instance of an adult moving into the county with an existing eligibility determination, a Services Coordinator should be assigned within ten (10) days of application or, if already enrolled in a support services brokerage, a Support Specialist must be assigned. A written notice that includes the name, telephone number and location of the Services Coordinator or Support Specialist must be sent to the individual requesting services and the individual's legal representative. Notice will be sent to the family or advocate if the adult does not object.

(2) Change of Services Coordinator. The CDDP should keep changes of Services Coordinator(s) to a minimum.

(a) Changes in assignment. If the CDDP changes Services Coordinator assignments or transfers the individual to a Support Specialist there should be timely notification, (within 10 working days of the designation), to the individual, the individual's legal representative and all current service providers. This notification must be in writing and include of the name, telephone number and address of the new Services Coordinator.

(b) Requests for a change. The individual receiving services or the individual's legal guardian may request a new Services Coordinator or Support Specialist within the same county. The CDDP must develop standards and procedures for evaluating and acting upon requests for change of Services Coordinator or Support Specialist. If another Services Coordinator or Support Specialist is assigned by the CDDP, (as the result of a request by the individual or his or her legal representative), the individual, the individual's legal representative and all current service providers must be notified within 10 working days of the change. This notification must be in writing and include the name, telephone number and address of the new Services Coordinator or Support Specialist.

(3) Termination of case management services. A Services Coordinator or Support Specialist retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with OAR 411-320-0100(3)(a) through (e) of this rule, or until another Services Coordinator is designated. The CDDP must terminate case management or Support Specialist services when:

(a) The individual or the individual's legal representative delivers a signed written request that case management or Support Specialist services be terminated or such a request by telephone is documented in the individual's file. An adult, his or her legal guardian, the parent or legal guardian of a child in Department-funded services can refuse contact by a Services Coordinator or a Support Specialist, as well as the involvement of a services at the ISP meeting.

(b) The individual dies; or

(c) The individual is determined to be ineligible for services based on an assessment by a licensed psychologist, certified educational psychologist or psychiatrist in accordance with OAR 411-320-0080; or

(d) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management or Support Specialist services are to be referred and transferred to the new county. Except in the case of a child moving into a foster home or 24-hour residential home wherein the county of parental residency or court jurisdiction must retain case management responsibility; or

(e) An individual cannot be located after repeated attempts by letter and telephone.

(4) Mandatory services necessary. An individual in Department-funded services must accept the following case management services: protective service investigations, Services Coordinator presence at Department-funded program entry, exit, or transfer meetings, monitoring of provider program(s) and Services Coordinator or Support Specialist access to individual files.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0110**
**Entry and Exit Requirements**

(1) Admission to Department funded developmental disability program.

(a) Department staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs and state training centers. The Services Coordinator will make referrals for admission and participate in all entry meetings for these programs.

(b) The Services Coordinator must ensure that individuals are appropriately referred to a support services brokerage and must participate in the entry of individuals to a support service brokerage according to guidelines established by the Department.

(c) Admissions to all other Department funded programs for persons with developmental disabilities must be coordinated and authorized by the CDDP Services Coordinator in accordance with these rules.

(2) Written information required. The Services Coordinator or his or her designee must provide written information to providers of comprehensive services prior to admission.

(a) If the person is being admitted from his or her family home and entry information is not available (due to a crisis) the Services Coordinator will ensure that the provider assesses the individual upon entry for issues of immediate health or safety and the Services Coordinator will document a plan to secure the information listed in OAR 411-320-0110(2)(b)(A–J), no later than thirty (30) days after admission. This will include a written documentation as to why the information is not available. A copy of the information and plan will be given to the provider at the time of entry.

(b) If the person is being admitted from comprehensive service the information must be made available prior to the admission. This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam, if any, made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(F) Copies of protocols, the Risk Tracking Record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the person cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, behavior support plan, individual support plan, and individual educational plan, if applicable.

(3) Entry meeting. Prior to an individual's date of entry into a Department funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The team participants will be determined according to OAR 411-320-0120(1)(b). The findings of the meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-entry information required by OAR 411-320-0110(2)(b);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;

(f) If the decision was made to enter the individual a written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission; and

(g) Record the signatures of all participants.

(4) Crisis services. For a period not to exceed 30 days, OAR 411-320-0110(3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis services.

(5) Exit from Department funded programs. All exits from Department funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The team participants must be determined according to OAR 411-320-0120(1)(b).

(6) Exit staffing. The exit plan must be distributed to all ISP team members. The exit plan must include:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service, (unless the individual, his or her legal guardian or, for a child, the parent or guardian, is requesting the exit);

(f) Documentation of the decision regarding exit including verification of majority agreement of the meeting participants regarding the decision; and

(g) The written plan for services to the individual after exit.

(7) Transfer meeting. All transfers within a county between service site by a comprehensive service provider agency must be authorized by the CDDP, except as follows: All transfers between Department direct contracted services for children in a 24-hour residential programs and in state operated community programs must be coordinated by Department staff. A meeting of the ISP team must precede any decision to transfer an individual. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reason(s) any preferences of the individual, the individual's legal representative or family members cannot be honored;

(g) Documentation of majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

(8) Entry to Support Services.

(a) Referral. Referrals of eligible individuals to a Support Services Brokerage should be made in accordance with OAR 411-340-0110(2)(a-b). Referrals must be made using the Department mandated application and referral form in accordance with current Department guidelines.

(b) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services;

(C) The individual is not enrolled in Comprehensive Services;

(D) At the time of initial proposed enrollment in the Brokerage, the individual is not receiving short-term services from the Department because she or he is eligible for, and at imminent risk of, civil commitment under ORS chapter 427; and

(E) The individual or the individual's legal representative has chosen to use a Support Service Brokerage for assistance with design and management of personal supports.

(c) Required information. The Services Coordinator will communicate with the support services brokerage staff and provide all relevant information upon request. At a minimum this must include:

(A) A current application or referral on the Department mandated application or referral form;

(B) A completed Title XIX Waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant case notes; and

(G) A copy of any current plan(s).

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0120**
**Service Planning**

(1) Principles for planning. These rules prescribe standards for the development and implementation of plans for individuals with developmental disabilities. As such, plans for individuals must be developed in a manner that address issues of independence, integration and productivity, enhance the quality of life of the person with developmental disabilities and are consistent with the following principles:

(a) Personal control and family participation. While the service system reflects the value of family member(s) participation in the planning process, adults have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(b) Choice and preferences. The process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the team. The individual's active participation and input must be facilitated throughout the planning process.

(c) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services and develop strategies for reducing the barriers.

(d) Health and Safety. The process should also identify strategies to assist the individual in the exercise of his or her rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(e) Children in alternate living situations. When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following should apply:

(A) Unless contraindicated there should be a goal for family reunification;

(B) The number of moves or transfers should be kept to a minimum; and

(C) If the placement is distant from the family the Services Coordinator should continue to seek a placement that would bring the child closer to the family.

(2) Responsibility for annual ISP, CFSP or annual summary. Individuals enrolled in Department funded services must have an annual ISP or CFSP. Plans will be developed, implemented and authorized as follows:

(a) Persons in foster care, 24-hour residential services and related employment or alternatives to employment services. A Services Coordinator or his or her qualified designee must attend and assure that an annual ISP meeting is held. The Services Coordinator or his or her qualified designee must participate in the development of the ISP for individuals enrolled in comprehensive services. ISP's for children in Department direct contracted children's 24 hour residential must be coordinated by Department staff.

(A) The Services Coordinator must ensure that the plan for persons in foster care or 24-hour residential services is developed and updated in accordance with current published state guidelines, tracks the plan timelines and coordinates the resolution of grievances and conflicts arising from ISP discussions.

(B) ISP Team. At a minimum the ISP team for an individual in services described in OAR 411-320-0120(2)(a)(A) above includes, the individual, the individual's guardian, representatives from the residential program, a representative from the employment or alternatives to employment program, if any, the Services Coordinator, any person requested by the individual and any treatment professional requested by the person or the team on behalf of the person.

(b) Supported living services. The Services Coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual individual support plan. The Services Coordinator must attend such ISP meetings and participate in the development of an ISP in conformance with the ISP content described in OAR 411-320-0120(3).

(c) Family support. The Services Coordinator will coordinate with the family or the legal guardian the development of the annual child and family service plan, (CFSP), for a child receiving child and family support services. The CFSP must be in accordance with OAR 411-305-0010 through 0180, (Child and Family Support Rule).

(d) Comprehensive in-home supports. The Services Coordinator must coordinate with the individual, his or her family or legal guardian, the development of the annual In-Home Support Plan for the individual enrolled in Comprehensive In-Home Supports in accordance with OAR 411-330-0050(3).

(e) Support services for adults. The Support Specialist must review and authorize the ISP developed by the individual, his or her legal guardian and the personal agent, in accordance with OAR 411-340-0010 through 0180.

(f) Annual summary. For individuals not enrolled in any other Department funded developmental disability service the Services Coordinator must ensure the completion of an annual summary. The annual summary must be completed within 60 days of intake and annually thereafter. The written summary must be documented in the individual's record as a CDDP plan or as a comprehensive case note and consist of:

(A) A review of the individual's current living situation;

(B) A review of any personal health, safety or behavioral concerns;

(C) A summary of support needs of the individual; and

(D) Actions to be taken by the Services Coordinator and others.

(3) Plan content. The Services Coordinator or Support Specialist, (as is appropriate), will ensure that individual plans or the annual summary conforms to the requirements of this rule.

(a) The Services Coordinator must ensure that a plan for an individual in Department funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual, and also identifies the supports necessary to address issues of health, behavior, safety and financial supports. There must be documentation of an action plan or discussion record resulting from the team's discussion addressing issues of conflict between personal preferences and issues of health and safety.

(b) The Services Coordinator must ensure that a plan developed for a child in Department funded child and family support services conforms to requirements of OAR 411-305-0010 through 0180 rules for Child and Family Support Services.

(c) The Services Coordinator must ensure that an In-Home Support Plan conforms to the requirements describes in OAR 411-330-0050(3).

(d) The Support Specialist must receive a copy of the ISP developed for an individual enrolled in support services for adults that conforms to OAR 411-340-0120 rules for support services for adults.

(4) Plan authorization. The Services Coordinator or the Support Specialist must review and authorize plans for the expenditure of Department funds. The plan must be signed within 5 working days by the Services Coordinator or the support services specialist and be authorized using the following standards:

(a) The plan addresses the needs of the individual as defined in OAR 411-320-0120(3);

(b) The plan identifies type, amount, frequency, duration and provider of services;

(c) The plan is signed by the individual and his or her guardian, (if any), and other team members where applicable,

(d) Plans for individuals residing in foster care or residential care licensed by other licensing authorities may be authorized without using the state-mandated formats described in OAR 411-320-0120(5).

(5) Plan formats. The ISP, CFSP, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by the Department. In the absence of a Department mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.

(6) Plan updates. Plans for individuals must be kept current.

(a) Services Coordinator responsibility. The Services Coordinator or the Department Residential Services Coordinator for Children in Department directed contracted 24-hr residential services must ensure that a current plan for individuals enrolled in comprehensive services, self-directed supports or in family support services for children is authorized in accordance with OAR 411-320-0120(4) and maintained.

(A) The plan must be kept in the individual's record.

(B) Plan updates must occur as required by this rule and any rules governing the operation of the service element.

(C) When there is a significant change the plan must be updated.

(b) Support Specialist responsibility. Anytime there is a significant change in the individual or his or her circumstances the plan must be updated by the personal agent. An updated plan must be submitted to the Support Specialist at the CDDP for authorization in conformance with OAR 411-320-0120(4). The Support Specialist must maintain a copy of the current ISP for individuals enrolled in support services for adults.

(7) Team process in comprehensive services. Except in Comprehensive In-Home Supports or Child and Family Supports the following applies to ISPs developed for persons in comprehensive services:

(a) ISPs must be developed by an ISP Team. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs.

(A) Membership on ISP teams must, at a minimum, conform to this rule and any relevant service provider rules.

(B) Unless refused by the adult, family participation should be encouraged.

(C) The individual may also suggest additional participants, friends or significant others.

(D) The individual may raise an objection to a particular person. When an individual raises objections to a person the team must attempt to accommodate the objection while allowing participation by agency representatives.

(b) Plans developed by an ISP Team must utilize a team approach and work toward consensus for a meaningful plan for the individual.

(A) No one member of the team has the authority to make decisions for the team except as agreed to on the ISP.

(B) When consensus cannot be achieved, majority agreement will prevail. For purposes of the team process and for the reaching majority agreement, representatives from each service provider agency, the family, the CDDP or advocacy agencies will be considered as one member.

(C) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a grievance.

(D) The ISP Team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The Services Coordinator must be notified in all such instances.

Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0130**
**Monitoring of Services**

(1) Visits to residential provider sites. The CDDP will ensure that regular visits responding to Department questions are conducted at each child or adult foster home and each 24-hour residential program site licensed or certified by the Department to serve individuals with developmental disabilities. Visits will review areas of service and support to individuals with specific focus on areas addressing health, safety, behavior support or financial services to individuals.

(a) In January of each year the CDDP will establish a review schedule based on the number of individuals served in each home. Visits will be scheduled to occur as follows:

(A) Homes or sites licensed or certified for one or two individuals will be visited at least quarterly.

(B) Homes or sites licensed or certified for three or more individuals will be visited at least ten months each year.

(i) The CDDP will develop a procedure for the conduct of the visits to these homes; and

(ii) There should never be two consecutive months when a residential site is not visited.

(iii) In the months the home is not visited, the CDDP may conduct a visit to an employment site or attend a school IEP meeting as a substitute for an employment visit for children who are still in school.

(iv) If there are no Department funded individuals with developmental disabilities residing in the home, a visit by the CDDP is not required.

(b) When the service provider is a Department contracted and licensed 24 hour residential program for children or is child foster proctor agency and a Department children's residential Services Coordinator is assigned to monitor services the Department's residential Services Coordinator and CDDP staff shall coordinate who will visit the home. If the visit is made by Department staff, the staff will provide the results of the monitoring to the local Services Coordinator.

(c) The CDDP will document visits to the residential service and provide information concerning such visits to the Department upon request.

(2) Service delivery. The Services Coordinator must monitor the delivery of services individuals enrolled in case management services at least annually.

(a) Case Management Only. Every individual enrolled in case management services and not enrolled in any other funded developmental disability service must have at least an annual contact with a Services Coordinator. Whenever possible this contact will be made in person. If contact is not made in person the case note must document how contact was achieved. The Services Coordinator must document this contact in an annual summary in accordance with OAR 411-320-0120(1)(f). If the individual has any identified high-risk medical issue, including but not limited to, risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the Services Coordinator will maintain contact in accordance with planned actions described in the annual summary. Any follow-up must be documented in case notes. The Services Coordinator may, to the extent resources are available, monitor the annual summary of other individuals.

(b) Service monitoring. The Services Coordinator will monitor services for individuals enrolled in Department-funded comprehensive services or for children enrolled in Child and Family Support Services. For persons residing in 24-hour residential programs or foster care, this monitoring maybe combined with the monthly visits as described in 411-320-0120(1) above. The Services Coordinator will determine if services are in accordance with the ISP or CFSP and take appropriate actions to ensure services.

(A) Content of a review. The review of plans for individuals must include the following:

(i) Consideration of any serious events and unusual incident reports and the results of any monthly monitoring visits conducted in residential programs;

(ii) A semi-annual review of the process by which an individual accesses and utilizes funds according to standards specified in OAR 411-325-0380, 24-hour residential services or OAR 309-040-0390, adult foster care. The Services Coordinator must report any misuse of funds to the CDDP and the Department. The Department will determine whether a referral to the Medicaid Fraud Control Unit is warranted; and

(iii) Review of the ISP document to determine if the goals and objectives or actions to be taken by the provider, the Services Coordinator or others are implemented. This should include a discussion of the following

(I) Are services being provided as described in the plan document; and do they result in the achievement of the identified action plans;

(II) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(III) Are the personal desires of the individual; the individual's legal representative or family addressed; and

(IV) Do the services provided for in the plan continue to meet what is important to and for the individual.

(B) Frequency of ISP reviews. The frequency of the monitoring will be determined by the needs of the individual. At a minimum the results of the ISP for individuals enrolled in comprehensive services must be reviewed at least once within the first 6 months of the plan year and again in preparation for the annual ISP process. The frequency with which individuals presenting with serious health, safety or behavioral risks are monitored should be based on ISP team decisions and CDDP policy.

(C) In monitoring the plan, the Services Coordinator will document his or her findings and any resulting actions in the individual's CDDP record.

(3) Monitoring follow-up. The Services Coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a Department direct contract 24-hour residential service when a Department staff may conduct the follow-up.

(a) If the Services Coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last review, the Services Coordinator should initiate action to update the plan.

(b) If there are concerns regarding the service provider ability to provide services, the CDDP, in consultation with the Services Coordinator, will determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the DD program manager for consultation or corrective action, requesting assistance from the Department for licensing unit or other administrative support, or meetings with the provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for Department-funded programs;

(B) The CDDP finds a serious and current threat endangering to the health, safety or welfare of individuals in a program for which an immediate action by the Department is required; or

(C) Any individual receiving Department funded developmental disability services dies. Notification must be made to the Department's Medical Director or his or her designee within one working day of the death.

Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0140**
**Abuse Investigations and Protective Services**

(1) General duties of the CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs. If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse. Under such circumstances, the CDDP must receive authorization from the Department before conducting a separate investigation.

(2) Eligibility for protective services. Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

(a) Eighteen years of age or older, and

(b) Receiving case management services, or

(c) Receiving any Department funded services for individuals with developmental disabilities.

(3) Abuse investigations. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions and the report writing process. Investigations must be conducted in accordance with OAR 410-009-0050 through 0160.

(4) Coordination with other agencies. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) Initial complaints. Initial complaints must immediately be submitted electronically, using the Department's system for reporting serious events.

(6) Conflict of interest. The CDDP must develop and implement procedures to ensure a thorough and unbiased investigation that is timely and avoids actual or potential conflicts of interest where a Services Coordinator or CDDP employee may fall within the scope of the investigation or the perception of bias on the part of the investigator or CDDP.

(7) Notification. Upon the initiation of an investigation of an alleged abuse, the CDDP must assure the immediate notification of the individual and the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the investigation or protective services, unless specifically prohibited by rule or statute.

(8) Reports. The Department or its designee must complete an abuse investigation and protective service report according to OAR 410-009-0120(1). Abuse investigations and protective service reports must be maintained by the CDDP. The sections of a report that are not exempt from disclosure under the public record's law or subject to confidentiality laws will be provided to any service provider organization involved in the allegation. The CDDP must ensure that any actions to prevent further abuse listed in the report are implemented within the deadlines listed.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0160**

**Crisis/Diversion Services**

(1) Crisis/Diversion services. The CDDP will, in conjunction with its regional partners, provide crisis/diversion services for adults who are at imminent risk for civil commitment to Department of Human Services, (DHS), under ORS 427, and for children with developmental disabilities who are at imminent risk of out-of-home placement.

(2) Crisis risk factors. An individual is in crisis when one or more of the following risk factors are present:

(a) An individual eligible for crisis services is not receiving necessary supports to address life-threatening safety skill deficits; or

(b) An individual eligible for crisis services is experiencing life-threatening health and safety issues resulting from complex behavioral or medical conditions; or

(c) An individual eligible for crisis services undergoes loss of caregiver due to caregiver illness or disability, or a protective service action that results in loss of home; or

(d) An individual eligible for crisis services presents the following significant safety risks to others in the home:

(A) Physical aggression toward vulnerable people; or

(B) Fire-setting behaviors; or

(C) Sexually aggressive behaviors; or

(D) An individual eligible for crisis services currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention.

(3) Eligibility for crisis/diversion services. The CDDP must ensure the determination of the eligibility of individuals to receive crisis services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis programs upon each referral. An individual is eligible for crisis/diversion services when:

(a) An individual is court committed to the Department under ORS 427, or an adult with a Full Scale Intelligence Quotient (FSIQ) pattern of 75 or less with significant deficits in adaptive functioning due to mental retardation and is at imminent risk of civil court commitment to the Department under ORS 427; and

(b) With no alternative resources available; and

(c) For whom a crisis exists as defined in (2)(a)-(d) above; or

(d) A child with developmental disabilities who is at imminent risk of out of home placement; and

(e) With no alternative resources available; and

(f) For whom a crisis exists as defined in (2)(a)-(d) above.

(4) Funds for crisis services.

(a) Must not supplant existing funding.

(b) Purchased goods or services must only be those necessary to divert an adult from civil court commitment under ORS 427, or a child from out-of-home placement.

(c) Crisis services must only be used when no appropriate alternative resources are available to resolve the crisis situation. Funded residential program vacancies represent existing available and alternative resources.

(5) Allowable expenditures. Allowable short term Crisis Services include, but are not limited to:

(a) Professional consultation, assessment, or evaluation;

(b) Adaptive equipment;

(c) Respite care;

(d) Adaptations to the eligible individual's residence to increase accessibility or security;

(e) Short-term residential or vocational services;

(f) Added staff supervision; or

(g) Wages for direct care staff, respite providers and professional consultants musts be paid within the current wage and rate guidelines published by the Department.

(6) Service limitations. The following must not be purchased with crisis services funds:

(a) Household appliances;

(b) Services covered under existing provider contracts with the CDDP or Department;

(c) Health care services covered by Medicaid, Medicare, or private medical insurance; and

(d) Services provided by the parent of a child, or the spouse of an adult.

(7) Service authorization. The CDDP or Regional Crisis Program must authorize the utilization of crisis services.

(a) To assure that Crisis services are utilized only when no appropriate alternative resources are available, the CDDP or the Regional Crisis Program must document the individual's eligibility for crisis services, the alternative resources considered, and why those resources were not appropriate or available, prior to initiating any crisis services.

(b) For services that exceed $3,000 per individual case, or 90 days duration, authorization must be made by the CDDP or the Regional Crisis Program, and must be documented, in writing, within the individual's case file; or

(c) For services that exceed $5,000 for adaptation or alteration of fixed property, authorization must be made by the Department based upon the recommendation of the CDDP or the Regional Crisis Program.

(d) The Department may, at its discretion, exercise authority under ORS 427.300 to direct any court-committed mentally retarded person to the facility best able to treat and train the person. The Department must consult with any CDDP, the Regional Crisis Program or service provider affected by this decision, prior to placement of the individual or child.

(8) Administration of short term crisis services. The CDDP and the Regional Crisis Program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of persons or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(d) The CDDP or the Regional Crisis/Diversion Program must have the capacity to make service payments within 48 hours.

(9) Monitoring of short-term crisis services.

(a) The CDDP must monitor the delivery of crisis services as specified in the crisis plan and the individual's plan of care. This should be done through contact with the individual, any service providers and the family. This must be documented in the individual's case file.

(b) The CDDP must coordinate with service providers or other support team members to evaluate the impact of crisis services upon the individual, and will ensure needed changes are recommended to the individual's support team.

(c) The Department may monitor crisis services through reports received pursuant to OAR 411-320-0160(10) and (11), Record Keeping and Reporting Procedures and OAR 411-320-0180, On-site Inspections.

(10) Record keeping and reporting procedures.

(a) The CDDP or the Regional Crisis Program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual including name, address, age, and name of parent or guardian;

(B) Description of the circumstances for which crisis services were requested, to clearly specify how the individual is eligible to receive crisis services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:

(i) The frequency of the provision or purchase of goods or services; and

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved to resolve the crisis through the provision or purchase of the goods and services; and

(b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care, that outline how the crisis is to be addressed through the use of crisis services.

(c) The CCDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis services is receiving a Home and Community Based Waiver Services, or as otherwise instructed by the Department.

(11) Reporting requirements. The CDDP or Region must report, using the accepted Department reporting systems, the following information to the Department by the tenth working day the month following each month in which crisis services were provided:

(a) Individuals for whom crisis services were provided;

(b) Individual services provided; and

(c) Total cost by type of service.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

**411-320-0170**

**Complaints and Grievance**

(1) Complaint and grievance log. The CDDP will maintain a log of all complaints and grievances received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The log must, at a minimum, include the following: the date the complaint or grievance was received, the person taking the complaint, the nature of the complaint or grievance, the name of the person making the complaint or grievance, if known; and the disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint and grievance log.

(2) Grievances. The CDDP must address all grievances by individuals or subcontractors in accordance with CDDP policies, procedures and these rules. Copies of the procedures for resolving grievances must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department.

(a) Subcontractor grievances. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of an administrative rule of the Department relating to developmental disability services, and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(A) Procedure. The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) Request. The party requesting mediation must send a written request to the Administrator or designee, the CDDP program director, and the provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) Arrangements. Department staff must arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting should include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement should be made on arrangements for obtaining these services;

(II) Development of rules and procedures that will be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation will be completed, unless extended by mutual agreement.

(iii) Cost. Unless otherwise agreed to by all parties:

(I) Each party will be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. will be shared equally by all parties.

(B) Final report. A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department will prepare the final report. A final report on each mediation must be retained on file at the Department.

(b) Contract not substantially similar. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Administrator or designee within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

(i) A copy of the contract and any pertinent contract amendments;

(ii) Identification of the specific term(s) that are in dispute; and

(iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of this notice, the CDDP will suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) Process. The Administrator or designee, must offer to mediate a solution in accordance with the procedure outlined in OAR 411-320-0170(2)(a)(A) and (B).

(i) If a solution cannot be mediated, the Administrator or designee will declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(I) A representative from the Department;

(II) A representative from another CDDP; and

(III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments and send written recommendations to the Administrator within 45 business days after an impasse is declared, unless the Administrator grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The Administrator or designee must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding OAR 411-320-0170(2)(b)(C)(i–iv) listed above, the Administrator has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Administrator or his or her designee finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

(D) Expedited appeal process. The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the Administrator or designee. It must describe the potential harm and level of risk that will be incurred by following the appeal process.

(ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, the Department's designee must notify all parties of his or her decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process will be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) Grievances by or on behalf of individuals. An Individual, his or her guardian or other legal representative, a family member, or advocate may file a grievance with the CDDP under the following conditions:

(A) Informal procedures. Grievances submitted to the CDDP may be resolved at any time through the use of informal procedures such as meetings or mediation. However, the person submitting the grievance may elect not to use informal procedures. Any agreement to resolve the grievance must be reduced to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of such agreement.

(B) Eligibility grievance. A grievance of a denial of an initial determination of eligibility for developmental disability services or an eligibility redetermination must be submitted to the CDDP, in writing, within 30 days of receipt of notice of the eligibility determination required in OAR 411-320-0080. The CDDP, upon request, must assist individuals requiring assistance in preparing a written grievance.

(i) CDDP review of grievance. When a grievance includes new information relative to making an eligibility determination, the CDDP has up to 30 days from the date received to review their original decision of denial, consider the new eligibility documentation, respond to the grievant in writing with a decision and if necessary to forward it for an administrative review. If there is no new information submitted with the grievance the CDDP must refer the grievance to the Diagnosis and Evaluation Coordinator within 5 working days from the receipt of the grievance.

(ii) Extension of process. The process described in OAR 411-320-0170(2)(c)(B)(i) can be extended by mutual agreement between the parties. A written confirmation of the agreement to extend the time for resolution shall be sent to the grievant.

(iii) Administrative review. Within 30 days of receipt of the grievance, the Diagnosis and Evaluation Coordinator must, based upon a review of the documentation used to deny eligibility and any new information submitted by the grievant, inform the grievant and the CDDP in writing of his or her decision regarding eligibility. The notice must state the reasons for the decision.

(iv) Decision by the D&E Coordinator. The decision by the Diagnosis and Evaluation Coordinator may be grieved by the individual, the guardian, a family member, or his or her legal representative. The grievance must be submitted within 15 days of receipt of the notice from the D&E Coordinator. It should be submitted to the Department's Eligibility Grievance Review Committee.

(v) Department eligibility grievance review committee. The Administrator or designee will appoint a grievance review committee to review all grievances of eligibility determinations that fail to be resolved at the local level or by the D & E Coordinator.

(I) The committee must be composed of at least a Department representative, a local service provider program representative and a county case management representative. The Administrator shall appoint the Committee and name the Chairperson.

(II) In case of a conflict of interest the Administrator will temporarily appoint an alternative representative to the committee.

(vi) Upon receipt of the request for formal review the Department must:

(I) Schedule a grievance committee review meeting within 30 days of receipt of the written request for a formal review of the decision;

(II) Notify in writing, each party involved in the disagreement of the date, time and location of the committee review meeting, allowing at least 15 days from the meeting notification to the scheduled meeting time; and

(III) Record the review committee meeting.

(vii) Individual rights. The Grievance Review Committee must afford individuals the following rights:

(I) The opportunity to review documents and other evidence relied upon in reaching the decision being grieved;

(II) The opportunity to be heard in person and to be represented; and

(III) The opportunity to present witnesses or documents to support their position and to question witnesses presented by other parties.

(viii) Within 15 days after the conclusion of the meeting, the grievance review committee must provide written recommendations to the Administrator.

(ix) The Administrator must make a decision and send written notification of the recommendations and implementation process to all grievance review meeting participants within 15 days of receipt of the recommendations.

(x) The decision of the Administrator is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(C) Dispute with service provider or CDDP services. A grievance may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a grievance.

(ii) The CMHDDP Director or his or her designee must provide to the grievant a written decision regarding the grievance within 30 days of receipt of the grievance.

(I) The written decision regarding the grievance must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

(II) Along with the written decision, the grievant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the grievance; and

(III) Be provided a notice that the grievant has the right to request a review of the decision by the Department. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the Administrator.

(iii) Department review. Following a decision by the CMHDDP Director or his or her designee regarding a grievance, the grievant may request a review by the Administrator.

(I) The grievant must submit to the Department a request for review within 15 days from the date of the decision by the CMHDDP Director or his or her designee.

(II) Upon receipt of a request for a review, the Administrator will appoint a Grievance Review Committee and name the Chairperson. Such a committee will be comprised of a representative of the Department, a CDDP representative and a service provider who provides a similar service as the service being grieved, i.e., residential, employment, foster care, etc. Committee representatives must not have any direct involvement in the provision of services to the individual or have a conflict of interest in the specific case being grieved.

(III) The Committee will review the grievance and the decision by the CMHDDP Director and make a recommendation to the Administrator within 45 days of receipt of the grievance unless the grievant and the Committee mutually agree to an extension.

(IV) The Administrator or his or her designee will consider the report and recommendations of the Grievance Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Committee. The written decision must contain the rationale for the decision.

(V) The decision of the Administrator or his or her designee is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(3) Specific Grievances. Individuals, their guardian, or legal representative may request a review of specific decisions by the CDDP, a service provider or a state training center as follows:

(a) Residential. Grievances of entry, exit or transfer decisions within residential services may only be initiated according to the "24-Hour Residential Services" (OAR 411-325-0010 to 0480) and the "Supported Living (OAR 309-041-0550) rules;

(b) Employment. Grievances of entry, exit or transfer decisions within employment services or community inclusion services may only be initiated according to the "Employment and Alternatives to Employment Services" (OAR 411-345-0150) rule;

(c) Medicaid. Appeals of Medicaid eligibility decisions may only be initiated according to the "Client Appeals" (OAR 410-120-1860); and

(d) Eastern Oregon Training Center. Disagreements with State Training Center decisions for admission and discharge may only be initiated according to OAR 309-118-0000, Grievance Procedure for Use in State Institutions.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06

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**Rule Caption:** Allows discharge of residents with sexual conviction and who are a risk of harm.
**Adm. Order No.:** SPD 6-2006(Temp)
**Filed with Sec. of State:** 1-18-2006
**Certified to be Effective:** 1-18-06 thru 7-1-06
**Notice Publication Date:**
**Rules Amended:** 411-088-0020
**Subject:** OAR 411-088-0020 is being amended to implement Senate Bill 106 which allows a licensed Nursing Facility to immediately discharge a resident who has had a sexual conviction and is a current risk of harm to others.

Senate Bill 106 was imposed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate at the request of Governor Kulongoski.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-088-0020**
**Basis for Involuntary Transfer**

Upon compliance with these Transfer rules (OAR chapter 411, division 088), an involuntary transfer of a resident may be made when one of the reasons specified in section (1) or section (2) of this rule exists.

(1) MEDICAL and WELFARE REASONS.

(a) A resident may be transferred when the resident's physician states in writing that:

(A) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or

(B) The facility is unable to meet the resident's care needs and the facility has identified another environment available to the resident which can better meet the resident's needs. The Division shall assist the facility in the effort.

(b) A resident may be transferred when the Division Administrator or the State Fire Marshal states in writing the safety of the resident (or other persons in the facility) is endangered and justifies the transfer;

(c) A resident may be transferred when the behavior of the resident creates a serious and immediate threat to the resident or to other residents or persons in the facility and all reasonable alternatives to transfer (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record. Such alternatives may include but are not limited to chemical or physical restraints and medication;

(d) A resident may be transferred when the resident has a medical emergency;

(e) A resident may be transferred when governmental action results in the revoking or declining to renew a facility's certification or license;

(f) A resident may be transferred when the facility intends to terminate operation as a nursing facility, and:

(A) Certifies in writing to the Division the license is to be irrevocably terminated; and

(B) Establishes to the satisfaction of the Division it has made arrangements to accomplish all necessary transfers in a safe manner with adequate resident involvement and follow-up or each resident to minimize negative effects of the transfer;

(g) A resident may be transferred from a facility when the resident has been accepted for the purpose of receiving post-hospital extended care services or specialized services, as physician's orders for such facility services and has, according to the physician's written opinion, improved sufficiently so the resident no longer needs the post-hospital extended care services or specialized services provided by the facility. The purpose of the admission, including the program of care, and the expected length of stay must have been agreed to in writing by the resident (or his/her legal representative who is so authorized to make such an agreement) at or prior to admission. The facility shall identify another environment available to the resident which is appropriate to meet the resident's needs. The Notice may be issued at the time of admission or later and shall be based upon the projected course of treatment.

(2) NON-PAYMENT REASONS. A resident may be transferred when there is a non-payment of facility charges for the resident and payment for the stay is not available through Medicaid, Medicare or other third party reimbursement. A resident may not be transferred if, prior to actual transfer, delinquent charges are paid. A resident may not be transferred for delinquent charges if payment for current charges is available through Medicaid, Medicare or other third party reimbursement.

(3) CONVICTION OF A SEX CRIME. A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:

(a) The facility was not notified prior to admission that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime; and

(b) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, and

(c) The resident presents a current risk of harm to another resident, staff or visitor in the facility, as evidenced by:

(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; and

(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

(d) Prior to the move, the facility must contact DHS Central Office by telephone and review the criteria in paragraph (8)(c)(A)(B) of this rule. DHS will respond within one working day of contact by the facility. The Department of Corrections parole or probation officer will be included in the review, if available. DHS will advise the facility if rule criteria for immediate move out are not met. DHS will assist in locating placement options.

(e) A written move-out notice must be completed on a Department approved form. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(f) Prior to the move, the facility must orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility will immediately telephone DHS Central Office when a hearing is requested. The hearing will be held within five business days of the resident's move. No informal conference will be held prior to the hearing.

Stat. Auth.: ORS 441.055 & 441.605
Stats. Implemented: ORS 441.055, 441.600 & 441.615
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 2-1995, f. & cert. ef. 2-15-95; SPD 6-2006(Temp), f. & cert. ef. 1-18-06 thru 7-1-06

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**Rule Caption:** Allows discharge of residents with sexual conviction and who are a risk of harm.
**Adm. Order No.:** SPD 7-2006(Temp)
**Filed with Sec. of State:** 1-18-2006
**Certified to be Effective:** 1-18-06 thru 7-1-06
**Notice Publication Date:**
**Rules Amended:** 411-056-0020
**Subject:** OAR 411-056-0020 is being amended to implement Senate Bill 106 which allows a licensed Assisted Living Facility to immediately discharge a resident who has had a sexual conviction and is a current risk of harm to others.

Senate Bill 106 was imposed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate at the request of Governor Kulongoski.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-056-0020**
**Involuntary Move-Out Criteria**

The Department of Human Services, Seniors and People with Disabilities encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the assisted living setting due to safety and medical limitations.

(1) A resident may, but is not required to be, asked to leave under the following circumstances:

(a) Residents shall be given 30 days written notice when they are requested to move-out for the following reasons:

(A) The resident's needs exceed the level of ADL services the facility provides. There shall be documentation of the facility's efforts to provide or arrange for the required services. The minimum required services

identified in OAR 411-056-0015(3) shall be provided before a resident can be asked to move-out for this reason;

(B) The resident exhibits behavior or actions that repeatedly and substantially interferes with the rights or well being of other residents and the facility has tried prudent and reasonable interventions. There shall be documentation of the interventions attempted;

(C) The resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express need or summon assistance;

(D) The resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed and implemented in the assisted living environment. There shall be documentation of the facility's efforts to obtain appropriate care for the resident; or

(E) Non-payment of charges.

(b) The resident may be asked to move-out with less than 30 days, but not less than 14 days written notice for the following reasons:

(A) The resident exhibits behavior that is an immediate danger to self or others;

(B) The resident has had a sudden change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. If the resident appeals the notification to move-out, the facility shall not rent the resident's unit pending completion of the appeals process;

(C) The facility is unable to accomplish resident evacuation in accordance with OAR 411-056-0035; or

(D) The resident requires 24 hour, seven day a week nursing supervision.

(c) A resident or his/her legal representative may be given less than 14 days notice with written consent from the Department. All appeal rights shall remain intact.

(d) A resident or his/her legal representative shall be given at least 30 days notice if a facility has had its license revoked, not renewed, or voluntarily surrendered.

(e) A resident or his/her legal representative may terminate residency of a resident without notice due to abuse or conditions of imminent danger to life, health or safety, as substantiated by the Department.

(2) The written move-out notice shall be completed on a Department designated form. The form shall be filled out in its entirety and a copy of the notice shall be sent by certified mail or delivered in person to the resident, the resident's legal representative, or any person designated by the resident, guardian, or conservator and if applicable, the case manager. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out shall be faxed or sent next-day delivery to the State Long Term Care Ombudsman, who may request an informal conference for the resident.

(3) When given a 14 day move-out notice, residents who object to the notification have five working days from receipt of the notice to request an informal conference. Residents who receive a 30 day notice to move have ten working days to request an informal conference after receipt of the notice. When a resident or designee requests an informal conference, the Department's Salem central office shall be notified by the facility.

(4) The Department will hold an informal conference as promptly as possible after the request is received. Participants shall include the resident and others as requested by the resident. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, no formal hearing will be held. If a resolution is not reached at the informal conference, the resident or resident's representative may request a formal hearing.

(5) The resident has the right to a formal administrative hearing prior to an involuntary move-out.

(6) Temporary absence for medical treatment is not considered a move-out.

(7) Intra-facility move policy shall be included in the facility's disclosure statement. In the case of a facility requested move, the facility shall pay all associated costs with the move. Residents shall not be relocated from one unit to another for the convenience of the facility.

(8) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:

(a) The facility was not notified prior to admission that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime; and

(b) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, and

(c) The resident presents a current risk of harm to another resident, staff or visitor in the facility, as evidenced by:

(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature or verbal threats of a sexual nature; and

(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

(d) Prior to the move, the facility must contact DHS Central Office by telephone and review the criteria in paragraph (8)(c)(A)(B) of this rule. DHS will respond within one working day of contact by the facility. The Department of Corrections parole or probation officer will be included in the review, if available. DHS will advise the facility if rule criteria for immediate move out are not met. DHS will assist in locating placement options.

(e) A written move-out notice must be completed on a Department approved form. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(f) Prior to the move, the facility must orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility will immediately telephone DHS Central Office when a hearing is requested. The hearing will be held within five business days of the resident's move. No informal conference will be held prior to the hearing.

Stat. Auth.: ORS 410 & 443
Stats. Implemented: ORS 443.450
Hist.: SSD 14-1989, f. & cert. ef. 9-1-89; SDSD 3-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 7-2002, f. & cert. ef. 8-1-02; SPD 7-2006(Temp), f. & cert. ef. 1-18-06 thru 7-1-06

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**Rule Caption:** Determines service eligibility for persons under age 65 who have mental or emotional disorder diagnoses.
**Adm. Order No.:** SPD 8-2006
**Filed with Sec. of State:** 1-26-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 411-015-0015
**Subject:** Language clarifying how to establish service eligibility for individuals with mental or emotional disorder or substance abuse related disorder diagnoses is being added to OAR 411-015-0015.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-015-0015**
**Current Limitations**

The Department has the authority to establish by Administrative Rule the priority level within which to manage its limited resources. The Department is currently able to serve:

(1) Individuals determined eligible for OSIPM or TANF and are assessed as meeting at least one of the priority levels (1) through (13) as defined in OAR 411-015-0010.

(2) Individuals eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.

(3) Individuals needing Risk Intervention Services in areas designated to provide such services. Individuals with the greatest priority under OAR 411-015-0010 will be served first.

(4)(a) Individuals sixty-five years of age or older determined eligible for Developmental Disability services or having a primary diagnosis of mental illness are eligible for nursing facility and community based care services if they meet Sections (1), (2), or (3) of this rule and are not in need of specialized mental health treatment services or other specialized Department residential program intervention as identified through the PASARR or mental health assessment process.

(b) Individuals under sixty-five years of age determined eligible for developmental disability services or having a primary diagnosis of mental illness are not eligible for Department nursing facility services unless determined appropriate through the PASARR process.

(c) Individuals under sixty-five years of age determined to be eligible for developmental disabilities services are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the

Department's 1915C Waiver for seniors and people with physical disabilities.

(d) Individuals under sixty-five years of age who have a diagnosis of mental or emotional disorder or substance abuse related disorder are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915C Waiver for seniors and people with physical disabilities unless:

(A) They have a medical non-psychiatric diagnosis or physical disability; and

(B) Their need for services is based on their medical non-psychiatric diagnosis or physical disability; and

(C) They provide supporting documentation demonstrating that their need for services is based on the medical, non-psychiatric diagnosis or physical disability. The Department will authorize documentation sources through approved and published policy transmittals.

(5) Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915(c) Waiver are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Services may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income must contribute to the cost of care pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 410.060, 410.070 & 411
Stats. Implemented: ORS 410.070
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92, Renumbered from former 411-015-0000(4); SSD 1-1993, f. 3-19-93, cert. ef. 4-1-93; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SDP 3-2003(Temp), f. 2-14-03, cert. ef. 2-18-03 thru 6-3-03; SPD 5-2003(Temp), f. & cert. ef. 3-12-03 thru 6-3-03; SPD 6-2003(Temp), f. & cert. ef. 3-20-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 5-2004(Temp), f. & cert. ef. 3-23-04 thru 4-27-04; SPD 8-2004, f. & cert. ef. 4-27-04; SPD 20-2004(Temp), f. & cert. ef. 7-7-04; SPD 29-2004(Temp), f. & cert. ef. 8-6-04 thru 1-3-05; SPD 1-2005, f. & cert. ef. 1-4-05; SPD 8-2006, f. 1-26-06, cert. ef. 2-1-06

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**Rule Caption:** Amending Rules for Housekeeping Purposes Only.
**Adm. Order No.:** SPD 9-2006
**Filed with Sec. of State:** 1-26-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 411-070-0005, 411-070-0010, 411-070-0015, 411-070-0020, 411-070-0025, 411-070-0027, 411-070-0029, 411-070-0035, 411-070-0040, 411-070-0043, 411-070-0045, 411-070-0050, 411-070-0080, 411-070-0085, 411-070-0091, 411-070-0095, 411-070-0100, 411-070-0105, 411-070-0110, 411-070-0115, 411-070-0120, 411-070-0125, 411-070-0130, 411-070-0140, 411-070-0300, 411-070-0302, 411-070-0305, 411-070-0310, 411-070-0315, 411-070-0330, 411-070-0335, 411-070-0340, 411-070-0345, 411-070-0350, 411-070-0359, 411-070-0365, 411-070-0370, 411-070-0375, 411-070-0385, 411-070-0400, 411-070-0415, 411-070-0420, 411-070-0425, 411-070-0428, 411-070-0430, 411-070-0435, 411-070-0452, 411-070-0462, 411-070-0464, 411-070-0465, 411-070-0470
**Rules Repealed:** 411-070-0458
**Subject:** These rules are being amended for to the following: a) to correct statutes and rule references in rules; update language currently used by the Department; and general housekeeping. OAR 411-070-0458 is no longer applicable and is being repealed.
**Rules Coordinator:** Lisa Richards—(503) 945-6398

**411-070-0005**
**Definitions**

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized plan of care developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, and behavior.

(4) "Alternative Services" means individuals or organizations offering care to persons living in a community other than a nursing facility or hospital.

(5) "Area Agency on Aging (AAA)" means a Type B Area Agency on Aging which is an established public agency designated under the Older Americans Act, 42 USC 3025, and has responsibility for local administration of Department programs.

(6) "Basic Flat Rate Payment" and "Basic Rate" mean the statewide standard payment rate for all long term care services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the all-inclusive payment rate unless the resident qualifies for the complex medical add-on rate (in addition to the basic rate) or the all-inclusive pediatric rate (instead of the basic rate).

(7) "Care Management" means observation, assessment, care planning and documentation of the resident's physical, cognitive and psychosocial needs and the supervision and coordination of the services provided to meet those needs by a licensed professional nurse.

(8) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(9) "Categorical Determinations" means the four categories of persons with indicators of MI or MR/DD who may enter a nursing facility without a Level II evaluation:

(a) Individuals admitted to a nursing facility from an acute care hospital for recovery from an illness or surgery and stay is not to exceed 30 days (60 days if MR/DD);

(b) Individuals certified terminally ill (prognosis of life expectancy of 30 days or less);

(c) Individuals needing nursing facility services for length of stay of 30 days or less for respite for in-home care givers; or

(d) Individuals with severe chronic medical condition or illness that precludes participation in, or benefit from, Specialized Services.

(10) "Certified Program" means a hospital, private agency or an area agency on aging certified by the Department to conduct Private Admission Assessments in accordance with ORS 410.505 through 410.530.

(11) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract. This subsection is not intended to include changes which are merely changes in personnel, e.g., a change of administrators.

(12) "Client" means a resident for whom payment is made under the Medicaid Program.

(13) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator or other employee. They include but are not necessarily limited to the following:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

(14) "Complex Medical Add-On Payment" and "Medical Add-On" mean the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose care is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures or rehabilitation services listed in OAR 411-070-0091.

(15) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(16) "Costs Not Related to Resident Care" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. They include, for example, costs of meals sold to visitors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop, and similar items.

(17) "Costs Related to Resident Care" means all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident care include: nursing costs, administrative costs, costs of employee pension plans, and interest expenses.

(18) "CPI" means the Consumer Price Index for all items and all urban consumers.

(19) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(20) "Developmental Disability" means severe, chronic disability that is:

(a) Attributable to cerebral palsy, epilepsy or autism, or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation and requires treatment and services similar to those required for persons with mental retardation; and

(b) Manifested before the age of 22 years; and

(c) Likely to continue indefinitely; and

(d) Results in substantial functional limitations in three or more areas of major life activity; i.e., self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent living.

(21) "Direct Costs" means costs incurred to provide services required to directly meet all the resident nursing and activity of daily living care needs. These costs are further defined in these rules. Examples: The person who feeds food to the resident is directly meeting the resident's care need, but the person who cooks the food is not. The person who is trained to meet the resident's care needs incurs direct costs whereas the person providing the training is not. Costs for items which are capitalized or depreciated are excluded from this definition.

(22) "DRI Index" means the "HCFA Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw - Hill in the publication Health Care Costs.

(23) "Exempted Hospital Discharge" for pre-admission screening means an individual seeking temporary admission to a nursing facility from a hospital and is certified by the attending physician to meet all of the criteria. The criteria are:

(a) Seeks admission directly from a hospital after receiving acute inpatient care at the hospital;

(b) Requires nursing facility services for the condition for which he or she received care in the hospital; and

(c) Requires nursing facility services for 30 days or less.

(24) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department as a Nursing Facility. A Nursing Facility also means a Medicaid Certified Nursing Facility only if identified as such.

(25) "Facility Financial Statement" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department for reimbursement.

(26) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(27) "Generally Accepted Accounting Principles" means accounting principles currently approved by the American Institute of Certified Public Accountants.

(28) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired or the excess of the price paid for an asset over its fair market value.

(29) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees, and engineering studies. It does not include "start-up costs" as defined in this rule.

(30) "Hospital-based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(31) "Indirect Costs" means the costs associated with property, administration, and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry, and housekeeping). These costs are further described in OARs 411-070-0359, 411-070-0428, and 411-070-0465.

(32) "Interrupted-Service Facility" means an established facility recertified by Department following decertification.

(33) "Level I" means the pre-admission screening and assessment process implemented by the Department to identify individuals with indicators of MI or MR/DD and determine their need for nursing facility services.

(34) "Level II" means a comprehensive assessment implemented by the Department of individuals with MI or MR/DD to evaluate and determine whether nursing facility services and Special Services are needed.

(35) "Level of Care Determination" means an evaluation of the intensity of a client's health care needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(36) "Medical Add-On" or "Complex Medical Needs Additional Payment" has the meaning provided in OAR 411-070-0027.

(37) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders; bipolar (manic-depressive) and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizo-affective disorders or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(38) "Mental Retardation" means a level of retardation (mild, moderate, severe or profound) as described in the American Association on Mental Deficiencies Manual on Classification of Mental Retardation (1983) with a diagnosis of onset before age 18 and documented with I.Q. Score below 70 plus clinical observation.

(39) "Necessary Costs" means costs that are appropriate and helpful in developing and maintaining the operation of resident care facilities and activities. These costs are usually costs that are common and accepted occurrences in the field of long term care nursing services.

(40) "New Admission" for pre-admission screening means an individual admitted to any nursing facility for the first time and is not an exempted hospital discharge.

(41) "New Facility" means a nursing facility commencing to provide services to SPD recipients.

(42) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS Chapter 678 and the rules adopted pursuant thereto.

(43) "Ordinary Costs" means costs incurred that are customary for the normal operation.

(44) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of care, need for care, and quality of care.

(45) "Pediatric Rate" means the statewide standard payment rate for all long term care services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(46) "Perquisites" means privileges incidental to regular wages.

(47) "Personal Incidental Funds" means resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(48) "Placement" means the location of a specific place where health care services can be adequately provided to meet the care needs.

(49) "Pre-Admission Screening (PAS)" means an interdisciplinary assessment and decision making process which assures the most appropriate care and services for a person who is at high risk of nursing facility placement.

(50) "Pre-Admission Screening and Resident Review (PASRR)" means a process that identifies whether an individual seeking admission to or residing in a nursing facility has mental illness or mental retardation or a related condition (developmental disability); needs active treatment for the illness or disability; and if so, where the active treatment can best be provided in order to meet the needs of the individual.

(51) "Provider" means an organization that has entered into an agreement with the Department to provide services for Department clients.

(52) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(53) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has five percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(54) "Resident" or "Client" means those individuals for whom payment is made under the Medicaid Program.

(55) "Resident Review" means a review conducted by the Department of individuals with MI or MR/DD who are residents of nursing facilities to determine whether the individual requires the level of services provided by the nursing facility and whether the individual requires Specialized Services.

(56) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted Fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(57) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(58) "Specialized Services for Mental Retardation/Developmental Disability" means:

(a) A continuous program of specialized and generic training, treatment, and activities directed toward:

(A) The acquisition of behaviors necessary for the individual to function with as much self-determination and independence as possible;

(B) Prevention (or deceleration) of regression or loss of current optimal functional status;

(C) Increased interaction with other persons both within and outside the nursing facility;

(D) Increased access to, and participation in, community events and activities, including as appropriate, employment; and

(E) Enhancement of the individual's quality of life.

(b) Emphasis is placed on providing Specialized Services at sites outside the nursing facility. By doing so, the individual learns new skills and behaviors in more normalized environments with natural supports and consequences. Further, community settings provide increased opportunities for social and physical integration.

(59) "Start-up Costs" means one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. They do not include such costs as feasibility studies, engineering studies, architect's fees or other fees that are part of the historical cost of the facility.

(60) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(61) "Title XVIII" and "Medicare" mean Title XVIII of the Social Security Act.

(62) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(63) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department for providers to use in reporting their costs.

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

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0010**
**Conditions for Payment**

Nursing Facilities must meet the following conditions in order to receive payment under Title XIX (Medicaid):

(1) Certification:

(a) Compliance with Federal Regulations. The facility must be in compliance with Title XIX Federal certification requirements;

(b) All Beds Certified. Except as provided in subsection (1)(c) of this rule, all beds in the nursing facility must be certified as nursing facility beds;

(c) Gradual Withdrawal. A facility choosing to discontinue compliance with subsection (1)(b) of this rule, may elect to gradually withdraw from Medicaid certification, but must comply with all of the following:

(A) Notify the Department in writing within 30 days of the certification survey that it elects to gradually withdraw from the Medicaid Program;

(B) Request Medicaid reimbursement for any resident who resided in the facility, or who was eligible for right of return or right of readmission under OAR 411-088-0050 or 411-088-0060, on the date of the notice required by subsection (1)(c) of this rule. If it appears the resident may be eligible within 90 days, such request may be initiated;

(C) Retain certification for any bed occupied by or held for any resident who is found eligible for Medicaid, until the bed is vacated by:

(i) The death of the resident; or

(ii) The transfer or discharge of the resident, pursuant to the Transfer Rules (OAR chapter 411, division 088).

(D) All Medicaid recipients exercising rights of return or readmission under the transfer rules must be permitted to occupy a Medicaid certified bed; and

(E) Notify in writing all persons applying for admission subsequent to notification of gradual withdrawal that, should the person later become eligible for Medicaid assistance, that reimbursement would not be available in that facility.

(2) Civil Rights, Medicaid Discrimination:

(a) The facility must meet the requirements of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973;

(b) The facility must not discriminate based on source of payment. The facility must not have different standards of transfer or discharge for Medicaid residents except as required to comply with this rule;

(c) The facility must accept Medicaid payment as payment in full. The facility must not require, solicit or accept payment, the promise of payment, a period of residence as a private pay resident, or any other consideration as a condition of admission, continued stay, or provision of care or service from the resident, relatives, or any one designated as a "responsible party";

(d) No applicant may be denied admission to a facility solely because no family member, relative or friend is willing to accept personal financial liability for any of the facility's charges;

(e) The facility may not request or require a resident, relative or "responsible party" to waive or forego any rights or remedies provided under state or federal law, rule or regulation.

(3) Provider Agreement, Facility Payment:

(a) The facility must sign a formal provider agreement with the Department;

(b) The facility must file a Facility Financial Statement with the Department within 90 days after the end of its fiscal year;

(c) The facility must bill the Department in accordance with established rules and guidelines.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0020 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 12-1986, f. 9-26-86, ef. 10-1-86; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 17-1991(Temp), f. & cert. ef. 9-13-91; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0015**
**Denial, Termination or Non-Renewal of Provider Agreement**

(1) Failure to Comply. The Department reserves the right to deny, terminate or not renew contracts with providers who fail to comply with OAR 411-070-0000 through 411-070-0470 relating to nursing facility services.

(2) Notice. The Department will give the provider 30 day's written notice, by Certified Mail, before the effective date of the denial, termination or non-renewal. The notice will include the basis of the Department decision, advise the provider of the right to an informal conference to give the opportunity to refute the Department findings in writing.

(3) Information Conference:

(a) A request for an informal conference must be received by the Department prior to the effective date of the denial, termination or non-renewal;

(b) A written notice of the Department's decision reached in an informal conference will be sent to the provider by Certified Mail. This notice will also advise the provider of his or her right to a hearing, if requested within 30 days of mailing the notice.

(4) Hearing. When a hearing is requested, it will be conducted in accordance with OAR chapter 461, division 025.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 8-1982, f. & ef. 6-30-82; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0020**
**On-Site Reviews**

The facility must allow periodic on-site reviews of Medicaid residents as required by federal regulations.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; Renumbered from 461-017-0030 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 8-1983, f. 9-20-83, ef. 10-1-83; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0025**
**Basic Flat Rate Payment (Basic Rate)**

(1) PAYMENT. The Department may authorize payment at the basic rate if a Medicaid client requires daily, intermittent licensed nurse observation and continuous nursing care and has a physician's order for nursing facility care. When determining the payment rate, the Department will consider the stability of the medical condition, the health care needs of the client, and the client's ability to maintain themselves in a less restrictive setting. A client who qualifies for reimbursement at the basic rate will:

(a) Have chronic medical problems that are stabilized but not cured and have a need for supervision in a structured environment to maintain or restore stability and prevent deterioration; or

(b) Require assistance for a combination of health care needs either because of a physical or psycho-social disabling condition; or

(c) Have insufficient personal and community resources available to provide for either subsection (1)(a) or (b) of this rule.

(2) DOCUMENTATION. The professional nursing staff of the nursing facility must keep sufficient documentation in the resident's clinic record to justify the basic rate payment determination in accordance with these rules and must make it available to the Department upon request.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 22-1978, f. & ef. 6-1-78; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0040 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 8-1982, f. & ef. 6-30-82; SSD 8-1989(Temp), f. & cert. ef. 6-1-89; SSD 2-1990(Temp), f. & cert. ef. 1-10-90; SSD 8-1990, f. & cert. ef. 3-1-90; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0027**
**Complex Medical Need Additional Payment (Medical Add-On)**

(1) PAYMENT. The Department may authorize payment for a medical add-on (in addition to the basic rate) when the client requires one or more of the treatments, procedures and services listed in OAR 411-070-0091.

(2) AUTHORIZATION:

(a) Initial Approval — Approval of the medical add-on must be obtained from the Pre-Admission Screener prior to placement in the nursing facility.

(b) Continued Payment — The Department may continue to pay the medical add-on only as long as warranted by the condition of the client.

(3) DOCUMENTATION. The professional nursing staff of the nursing facility must keep sufficient documentation in the resident's clinical record to justify the medical add-on payment determination in accordance with these rules and must make it available to the Department upon request.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 20-1990, f. & cert. ef. 10-4-90; SSD 21-1990(Temp), f. & cert. ef. 10-5-90; SSD 6-1991, f. & cert. ef. 3-25-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0029**
**Pediatric Rate**

(1) This rate will be for those facilities meeting the criteria established in OAR 411-070-0452 as Pediatric Nursing Facilities or as self-contained pediatric units.

(2) The pediatric rate will constitute the total rate payable by the Department on behalf of its client.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0035**
**Placement, Payment Authorization and Administrative Review**

(1) PRIOR AUTHORIZATION. The Department may reimburse a nursing facility for services provided to a Department client only if prior authorized after the Department has participated in development of the placement plan and is satisfied that the placement is justified and most suitable for the person according to the Department service plan. The Department may not reimburse a nursing facility for services rendered prior to the date of referral to the Department. A nursing facility must verify that the local SPD/Type B AAA where the facility is located is involved in the placement.

(a) Initial Level. Initial determination of resident level must be made by the Preadmission Screener.

(b) Adjustments. The facility must notify the Department Resident Care Review Specialist according to the Department schedule for weekly reporting (excluding weekends, state holidays and any business day on which the offices of the State of Oregon are closed by the Governor or designee) of:

(A) Admission of any Medicaid client whose condition or care needs meet the criteria for the medical add-on and has had a Pre-Admission Screening that reflects the same;

(B) An in-facility Medicaid resident whose condition or care needs change and now meets the criteria for the medical add-on; and

(C) Termination of the medical add-on for a resident whose condition or care needs no longer meet the criteria for the medical add-on.

(c) Payment Effective Dates and Notification Requirements.

(A) For a new resident of a nursing facility, the medical add-on approved by the Preadmission Screener is effective from the date of admission to the last date on which the resident meets the medical add-on criteria. The nursing facility must add these residents to the next weekly report filed after admission. However, if the nursing facility fails to add the resident to the report or files the report more than two working days after it is due, the Department will pay the medical add-on from the date of notification only.

(B) For an in-facility resident whose condition or care needs change, the medical add-on is effective from the date the resident meets the medical add-on criteria to the last date the resident meets the medical add-on criteria. The nursing facility must add these residents to the next weekly report filed after the resident meets the medical add-on criteria. However, if the nursing facility fails to add the resident to the report or files the report more than two working days after it is due, the Department will pay the medical add-on from the date of notification only.

(C) Notwithstanding paragraph (1)(c)(B) of this rule, for an in-facility resident whose condition or care needs change is an emergent medical/surgical problem or an emergent behavior problem, the medical add-on is effective from the date of the change to the last date the resident meets the medical add-on criteria. The nursing facility must notify the Resident Care Review Specialist the next working day or within two days following the emergent problem. However, if the nursing facility fails to notify the Department in a timely manner, the Department will pay the medical add-on from the date of notification only.

(2) ADMINISTRATIVE REVIEW. If a provider disagrees with the decision of the Department Resident Care Review Specialist to make or deny an adjustment in the medical add-on payment for a Medicaid resident, the provider may request from the Department an administrative review of the decision. The provider must submit its request for review in writing within 30 days of receipt of the notice to make or deny the adjustment. The provider must submit documentation, as requested by the Department, to substantiate its position. The Department will notify the provider in writing of its informal decision within 45 days of the Department's receipt of the provider's request for review. The Department's informal decision will be an order in other than a contested case and subject to review pursuant to ORS 183.484.

(3) MEDICAL ADD-ONS PROHIBITED. The Department will not provide medical add-on payments for residents placed in a facility having a waiver that allows a reduction of eight or more hours per week from required licensed nurse staffing hours.

(4) CONFIRMATION OF SPD RESPONSIBILITY. Receipt of Form SDS 0458A, Title XIX Financial Planning for Medicaid Nursing Facilities/Institutions, from the local SPD/Type B AAA will acknowledge and detail the Department payment responsibility for nursing care of the resident. Form SDS 0458A also details the resident's income sources that make up client liability. The facility is responsible for collecting client liability from the resident or their responsible party.

(5) REDUCED PAYMENT FOR ABUSE.

(a) If abuse of a resident, according to the provisions of ORS 441.630 to 441.685, is substantiated by the Department, the Department may reduce the payment for the client(s) for the month the abuse occurred, and until

such time as the Department determines the conditions leading to the abuse have been corrected.

(A) The facility will receive payment for care provided for the client as determined by the Department. This determination will be based on the absence of appropriate care that resulted in the substantiated abuse of a resident;

(B) The reduced payment may not be considered a reduction in benefits for the client.

(b) The Department will notify the facility by certified mail at least fifteen days prior to taking action to reduce payment.

(A) The notice will include the basis of the Department decision, the effective date of the reduced payment, the amount of the reduced payment, and will advise the facility of their right to request review by the Administrator if such request is made in writing within 30 days of the receipt of the notice;

(B) If a request for review is made, the Administrator will include the basis of the Department decision, the effective date of the reduced review all material relating to the allegation of resident abuse and to the reduction in payment. The Administrator will include the basis of the Department decision, the effective date of the reduced determine, based upon review of the material, whether or not to sustain the decision to reduce payments to the facility and will notify the facility of the decision within 20 days of receiving the request for review;

(C) If the Administrator determines not to sustain the decision to reduce payments, the reduction will be lifted immediately. Otherwise, the reduction in payment will remain in effect until the Department determines the conditions leading to the abuse have been corrected;

(D) If the decision to reduce payment is sustained, the payment reduction will not be recovered in the year end settlement.

(6) OVERPAYMENT FOR MEDICAL ADD-ONS. The Department will collect monies that were overpaid to a facility for any period during which the Department determines the client did not meet the criteria for the medical add-on.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0050 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1983, f. 10-19-83, ef. 11-1-83; SSD 8-1985, f. 6-13-85, ef. 6-15-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0040**
**Client Screening, Assessment and Review**

(1) Pre-Admission Screening (PAS): Pre-Admission Screening is an on-site assessment of an individual's health, functional, psycho-social, and economic status. The on-site assessment is conducted to establish the most appropriate placement and services for persons who are requesting or who are being referred for nursing facility placement. PAS is available to any person upon request or referral and is provided without regard to income. PAS is mandatory for all requests or referrals for nursing home placement that involve payment for nursing facility care by the Department. No payment for nursing facility care will be authorized by the Department until Pre-Admission Screening has established that it is the most appropriate service for the client. PAS must first assess Title XIX eligibility for those who will be eligible upon admission to a nursing facility. Other persons will be assessed as time will allow.

(2) Client Review:

(a) Title XIX regulations require utilization review and quality assurance reviews of Medicaid residents in nursing facilities. The reviews carried out by Oregon Foundation of Medical Care (OFMC) must meet these requirements;

(b) Staff associated with SPD are required to maintain service plans on all Department clients in nursing facilities. The frequency of their service plan update will vary depending on such factors as resident's potential for relocation and federal or state requirements for resident review;

(c) Authorized representatives of the Department or OFMC must have immediate access to Department residents and to facility records. "Access" to facility records means the right to personally read charts and records to document continuing eligibility for payment, quality of care or alleged abuse. The Department or OFMC representative must be able to make and remove copies of charts and records from the facility's property as required to carry out the above responsibilities;

(d) Department or OFMC representatives must have the right to privately interview any Department residents and any facility staff in carrying out the above responsibilities;

(e) Department or OFMC representatives must have the right to participate in facility staffings on Department residents.

Stat. Auth.: ORS 410.535, 410.070 & 414.065
Stats. Implemented: ORS 410.070, 414.065 & 410.535
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0060 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 2-1983, f. 3-4-83, ef. 4-1-83; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0043**
**Pre-Admission Screening and Resident Review (PASRR)**

(1) Introduction:

(a) The purpose of PASRR is to prevent the placement of individuals with mental illness (MI) or mental retardation/developmental disabilities (MR/DD) in a nursing facility unless their medical needs clearly indicate that they require the level of care provided by a nursing facility. PASRR was mandated by Congress as part of the Omnibus Budget Reconciliation Act of 1987 and is codified in Section 1919(e)(7) of the Social Security Act. Final regulations are contained in 42 CFR, Part 483, Subparts C through E.

(b) PASRR is a process of evaluating Medicaid certified nursing facility potential or current residents with indicators of MI or MR/DD to determine if the nursing facility is appropriate to meet their needs and if specialized mental health or MR/DD services are needed. PASRR includes three components:

(A) Level I initial screenings prior to nursing facility admission to determine if there are indicators of MI or MR/DD that require further evaluation, and if nursing facility placement is appropriate;

(B) As needed, Level II comprehensive assessments and determinations by the Department of individuals with MI or MR/DD to evaluate and determine whether Specialized Services should be obtained in another setting;

(C) Individuals already residing in nursing facilities should be referred to the Office of Mental Health and Addiction Services for a Level II evaluation based on symptomatic changes in mental health condition. Individuals identified as having MR/DD through the Level I screening are reviewed by Senior's and People with Disabilities.

(2) Pre-Admission Screening (PASRR Level I). A pre-admission screening for indicators of serious MI or MR/DD and appropriateness of placement must be provided prior to admission for all individuals applying as new admissions to a Medicaid certified nursing facility regardless of the individual's sources of payment.

(a) Medicaid Eligible Individuals:

(A) Completion of the Pre-Admission Screening. Except as provided in subsection (2)(a)(B) of this rule, the pre-admission screening must be completed in conjunction with the Client Assessment and Planning System by approved Pre-Admission Screening personnel from the local AAA/SPD.

(B) Exception. The local AAA/SPD may delegate, in writing, completion of the PASRR Level I form to a Certified Program if the individual to be screened is a current Medicaid client being discharged from an acute care hospital to a Medicare certified nursing facility.

(C) Pre-Admission Screening Form. The pre-admission screening must be completed using the designated Level I Pre-Admission Screening form.

(D) Completion of the PASRR Level I form under subsection (2)(a)(B) of this rule does not constitute prior authorization of payment. Nursing facilities must still obtain prior authorization from the local AAA/SPD as required in OAR 411-070-0035.

(b) Non-Medicaid Eligible Individuals. For non-Medicaid eligible individuals, the pre-admission screening must be completed in accordance with the Private Admission Assessment Program established by ORS 410.505 through 410.545 and OAR chapter 411, division 071.

(c) Negative Response To Pre-Admission Screening. If there are no indicators of MI or MR/DD or if the individual belongs to a categorically exempt group, the individual may be admitted to a nursing facility subject to all other relevant rules and requirements.

(d) Mental Illness Indicators. If there are indicators of mental illness, the individual may not be admitted to a nursing facility without a referral to the Office of Mental Health and Addiction Services for a Level II evaluation. If the individual demonstrates a need for nursing facility services as determined by membership in a categorical determination group, then the individual may be admitted without the Level II evaluation prior to admission.

(e) Mental Retardation/Developmental Disability Indicators. If there are indicators of mental retardation/developmental disability, the individual must be referred to the Department for possible Level II Evaluation. Prior to admission of the individual to a nursing facility, the Department must be contacted to seek a waiver of OAR 309-048-0020 that prohibits placement

of persons with mental retardation/developmental disabilities in nursing facilities. Based on the functional assessment portion of the pre-admission screening, the screener must make a recommendation as to the individual's need for services.

(f) Pre-Admission Screening Form Requirement. Except as provided in subsection (2)(g) of this rule, nursing facilities must not admit an individual without a completed and signed pre-admission screening form in the client record.

(g) Exception To Form Requirement. A nursing facility may admit an individual without a completed and signed pre-admission screening form in the client record provided the facility has received verbal confirmation from the screener that the screening has been completed and a copy of the screening will be sent to the facility as soon as is reasonably possible.

(h) Recordkeeping. The original or a copy of the pre-admission screening form must be retained as a permanent part of the individual's clinical record and must accompany the individual if he or she leaves the facility.

(3) Resident Review:

(a) Mental Illness. All residents of a Medicaid certified nursing facility must be referred when symptoms of mental illness develop.

(A) Completion of the Resident Review Part A will be completed by the nursing facility.

(B) Referral. Resident reviews with indicators of mental illness that require further evaluation must be referred to the local Community Mental Health Program who will determine eligibility for Level II evaluations.

(C) Form. The resident review must be performed in conjunction with the Comprehensive Assessment Form specified by the Department in accordance with OAR 411-086-0060.

(b) Mental Retardation/Developmental Disability. Residents identified as having mental retardation/developmental disabilities through the pre-admission screening process must be reviewed at least annually, or as dictated by changes in residents' needs or desires.

(A) Completion of the Resident Review. The resident review will be completed by the local county mental retardation/developmental disability authority and the Department.

(B) Form. The resident review must be completed using forms designated by the Department.

(4) PASRR Level II Evaluations and Determinations:

(a) Referral. Whenever the pre-admission screening process as established in section (2) of this rule or the resident review process as established in section (3) of this rule identifies a need for a PASRR Level II Evaluation and Determination, the individual will be referred to the appropriate office of the Department of Human Services.

(b) Evaluation Standards. Evaluations must be conducted under standards and criteria established by the Department.

(c) Determinations. Determinations must be consistent with Federal Regulations established by the Health Care Financing Administration according to Section 1919(e)(7)(C) of the Social Security Act.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070, 535 & 414.065
Hist.: SSD 5-1989(Temp), f. & cert. ef. 4-20-89; SSD 15-1989, f. & cert. ef. 10-20-89; SSD 3-1994, f. 4-29-94, cert. ef. 5-1-94; SDSD 1-1998, f. 1-30-98, cert. ef. 2-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0045**
**Facility Payments**

(1) Payment to Provider. Provider payments will be made following the month of service. For billing, the Department will mail Form SDS 483, Invoice and Payment Authorization, to each facility.

(2) Resident's Income. A resident's income, exclusive of the authorized allowance for personal incidental needs and other prior authorized special needs, will be offset as a credit against the established Department rate paid to that facility.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0070 by Ch. 184, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0050**
**Days Chargeable**

The Department will pay for the day of admission but not for the day of discharge, transfer, or death except as provided for in OAR 411-070-0110. When the day of admission is the same as the day of discharge, the Department will only pay for one day.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0080 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1982(Temp), f. 4-26-82, ef. 5-1-82; SSD 8-1982, f. & ef. 6-30-82; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0080**
**Out-of-State Rates**

Out-of-state facilities in areas contiguous to Oregon will be paid for Department clients who are receiving temporary care while alternative placement in Oregon is being located. Payment will be made at the facility's Medicaid rate established by the state in which the facility is located or the maximum rate paid to Oregon nursing facilities for a comparable payment level, whichever is less. The maximum rate for out-of-state purposes is Oregon's basic rate plus the medical add-on, if determined to be appropriate, or the pediatric rate, if warranted. The facility must submit a copy of the Assurance and Compliance (HHS 690), certifying its compliance with the Civil Rights Act of 1964. The facility must also submit their current approved nursing facility Medicaid rate to the Department. An Oregon resident will be returned to Oregon when proper placement can be made and it is feasible to do so.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0130 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0085**
**All-Inclusive Rate**

(1) Purpose. The nursing facility rate established for a facility is an all-inclusive rate and is intended to include all services, supplies and facility equipment required for care except therapy services, supply item(s) or equipment covered under OAR 411-070-0359(3) (Third-Party Payors).

(2) Services and Supplies:

(a) The following services and supplies required to provide care in accordance with each resident's care plan are included in the all-inclusive rate, except as modified by OAR 411-070-0359(3):

(A) All nursing and support services and supplies including restorative services, incontinency care, feeding, and routine foot care;

(B) Activities and social services programs and supplies;

(C) Professional consultation required for licensing or certification;

(D) Management of personal incidental funds, including purchase of items;

(E) Special diets and non-pumped food supplements;

(F) Room and board;

(G) Laundry, whether performed by the facility staff or an outside provider. This service includes laundry and marking of resident's personal clothing and bedding;

(H) Items stocked by the facility in gross supply and administered individually on physician's order;

(I) Items owned or rented by the facility which are utilized by individual residents but which are reusable and are routinely expected to be available in a nursing facility;

(J) Shaves, haircuts, and shampoos as required regularly for grooming and cleanliness, whether performed by facility staff or outside providers;

(K) Basic grooming supplies;

(L) Transportation provided in facility vehicles;

(M) All oxygen and oxygen equipment, including concentrators, unless the oxygen provided exceeds 1,000 liters per day;

(N) If allowed under OAR 411-070-0359, therapy services provided by on-staff therapists; and

(O) All administrative functions of the facility Medical Director.

(b) The following services and supplies are NOT included in the all-inclusive rate:

(A) Therapy services provided to residents by outside providers;

(B) Medical services by physicians or other practitioners, radiology services, laboratory services and podiatry services;

(C) Transportation for residents to and from medical care in non-facility vehicles;

(D) Biologicals (eg., immunization vaccines), hyperalimentation (eg., nutritional therapy consisting of vitamins, glucose, electrolytes, minerals etc., to sustain life), over-the-counter and prescription pharmaceuticals; or

(E) Ventilators.

(3) Examples. The all-inclusive rate established for the facility includes but is not limited to the following items, except as modified by OAR 411-070-0359(3), whether routinely stocked or specially purchased:

(a) Air mattresses, egg carton mattresses;
(b) Airway, oral;
(c) Alternating pressure pads and pumps;
(d) Applicators, cotton tipped;
(e) Aquamatic K pads (water-heated pad);
(f) Arm slings;
(g) Band Aids;
(h) Bandages, including elastic or cohesive;
(i) Basins;
(j) Bath/Shower benches and chairs;
(k) Bed frame equipment (for certain immobilized bed confined residents);
(l) Bedpan, regular and fracture;
(m) Bed rails;
(n) Bibs, including plastic;
(o) Canes;
(p) Catheter, urinary (any size, including indwelling);
(q) Catheter bags, plugs and tray;
(r) Clinitest tablets;
(s) Colon tubes;
(t) Combs, brushes;
(u) Commode chairs;
(v) Communication boards;
(w) Cotton and cottonballs;
(x) Creams (i.e., A & D, Eucerin, etc.);
(y) Crutches;
(z) Decubitus ulcer pads, preventive items;
(aa) Deodorants, room;
(bb) Diabetic urine testing (i.e., Clinitest, Diastix);
(cc) Disposable underpads, diapers;
(dd) Douche bags;
(ee) Drainage bags, sets, tubes;
(ff) Dressings (all, including surgical and dressing tray, pads, tape, sponges, swabs, etc.);
(gg) Enemas and enema supplies, OTC;
(hh) Eye pads;
(ii) Feeding tubes and units, gastric, nasal (non-pumped);
(jj) First aid supplies;
(kk) Flotation mattress, pads or turning frames;
(ll) Folding foot cradle;
(mm) Food or food supplements provided between meals for nourishment;
(nn) Foot boards;
(oo) Gauze and gauze sponges;
(pp) Geriatric chairs;
(qq) Gloves, unsterile and sterile, examination and surgical;
(rr) Glucose monitors;
(ss) Gowns, hospital;
(tt) Heat cradle, heat pads;
(uu) Hot pack machine;
(vv) Hot water bottles;
(ww) Ice bags;
(xx) Incontinency care and supplies, pants, diapers;
(yy) Infusion arm boards;
(zz) Inhalation therapy supplies; Nebulizer and replacement kit Steam vaporizer;
(aaa) Intermittent positive pressure breathing apparatus (I.P.P.B.);
(bbb) Invalid ring;
(ccc) Irrigation bulbs and trays;
(ddd) I.V. trays and tubing;
(eee) Jelly, lubricating;
(fff) Lamps, infrared and ultraviolet;
(ggg) Laxative, OTC;
(hhh) Linens;
(iii) Lotions, creams, and oils, over-the-counter (i.e., Keri, Lubriderm, etc.);
(jjj) Medicine dropper;
(kkk) Menstrual supplies;
(lll) Nasal cannula;
(mmm) Nasal catheter;
(nnn) Needles (various sizes);
(ooo) Ointments (i.e., Neosporin, Vaseline);
(ppp) Ostomy Bags and Supplies;
(qqq) Overhead trapeze equipment;
(rrr) Oxygen;
(sss) Oxygen tents, masks, etc.;
(ttt) Padding for incontinent care;
(uuu) Pumps, aspiration and suction;
(vvv) Restraints;
(www) Rubber rings;
(xxx) Sand bags;
(yyy) Shampoo, including medicated shampoos, conditioners;
(zzz) Sheepskin;
(aaaa) Soap, including medicated;
(bbbb) Specimen cups and bottles;
(cccc) Stomach tubes;
(dddd) Suction equipment and machines;
(eeee) Syringes (all sizes) reusable and disposable;
(ffff) Tes-Tapes;
(gggg) Thermometers;
(hhhh) Tissues, bedside and toilet;
(iiii) Tongue depressors;
(jjjj) Toothbrushes and paste;
(kkkk) Traction equipment;
(llll) Tuberculin tests;
(mmmm) Urinals, male and female;
(nnnn) Urological solutions;
(oooo) Walkers;
(pppp) Water bed;
(qqqq) Water pitchers; and
(rrrr) Wheelchairs (non-customized).

Stat. Auth.: ORS 414.065 & 410
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0140 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0091**
**Complex Medical Add-On Services**

(1) PROFESSIONAL NURSING SERVICES. If a Medicaid resident qualifies for payment at the basic rate and has a documented need for one or more of the procedures, routines or services listed in subsections (a) to (e) of this rule, the Department may pay a complex medical add-on payment (in addition to the basic rate) for services.

(a) Medication Procedures.

(A) Administration of medication(s) requiring skilled observation and judgment for necessity, dosage and effect, for example pain management, new anticoagulants, etc. (This category does not cover routine or oral medications or the use of oral antibiotics or the infrequent adjustments of current medications). Documentation required is a daily nursing note. Residents are eligible for add-on while procedures are daily or more often.

(B) Intravenous injections/infusions, heparin locks used daily or continuously for hydration or medication. Documentation required is a daily nursing note. Daily total parenteral nutrition (TPN) may be documented on a flow sheet with a weekly nursing note.

(C) Intramuscular medications for unstable condition used at least daily. Documentation required is a daily nursing note.

(D) External infusion pumps used at least daily if resident cannot self-bolus. Documentation required is a daily nursing note.

(E) Hypodermoclysis — daily or continuous use. Documentation required is a daily nursing note.

(F) Peritoneal dialysis, daily, when resident unable to do own exchanges. Documentation required is a daily nursing note.

(b) Treatment Procedures.

(A) Nasogastric, gastrostomy/jejunostomy tubes used daily for feedings. Daily information may be documentation on a flow sheet with a weekly nursing note.

(B) Nasopharyngeal suctioning, twice a day or more. Tracheal suctioning, as required, in resident who is dependent on nursing staff to maintain airway. Documentation required is a daily nursing note.

(C) Percussion, postural drainage, and aerosol treatment when all three are performed twice per day or more. Documentation required is a daily nursing note.

(D) Ventilator dependence. Care and services for resident who is dependent on nursing staff for initiation, monitoring, and maintenance. Documentation required is a daily nursing note.

(c) Skin/Wound.

(A) Stage III or IV decubitus ulcers, or ulcers related to circulatory impairment, that are being aggressively treated with expectation of resolution. Initial documentation required is completion of Rap 16 from the MDS (Minimum Data Set) form. Follow-up documentation is a weekly wound assessment and nursing note.

(B) Open wound(s) that require aggressive treatment and are expected to resolve. Documentation required is a weekly assessment and nursing note.

(C) Deep or infected stasis ulcers with tissue destruction equivalent to Stage III is eligible for add-on until resolved or returned to previous chronic status. Documentation required is a weekly assessment and nursing note.

(d) Insulin Dependent Diabetes Mellitus (IDDM).

(A) Unstable Insulin Dependent Diabetes Mellitus (IDDM) in a resident who requires sliding scale insulin: and

(i) Exhibits signs or symptoms of hypoglycemia or hyperglycemia; and

(ii) Requires nursing or medical interventions such as extra feeding, glucagon or additional insulin, transfer to emergency room; and

(iii) Is having insulin dosage adjustments.

(B) Documentation required is a daily nursing note. A Medication Administration Record is required when sliding scale insulin or other medication related to the IDDM has been administered. While all three criteria do not need to be present on a daily basis, the resident must be considered unstable. A resident with erratic blood sugars, without a need for further interventions, is not considered unstable.

(e) Other.

(A) Professional Teaching. Short term, daily teaching pursuant to discharge or self-care plan. Documentation required is a teaching plan with weekly progress notes.

(B) Emergent medical/surgical problems, requiring short term professional nursing observation or assessment. Payment for the add-on requires authorization from the Resident Care Review Specialist. Faxed documentation of the emergent problem will be requested. Eligibility for the add-on will be until the resident no longer requires professional observation and assessment for this medical or surgical problem. Documentation required is a nursing note each shift.

(C) Emergent Behavior Problems — Emergent behavior is a sudden, generally unexpected change or escalation in behavior of a resident that poses a serious threat to the safety of self or others and requires immediate intervention, consultation and a care plan. Payment for the add-on requires authorization from the Resident Care Review Specialist. Faxed documentation of the emergent behavior problem will be requested. Eligibility for the add-on will be until the resident no longer requires professional observation and assessment for this medical problem. Documentation required is a nursing note each shift.

(2) REHABILITATION SERVICES:

(a) Physical Therapy — at least 5 days every week.

(b) Speech Therapy — at least 5 days every week.

(c) Occupational Therapy — at least 5 days every week.

(d) Any combination of physical therapy, occupational therapy, and speech therapy at least 5 days every week qualifies. Documentation required is the therapist's notes and a weekly nursing progress note related to the rehabilitation services being provided.

(e) Respiratory Therapy — at least 5 days every week by respiratory therapist. These services must be authorized by Medicare, Medicaid Oregon Health Plan, or a third party payor. Documentation required is the therapist's notes and weekly nursing progress note.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SDSD 5-1998, f. 6-25-98, cert. ef. 7-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0095**

**Personal Incidental Funds**

(1) Each Medicaid resident is allowed a monthly amount for personal incidental needs. For purposes of this rule, personal incidental funds (PIFs) include monthly payments as allowed and previously accumulated resident savings.

(2) Facility Responsibility. The facility must assure that residents for whom the nursing facility is holding, managing, spending, or disbursing PIFs in the resident's own best interest; that neither PIFs nor funds from family or friends be used for services, supplies and equipment included in the facility's all-inclusive rate; or for items for which reimbursement through another source is available.

(a) The facility must not charge for items included in the all-inclusive rate or for other items or services for which funding can be provided through the Medicaid agency or another non-resident source.

(b) The facility must hold, safeguard and account for a resident's personal incidental funds if he or she requests such management; or if the case manager requests on Form SDS 0542 that the facility perform such management.

(c) The facility must maintain a record of the request by the resident, case manager or resident representative on Form SDS 0542, covering all funds it holds or manages for residents.

(d) The facility must manage resident funds in a manner in the resident's best interest.

(A) The facility must not charge the resident for holding, disbursing, safeguarding, accounting for, or purchasing from personal incidental funds. Charges for these services are included in the Nursing Facility Financial Statement, Form SPD 35 or 35A and are considered allowable costs reimbursable through the all-inclusive rate.

(B) The cost for items charged to personal incidental funds must not be more than the actual purchase price charged by an unrelated supplier.

(C) The facility may not charge Department clients or other sources for items or services furnished if all residents receiving such items or services are not charged. Charges must be for direct, identifiable services or supplies furnished individual residents. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., is not allowed. Charges will be made only after services are performed or items are delivered.

(D) The facility must keep any funds received from a resident for holding, safeguarding and accounting separate from the facility's funds.

(E) The nursing facility may request technical assistance from SPD/Type B AAA staff, however, responsibility for managing resident funds in the resident's best interest remains with the facility.

(F) When a facility is a resident's representative payee, it must fulfill its duties as representative payee in accordance with applicable federal regulations and state regulations that define those duties.

(G) Facilities holding resident funds must be insured to cover all amounts held in trust.

(3) Delegation of PIF Authority:

(a) The resident may manage his or her personal financial resources, including PIFs, and may authorize another person or the facility to manage them. The facility must, upon written authorization by the resident or representative, or case manager on the client's behalf, if appropriate, accept responsibility for holding, safeguarding, spending and accounting for these funds;

(b) At the time of admission, the facility must assure that the resident or representative delegating such responsibility to the facility completes Form SDS 0542, Designation of Management of Personal Incidental Funds, and the facility will sign the form acknowledging responsibility. The facility will retain the original in the resident's personal incidental fund records, with copies to the resident and the Department;

(c) The resident wishing to change delegation must do so by completing a new Form SDS 0542, that must be available at the facility; and

(d) The Department cannot be delegated to account for the resident's personal incidental funds.

(4) Resident Admission:

(a) The facility must provide each resident or resident representative with a written statement at the time of admission that:

(A) States the facility's responsibility to pay for all services, supplies, and facility equipment required for care (basic rate);

(B) Lists all services provided by the facility that are not included in the facility's basic rate;

(C) States that there is no obligation for the resident to deposit funds with the facility;

(D) Describes the resident's right to select how personal funds will be handled. The following alternatives must be included:

(i) The resident's right to receive, retain, and manage his or her personal funds or have this done by a legal guardian, or conservator;

(ii) The resident's right to delegate on the SDS 0542 another person to act for the purpose of managing his or her personal funds; and

(iii) The facility's obligation, upon written authorization by the resident or representative, to hold, safeguard and account for the resident's personal funds in accordance with these rules;

(E) States that any facility charge for this service is included in the facility's basic rate, and that the facility cannot charge for PIF management or charge residents more than the actual purchase price of items at an unrelated supplier;

(F) States that the facility is permitted to accept a resident's funds to hold, safeguard and account for, only upon the written authorization of the resident or representative, or if the facility is appointed as the resident's representative payee; and

(G) States that if the resident becomes incapable of managing his or her personal funds and does not have a representative, the facility is required to manage his or her personal funds if requested on the Form SDS 0542 by the case manager.

(b) The facility must obtain documentation on the Form SDS 0542 of resident intention to manage own funds, or resident, resident representative, or case manager delegation to another individual or the facility.

(5) Resident Account Records:

(a) The facility will maintain a Resident Account Record (Form SDS 713), on an ongoing, day-to-day basis, for each resident for whom the facility is holding personal incidental funds. Each receipt or disbursement of funds must be posted to the resident's account. Posting from supporting documentation must be done within seven days after the transaction date;

(b) The resident account record must show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds so received. Persons shopping for residents must provide a list showing description and price of items purchased, along with payment receipts for these items;

(c) Personal incidental fund individual resident accounts must be reconciled and listed by the facility at the end of each calendar month;

(d) Personal incidental fund petty cash accounts must be reconciled within ten days of receipt of the bank statement;

(e) The facility must maintain a monthly list that separately lists the petty cash and savings account balances for each resident for whom the facility is managing personal incidental funds;

(f) Records and supporting documentation must be retained for at least three years following the death or discharge of the resident;

(g) Accumulations of $50 or more:

(A) The facility must, within 15 days of receipt of the money, deposit in an individual interest-bearing account any funds held in excess of $50 for in individual resident, unless this money is being managed in a Trust and Agency Account by Seniors and People with Disabilities.

(B) The account must be individual to the resident, must be in a form that clearly indicates that the facility does not have an ownership interest in the funds, and must be insured under federal or state law; and

(h) Accumulations of Under $50:

(A) The facility may accumulate no more than $50 of a resident's funds in a pooled bank account or petty cash fund which must be separate from facility funds.

(B) The interest earned on any pooled interest-bearing account containing residents' petty cash must be either prorated to each client on an actual interest-earned basis, or prorated to each client on the basis of his or her end-of-quarter balance.

(6) Resident Rights:

(a) The resident must be allowed to manage his or her own funds, or to delegate their management to another, unless the resident has been determined to be incompetent by a court of law. A resident who was not adjudicated incompetent may always decide how to spend his or her own funds. Facility staff delegated to manage PIFs must follow guidelines outlined in this rule and other state and federal laws and regulations that may apply in order to assure that decisions not made by the resident are made in his or her best interest;

(b) The resident, family or friends has the right to be free from solicitation from the facility to purchase items that are included in the facilities daily rate;

(c) The resident must not be charged PIFs for any item included in the facility's daily rate unless the facility can show at least one of the following:

(A) The resident made an informed decision to purchase the item, understanding that a similar and appropriate item is included in the daily rate;

(B) The family requested that the facility purchase the item, understanding that a similar and appropriate item is included in the daily rate; or

(C) The resident is not currently able to make an informed decision to purchase the item, but did so prior to current incapacity;

(d) The resident, family or friends must not be charged for any drug designated by the Food and Drug Administration as less-than-effective unless it can show that both the physician and the resident made an informed decision to continue use of the drug;

(e) Prior to purchasing an item that is included in the facility's daily rate or is over $50, the facility must consult with the SPD/Type B AAA case manager;

(f) The facility must not charge resident PIFs for any item or service that benefits the facility, facility staff or relatives or friends of facility staff, unless it can show that the resident made an informed decision to purchase the item or service; and

(g) When the facility or SPD is of the opinion that a resident is incapable of managing personal funds and the resident has no representative, the facility must refer the resident to the case manager in the local SPD/Type B AAA, who will consult with the resident regarding resident preference. If the attending physician agrees, as documented on the Form SDS 544, Physician's Statement of Resident's Capacity to Manage Funds, that the resident is incapable of handling funds, the case manager will attempt to find a suitable delegate to manage the resident's funds. If no delegate can be found, the facility must assume the responsibility. If the resident disagrees with the designation of a delegate, the designation cannot be made, and the client retains the right to manage, delegate, and direct use of his own money, if not adjudicated incompetent.

(7) Access to Funds, Records:

(a) The facility must provide each resident or delegate reasonable access to his or her own financial records and funds;

(b) The facility must provide a written statement, at least quarterly, to each resident, delegate, or a person chosen by the resident to receive the statement. The quarterly statement must reflect separately all of the resident's funds that the facility has deposited in an interest-bearing account plus the resident funds held by the facility in a petty cash account or other account. The statement must include at least the following:

(A) Identification number and location of any account in which that resident's personal funds have been deposited;

(B) Balances at the beginning of the statement period;

(C) Total deposits with source and withdrawals with identification;

(D) Interest earned, if any;

(E) Ending balances; and

(F) Reconciliation.

(c) The facility must provide a copy of the quarterly accounting to the local SPD/Type B AAA within 15 days following the end of the calendar quarter on Form SDS 713, with a copy to the resident or an individual delegated by the resident to receive the copy;

(d) The resident or delegate must have access to funds in accordance with OAR 411-085-0350;

(e) The facility must, within ten business days of the resident's transfer or discharge, or appointment of a new delegate as documented on the Form SDS 0542, return to the resident or the delegate all of the resident's personal funds that the facility has received for holding, safeguarding, and accounting, and that are maintained in a petty cash fund or individual account, as well as a final accounting.

(8) Change of Ownership:

(a) The facility must give each resident or delegate a written accounting of any personal funds held by the facility before any transfer of facility ownership occurs, with a copy to the localSPD/Type B AAA;

(b) The facility must provide the new owner and the local SPD/Type B AAA with a written accounting of all resident funds being transferred and obtain a written receipt for those funds from the new owner.

(9) Local SPD/Type B AAA Responsibility:

(a) Monitor receipt of SDS 713 forms and review them quarterly for appropriateness of expenditures;

(b) Monitor client resources for resources over the current Medicaid limit;

(c) For residents incapable of managing own PIFs and having no one to delegate to do so, attempt to determine resident wishes, seek physician input on the physician statement, and find a delegate, delegating the facility if necessary and not in conflict with resident wishes;

(d) Notify the facility of inappropriate expenditures and report uncorrected problems to SPD Central Office and assist residents in obtaining legal counsel; and

(e) Track expensive or reusable items purchased for clients through personal incidental funds or by the Department and assure their appropriate use after resident death.

(10) Death of Resident:

(a) Within five business days following a resident's death, the facility must send a written accounting of the resident's personal incidental funds to the executor or administrator of the resident's estate. If a deceased resident has no executor or administrator, the facility must provide the accounting to:

(A) The resident's next of kin;

(B) The resident's representative;

(C) The clerk of probate court of the county in which the resident died; and

(D) Estate Administration Unit, Seniors and People with Disabilities, P.O. Box 14021, Salem, OR 97309-5024.

(b) Within five business days following a resident's death, the facility must:

(A) Send a written accounting of the resident's personal incidental funds and a listing of resident personal property, including wheelchairs, television sets, walkers, jewelry, etc., to the local Estate Administration Unit, SPD;

(B) Hold personal property for 90 days, unless otherwise instructed by the Estate Administration Unit, SPD; and

(C) Comply with the laws of Oregon regarding disbursal of client personal incidental funds, and any advance payments, or contact the Estate Administration Unit, SPD, for more detailed instructions.

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

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 35-1980, f. 6-30-80, ef. 7-1-80; Renumbered from 461-017-0160 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1984, f. 7-20-84, ef. 9-1-84; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 6-1989, f. & cert. ef. 5-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0100**

**Audit of Personal Incidental Funds**

(1) Records Available to Department. All account records and expenditure receipts for the resident's personal incidental funds must be available in the facility for audit and inspection by representatives of the Department of Human Services.

(2) Department Audits. Audits of a provider's cost reports, financial records and other pertinent documents may be made by the Department to verify that the provider is complying with Federal regulations and State Administrative Rules regarding protection of residents' funds. Copies of the provider's records may be removed from the facility.

(3) Discrepancies. Any discrepancies in the utilization of personal incidental funds brought to the attention of the case manager will be discussed with the facility. If the discrepancy cannot be resolved, the Department will assist the resident in finding an attorney to represent them or bring the situation to the attention of the local district attorney.

(4) Abuse of Funds. Abuse of resident's personal incidental funds or failure to comply with SPD personal incidental funds policy will be considered by the Department in deciding if a provider's agreement will be continued or renewed.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0170 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1984, f. 7-20-84, ef. 9-1-84; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0105**

**Resident Property Records**

(1) Current Records. The facility must maintain a current, written record for each resident that includes written receipts for all personal possessions deposited with the facility.

(2) Availability. The property record must be available to the resident and the resident's representative.

(3) Personal Property. The resident's private property must be clearly marked with his or her name.

(4) Department Audit. These records are subject to the same audit criteria as all personal incidental funds in OAR 411-070-0100.

(5) Removal from Facility. The Department may remove copies of these records from the facility.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0180 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1984, f. 7-20-84, ef. 9-1-84; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0110**

**Temporary Absence from Facility (Bedhold)**

(1) Payment by Department. The Department does not pay for holding a client's bed when the client is absent from the facility.

(2) Private Payment for Bedhold. Personal incidental funds or payment from a resident's family may be used to hold a facility bed if there are no vacancies in the facility to which other residents of the same sex could be admitted and if there is no duplicate payment from the Department. Personal incidental funds may only be used if the resident so chooses.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0190 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1982(Temp), f. 4-26-82, ef. 5-1-82; SSD 8-1982, f. & ef. 6-30-82; SSD 10-1986, f. & ef. 7-1-86; SSD 13-1986(Temp), f. & ef. 10-13-86; SSD 1-1987, f. & ef. 4-13-87; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 9-1995, f. 8-31-95, cert. ef. 9-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0115**

**Transfer of Residents**

(1) Prior Approval Required. A resident must not be transferred to another facility without prior approval by the resident, the attending physician, branch worker, and the facility's director of nursing services. Reassignment of rooms within the facility requires prior notice to the case manager. All transfers, both inter- and intra-facility, must be conducted in accordance with resident's rights as described in OAR chapter 411, division 085 and the transfer rules in OAR chapter 411, division 088.

(2) Emergency Transfer. In an emergency, consultation with the branch worker is waived. However, the branch worker must be notified by the facility of the resident's transfer at the earliest possible opportunity.

(3) Noncompliance. Failure on the part of the facility administration to comply with this rule can constitute a basis for withholding payment for care of the resident involved.

Stat. Auth.: ORS 410.070, 414.065 & 441.357

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0200 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0120**

**Discharge of Residents**

When the attending physician indicates that the resident does not, or in the future will not, require long-term care, facility authorities must report this fact to the branch office no later than the first branch office working day following the physician's notification. Upon request, the branch office will assist the resident, facility, relatives, or guardian in developing plans and arrangements for discharge placement. Resident's refusal to be discharged will relieve the Department of responsibility for payment.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0210 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0125**

**Medicare, (Title XVIII)**

The Department will pay on behalf of eligible clients the coinsurance rate established under Medicare, Part A, Hospital Care, for care rendered from the 21st day through the 100th day of care in a Medicare certified nursing facility. The Department will pay the appropriate rate as defined in OAR 411, Division 070, for care beyond the 100th day. Payment will be subject to documentation required for the rate.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0220 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 7-1989, f. & cert. ef. 5-1-89; SSD 4-1990(Temp), f. 1-12-90, cert. ef. 1-15-90; SSD 14-1990, f. 6-29-90, cert. ef. 7-1-90; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0130**

**Medicaid Payment for Medical Add-On Payments in Hospitals**

(1) SWING BED ELIGIBILITY. To be eligible to receive a medical add-on payment under this rule, a hospital must:

(a) Have approval from HCFA to furnish skilled nursing facility services as a Medicare swing-bed hospital;

(b) Have a Medicare provider agreement for acute care; and

(c) Have a current signed provider agreement with Seniors and People with Disabilities Department to receive Medicaid payment for swing-bed services.

(2) NUMBER OF BEDS. A hospital receiving the medical add-on payment for Medicaid services under this rule may not receive Medicaid payment for more than a total of five residents at one time. The residents must require and receive services that meet the medical add-on requirements.

(3) PAYMENT.

(a) Daily Rate. Medicaid payment for swing-beds will be equal to the rate paid to Oregon's Medicaid certified nursing facilities during the current six month period;

(b) Medicare Co-payment. Medicaid payment for Medicare co-insurance for Department clients will be made at a rate which is the difference, if any, between the Medicare partial payment and the facility rate as established in section (3) of this rule.

(4) SERVICES PROVIDED. The daily Medicaid rate will be for the services outlined in OAR 411-070-0085 (All-Inclusive Rate).

(5) COMPLIANCE WITH MEDICAID REQUIREMENTS. Hospitals receiving Medicaid payment for swing-bed services must comply with federal and Department rules and statutes that affect long-term care facilities as outlined in the facility's provider agreement with the Department.

(6) ADMISSION OF CLIENTS. Prior to determination of Medicaid payment eligibility in the swing bed, the case manager must determine there is no nursing facility bed available to the client within a 30 mile geographic radius of the hospital. For the purpose of this rule, "available bed" means a bed in a nursing facility that is available to the client at the time the placement decision is made.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 7-1988, f. & ef. 7-1-88; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0140**
**Hospice Services**

(1) Contract. The Department may enter into a contract (provider agreement) to reimburse Medicare certified hospice providers in Oregon for services provided in Medicaid certified nursing facilities under the following conditions:

(a) The Medicare-certified hospice provider must have a written contract with the nursing facility;

(b) A copy of the completed contract must be submitted to the Department; and

(c) The hospice provider must have a completed, written contract (provider agreement) with the Department for nursing facility-based hospice services prior to being determined eligible for reimbursement.

(2) Reimbursement:

(a) The Department will pay the hospice provider a rate equal to 95 percent of the rate that the nursing facility would otherwise receive;

(b) The hospice provider is solely responsible for reimbursing the nursing facility; and

(c) Reimbursement for services provided under this rule is available only if the recipient of such services is Medicaid-eligible, Medicare hospice eligible, and been found to need nursing facility care through the Pre-Admission Screening process.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 13-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0300**
**Filing of Financial Statement**

(1) The provider must file annually with the Seniors and People with Disabilities, Financial Audit Unit, the Nursing Facility Financial Statement covering actual costs based on the facility's fiscal reporting period for the period ending June 30. A Nursing Facility Financial Statement will be filed for other than a year only when necessitated by termination of a provider agreement with the Department, or by a change in ownership, or when directed by the Department. Financial reports of less than three months will not be used as the basis for biennial rate setting. Financial reports containing up to 15 months of financial data will be accepted for the reasons above or with permission of the Department prior to filing.

(2)(a) The Nursing Facility Financial Statement is due within three months of the end of the fiscal reporting period, change of ownership, or withdrawal from the program. The report must be postmarked on or before the due date to be considered timely.

(b) A one month extension may be obtained if a written request for an extension is postmarked prior to the expiration of the original three months. The Department will respond in writing to these requests.

(c) When a Nursing Facility Financial Statement is not postmarked within three months, or within four months if an extension under subsection (2)(b) of this rule was obtained, a penalty will be assessed and collected. The amount of the penalty will be $5 per licensed nursing facility bed per day for each State of Oregon business day the Nursing Facility Financial Statement is late. The total penalty must not exceed $50,000 per fiscal reporting period. For purposes of this subsection, the number of licensed nursing facility beds will be the number licensed on the last day of the fiscal reporting period that the facility failed to submit its report.

(d) The Department may assess interim penalties and deduct the amount of the interim penalties from the next Medicaid payment payable to the facility. Each interim penalty must be the amount of the penalty that has accrued under subsection (2)(c) of this rule to the date of assessment, and has not already been assessed as an interim penalty.

(e) A facility may request an informal conference or contested case hearing pursuant to ORS 183.413 through 183.470 within 30 days of receiving a letter from the Department informing it of assessment of an interim penalty or a penalty under this rule. OAR 411-070-0435 applies to such requests and sets forth the procedures to be followed. If no request for an informal conference or contested case hearing is made within 30 days of receiving such a letter, the interim penalty or penalty becomes final in all respects, including liability for payment of and the amount of the interim penalty or penalty.

(3) Improperly completed or incomplete Nursing Facility Financial Statements will be returned to the facility for proper completion.

(4)(a) Form SPD 35 is a uniform cost report to be used by all nursing facility providers, except those that are hospital based.

(b) Form SPD 35A is a uniform cost report to be used by all nursing facility providers that are hospital based.

(c) Forms SPD 35 and SPD 35A must be completed in accordance with the Medicaid Nursing Facility Services Provider Guide and Audit Manual.

(5) If a provider knowingly or with reason to know files a report containing false information, such action constitutes cause for termination of its agreement with the Department. Providers filing false reports may be referred for prosecution under applicable statutes.

(6) Each required Nursing Facility Financial Statement must be signed by a company or corporate officer or a person designated by the corporate officers to sign. If the Nursing Facility Financial Statement is prepared by someone other than an employee of the provider, the individual preparing the Nursing Facility Financial Statement will also sign and indicate his or her status with the provider.

(7) Facilities with fewer than 1000 Medicaid resident days during a twelve-month reporting period or fewer than 2.74 Medicaid resident days per calendar day, for facilities with reporting periods of less than a year, are not required to submit a SPD 35 or SPD 35A, but must submit a letter to the Seniors and People with Disabilities Department's Financial Audit Unit indicating they will not be submitting a financial statement. This letter is due the same day the financial statement would have been due.

(8) A Nursing Facility Financial Statement will be filed annually by each facility for the fiscal reporting period that ends June 30. The Nursing Facility Financial Statement filed for the period that ends June 30 is required to cover actual costs during the previous state fiscal year from July 1 through June 30.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0300 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1988, f. & cert. ef. 7-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0302**
**Filing of Revised Financial Statements**

(1) Revised Nursing Facility Financial Statements may only be filed with prior written authorization from the Department.

(2) An amended report must be postmarked within six months of the end of the fiscal reporting period.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0305**
**Accounting and Record Keeping**

(1) Nursing Facility Financial Statements are to be prepared in conformance with generally accepted accounting principles and the provisions of these rules. The Department has the option to prescribe and interpret these rules in conformance with generally accepted accounting principles.

(2) Financial Statements must be filed using the accrual method of accounting except governmental facilities using the cash method of accounting may file reports using the cash method.

(3) The provider must maintain, for a period of not less than three years following the date of submission of the Nursing Facility Financial Statement, financial and statistical records that are accurate and in sufficient detail to substantiate the cost data reported. If there are unresolved audit questions at the end of this three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited for compliance with generally accepted accounting principles and provisions of these rules.

(4) Expenses reported as allowable costs must be adequately documented in the financial records of the provider or they will be disallowed.

(5) The Department will maintain each required Nursing Facility Financial Statement submitted by a provider for three years following the date of submission of the report. In the event there are unresolved audit questions at the end of this three year period, the statements will be maintained until such questions are resolved.

(6) The records of the provider must be available for review by authorized personnel of the Department and of the U.S. Department of Health and Human Services during normal business hours at a location in the State of Oregon specified by the provider.

(7) Accrued expenses that are forgiven by a creditor will be considered as income to the facility and offset against expenses in the subsequent period. Accruals that are settled at less than full value will have the forgiven amount considered as income and offset against expenses.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 29-1979, f. 8-30-79, ef. 9-1-79; Renumbered from 461-017-0305 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0310**
**Auditing**

(1) All Nursing Facility Financial Statements are subject to desk review and analysis within six months after proper completion and filing.

(2) The desk review will determine, to the extent possible:

(a) That the provider has properly included its costs on the Nursing Facility Financial Statement in accordance with generally accepted accounting principles and the provisions of these rules; and

(b) That the provider has properly applied the cost finding method specified by the Department to its allowable costs determined in subsection (2)(a) of this rule; and

(c) Whether further auditing of the provider's financial and statistical records is needed.

(3) All filed Nursing Facility Financial Statements are subject to a field audit, normally to be completed within one year from the date of filing.

(4) The field audit will, at a minimum, be sufficiently comprehensive to verify that in all material respects:

(a) Generally accepted accounting principles and the provisions of these rules have been adhered to; and

(b) Reported data are in agreement with supporting records; and

(c) The Nursing Facility Financial Statement is reconcilable to the appropriate IRS report and payroll tax reports.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0310 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0315**
**Maximum Allowable Compensation of Administrator and Assistant Administrator**

(1) The maximum compensation of a full-time (40 hours per week) licensed administrator to a nursing facility may be allowable at the lower of compensation actually received or the maximum allowable administrator compensation amount determined annually using the calculation in section (4) of this rule.

(2) The maximum compensation of not more than one full-time (40 hours per week) assistant administrator to a nursing facility with at least 80 licensed beds may be allowable at the lower of compensation actually received or seventy-five percent of the allowable administrator compensation for the number of licensed beds in the nursing facility. The Department will not allow the cost of an assistant administrator in a facility with less than 80 beds.

(3) If either of the above individuals works less than 40 hours in the average week, allowable compensation must be the lower of actual compensation received or the maximum allowable administrator compensation determined annually based on the calculation in section (4) of this rule, multiplied by the percentage of 40 hours worked in the average week. The provider must maintain adequate records to demonstrate time actually spent.

(4) The maximum allowable administrator compensation may be adjusted each year and will be effective as of January 1 each year. The rates must be established using the gross allowable compensation in Account 411 (Administrator Compensation) of the Nursing Facility Financial Statement for non-owner administrators. The applicable compensation amounts will be inflated by the U.S. CPI from the mid point of each facility's fiscal year to July 1. The 75th percentile of each bed-size category, 1-49, 50-79, 80-99, 100 and over, will be the ceiling for each grouping.

(5) When a single individual serves as the administrator of both a nursing facility and a hospital, the salary will be pro-rated to both functions. The nursing facility portion will then be compared to the pro-rated share of the allowable administrator compensation to determine the amount to be included as allowable.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0315 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 2-1985, f. & ef. 3-5-85; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0330**
**Owner Compensation**

(1) Reasonable compensation for services performed by owners (whether sole proprietors, partners, or stockholders) is an allowable cost, provided the services are actually performed, documented, and are necessary, and the provisions of this rule are met.

(2) The allowance of compensation for services of sole proprietors and partners is the amount determined by the Department to be the reasonable value of the services rendered as long as compensation was paid in conformance with this rule.

(3) Compensation for services performed by owners may be included in allowable provider cost only to the extent that it represents reasonable remuneration for managerial, administrative, professional, and other services related to the operation of the facility and rendered in connection with resident care. Services rendered in connection with resident care include both direct and indirect activities in the provision and supervision of resident care, such as administration, management, and overall supervision of the institution. Services which are not related to either direct or indirect resident care; e.g., those primarily for the purpose of managing or improving the owner's financial investment are not recognized as an allowable cost. Costs related to the owner's management and overall supervision of the facility will be reported in Account 436.

(4) Payments to an owner that represent a return on equity capital are not allowable costs for reimbursement purposes. Such payments are not considered as compensation for purposes of determining the reasonable level of reimbursement of the owner.

(5) The compensation allowance will be an amount as would ordinarily be paid for comparable services in other nursing facilities, as defined by section (6) of this rule. This determination will be made by the Department depending upon the facts and circumstances of each case.

(6) For purposes of determining whether the compensation paid to or claimed by an owner is reasonable, the total of all benefits and remuneration such as travel allowance or key-man insurance, regardless of the form, will be considered. The Department has established the 75th percentile ranking of average compensation paid, in all facilities by job category, as being reasonable.

(7) Accrued compensation of an owner, if not paid within 75 days after the end of the Nursing Facility Financial Statement reporting period, may not be included as an allowable expense.

(8) An owner must not be compensated for services in excess of 40 hours in one week. This rule applies even if an owner may provide services in more than one area.

(9) The requirement that the function be necessary means that had the owner not rendered the services, the institution would have had to employ another person to perform them. The services must be pertinent to the operation and sound conduct of the institution.

(10) Compensation paid to an employee who is an immediate relative of the owner of the facility is also reviewable under the test of reasonableness. For this purpose, the following persons are considered "immediate relatives": Husband and wife; natural parent, child and sibling; adopted

child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; and grandparent and grandchild, uncle, aunt, nephew, niece, and cousin.

(11) Where an owner provides services for more than one facility or is engaged in other occupations or business activities, allowable compensation may be adjusted to reflect an appropriate allocation of time spent in each area based on the combined total of resident days.

(12) Where an owner functions as an administrator or assistant administrator, the rules governing compensation of these positions apply, in addition to the requirements of this rule.

Stat. Auth.: ORS 414.065 & 410
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0330 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0335**
**Related Party Transactions**

(1) Costs applicable to services and supplies furnished to a provider by organizations related to the provider by common ownership or control are allowable at the lower of cost excluding profits and markups to the related party or charge to the facility. Such costs are allowable to the extent that they relate to resident care, are reasonable, ordinary, and necessary, and are not in excess of those costs incurred by a prudent cost-conscious buyer. Documentation of costs to related parties (including those identified in OAR 411-070-0330(10) must be made available at time of audit. If documentation is not available, such payments to or for the benefit of the related organization will be non-allowable costs.

(2) An exception is provided to the general rule in section (1) of this rule applicable to related organizations. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of the Department:

(a) That the supplying organization is a separate legal entity; and

(b) That a substantial part of the supplying organization's business activity, of the type carried on with the provider, is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market. Prices paid by the provider may not be in excess of what would be paid by a prudent cost conscious buyer.

(3) If the provider takes the position that an exception as stated in section (2) of this rule applies, then the provider must:

(a) Make available the books and records of the related organization to SPD auditors; and

(b) Maintain a receiving report signed by personnel of the nursing facility for services or supplies furnished by the related organization.

(4) Rental expense paid to related organizations for facilities may be allowable to the extent the rental does not exceed the related organization's costs of owning (e.g., depreciation, interest on a mortgage) or leasing the assets, computed in accordance with the provisions of these rules. The exception listed in section (2) of this rule does not apply to rental expense paid for facilities.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0335 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert.ef. 7-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0340**
**Chain Operations**

(1) A chain organization consists of a group of two or more health care facilities that are owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains but also chains operated by various religious and other charitable organizations.

(2) Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider central administration or other service such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program.

(3) Home office costs that are not otherwise allowable costs when incurred directly by the provider are not allowable as home office costs to be allocated to providers. Where the home office is a mere holding company and provides no services related to resident care, no costs of the home office are allowable to the providers in the chain or single facility.

(4) Where an owner receives compensation from the home office for services to the facility, the compensation is allowable only to the extent that it is related to resident care and to the extent that it is reasonable as defined under owner's compensation.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0340 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0345**
**Allocation of Home Office and Regional Office Costs**

(1) The initial step in the allocation of home office and regional office costs is direct allocation of all allowable costs directly attributable to a particular nursing facility (such as construction interest, salary where the administrator of a nursing facility in the chain is paid directly by the home office, etc.) or non-nursing facility activity.

(2) Other allowable costs must appropriately be allocated among the providers (and to any non-provider activities in which the home office or regional office may be engaged) on the basis of beds, resident days, or other bases, whichever most equitably allocates such costs. Revenues are not generally appropriate for distributing these costs. Where possible, allocation of costs are to be based on function and, consequently, the bases of allocation may appropriately be different, say for accounting costs and for personnel costs. Where the home office or regional office incurs costs for activities not related to resident care in the chain's participating providers, the allocation basis must provide for all allocation of costs such as rent, administrative salaries, other general overhead costs, organization costs, etc., that are attributable to non-resident care as well as resident care activities.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0345 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0350**
**Management Fees**

Management fees are an allowable expense if they are necessary, reasonable, non-duplicative of facility personnel and functions, and documented by a binding contract with a non-related party defining the items, services, and activities provided. If the administrator or assistant administrator are supplied as part of the contract, the rules governing their compensation in these rules apply. Documentation demonstrating that the services were actually performed is required. Management fees paid to a related organization are subject to the rules governing related parties (OAR 411-070-0335), chain operations (OAR 411-070-0340), and allocation of home office costs (OAR 411-070-0345). The allowable salary paid to the administrator and assistant administrator are included in the total facility management fee calculation. Total management fees for allowable management and supervisory services may not exceed the limits established for the administrator and the assistant administrator in OAR 411-070-0315 plus $5,000 allowable for other management fees per year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0350 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1986, f. & ef. 7-1-86; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0359**
**Allowable Costs**

(1) Allowable costs are the necessary costs incurred for the customary and normal operation of a facility, to the extent that they are reasonable and related to resident care.

(a) Accounting, Auditing, and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(b) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(c) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(d) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident care are reimbursable. The allowance for mileage reimbursement will not exceed the amount determined reasonable by the Internal Revenue Service for the period reported. Allowable out-of-state travel is restricted to Washington, Idaho and Northern California, no farther south than San Francisco. One out of

state/contiguous area trip per year for two employees will be allowed, as long as it relates to resident care.

(e) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(f) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(g) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(h) Compensation of Owners — Owner's compensation in accordance with OAR 411-070-0330 is allowable.

(i) Consultant Fees — Consultant fees are allowable provided they meet the criteria as outlined in OAR 411-070-0320, Consultants.

(j) Criminal Records Checks — Costs of criminal record checks of facility employees if mandated by federal or state law.

(k) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Lease-hold improvements may be amortized. Depreciation and amortization must be calculated on a straight line basis and prorated over the estimated useful life of the asset. Effective 07/01/2003, these costs must be reported in accordance with OARs 411-070-0359(1)(B), 411-070-0365, 411-070-0375 and 411-070-0385.

(l) Education & Training — Registration, tuition and book expense associated with education and training of personnel is allowed provided it is related to resident care. The costs associated with training and certifying nurse aides are not allowable for inclusion in the annual Nursing Facility Financial Statement. These costs are reimbursed separately by the Department, per OAR 411-070-0470.

(m) Employee Benefits — Employee benefits that are made available to all employees, are for the primary use of the employees, are generally considered by the industry as reasonable and important benefits to provide for employees, are not taxable as wages, and are allowable to the extent of employer participation.

(n) Food — Food products and supplements used in food preparation are allowable.

(o) Home Offices Costs — Home office costs are allowable in accordance with OAR 411-070-0345.

(p) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident care. Self-insurance costs are allowable only when expense is actually incurred.

(q) Interest — Interest on debt related to the provision of resident care services is an allowable expense, except on or after July 1, 1984, interest expense related to that portion of the acquisition price of a long-term care facility that exceeds the depreciable basis (OAR 411-070-0375) will not be reimbursable. That portion of interest expense related to property or equipment must be reported in accordance with OAR 411-070-0359(1)(B), effective 07/01/2003.

(r) Legal Fees — Legal fees directly related to resident care are allowable. Legal fees related to non-allowable costs are not allowable. Legal fees claimed as related to resident care must be explained and listed on Schedule A. Fees related to legal and administrative actions to resolve a disagreement with the state will be allowable if the action is resolved in the provider's favor, and the judge/hearings officer does not order the State to pay the provider's legal fees.

(s) Licenses, Dues, and Subscriptions — Fees for facility licenses, dues in professional associations, and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff professional use are allowable.

(t) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(u) Management Fees — Management fees are allowable provided they meet the criteria for Rule 411-070-0350, Management Fees.

(v) Postage and Freight — Postage expense is considered an office supply cost. Freight will be posted to the same account as the item purchased.

(w) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(x) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident care and the sound conduct and operation of the facility.

(y) Rent or Lease Payments — Payments for the lease or rental of land, buildings, and equipment are to be reported. Payments for lease agreements entered into with a related party are limited to the lower of actual costs or the lease payments. These costs must be reported in accordance with OAR 411-070-0359(1)(B), effective 07/01/2003.

(z) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident care.

(aa) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident care activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, will be allowable.

(bb) Supplies — Cost of supplies used in resident care or providing services related to resident care are allowable.

(cc) Taxes — Property taxes on assets used in rendering resident care are allowable. Long Term Care Facility taxes paid on patient days are allowable, effective 07/01/2003.

(dd) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provisions are allowable.

(ee) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

(2) Exceptions to the items listed in section (1) of this rule must be approved in writing to be allowable. Exceptions will not be granted for the following items:

(a) Amortization of non-competitive agreement;

(b) Good will;

(c) Federal and other governmental income taxes;

(d) Penalties and fines;

(e) Costs of services and items otherwise reimbursable through the Office of Medical Assistance Programs, other third party payors (see OAR 411-070-0359(3)), or the resident's personal funds;

(f) The cost related to the functioning of Corporate Boards of Directors;

(g) Advertising for purposes of soliciting potential residents, except for listings in the yellow pages (see OAR 411-070-0359(1)(q));

(h) The cost of salaries and supplies devoted to religious activities; or

(i) Gifts and contributions.

(3) Third Party Payors. The purpose of this section is to assure that facilities are not paid twice, once through the Medicaid all-inclusive rate and again through a third party payor, for providing a service. This section includes both allowed and non-allowed costs.

(a) Facilities must bill third party payors for nursing facility services whenever payment from a third party payor is or may be available. Examples of such payors are Medicare, Veterans Administration, insurance companies or a private resident when the items are not included in the basic rate.

(b) The Department will provide and update a summary listing of those items that may be billed to Medicare Part B for eligible residents. The costs for these items are not allowable for inclusion in the Nursing Facility Financial Statement for the purpose of establishing total facility per day costs.

(c) For Medicaid residents who are not Medicare Part B eligible, the costs of the items on the list provided by the Department per section (3)(b) of this rule will be used to establish an add-on to the costs per resident day not to exceed the maximum direct care ceiling. These costs will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be added to the facility's per resident day direct care cost.

(d) Revenues received from third party payors, on behalf of Medicaid residents, for items other than those on the Medicare Part B list must be reported on the Nursing Facility Financial Statement. These revenues will be divided by the basic rate and the pediatric rate total Medicaid days and the resultant amount will be used to reduce the facility's per resident day direct care costs.

(e) Facilities must submit as an attachment to their Nursing Facility Financial Statement a list showing name, case number, and total dollars expended or other allocation methodology approved in advance by the Department for the listed Medicare Part B eligible items per client for Medicaid residents not eligible for Medicare or other third party payments. Facilities may elect to use an allocation method to determine the dollars expended as long as the Department approves of the method thirty days in advance of the facility's fiscal year end. The Department will approve or reject the allocation method in writing within 30 days from the receipt of the facility's request for approval. The Department's approval of the allocation method continues from year to year unless notified in writing by the Department. Once an allocation method is approved, other facilities may use this method by notifying the Department of their intent to adopt this method thirty days in advance of the facility's fiscal year end. This attachment will be required for all reporting periods with an ending date after December 31, 1992.

(f) Failure to bill or collect from third party payors whenever appropriate will not cause these expenses to be considered allowable.

(g) Therapies provided by facility employees are allowable or not allowable as indicated below:

(A) Therapy expenses for non-Medicare eligible Medicaid residents may be included in the calculation in subsection (3)(c) of this rule.

(B) The facility must establish a methodology that clearly indicates the approach taken to identify these allowable costs. This allocation method must be approved by the Department as described in subsection (3)(e) of this rule.

(C) The portion of the therapist(s) costs that will be allowed in computing the base direct care rate includes:

(i) Therapies provided to Medicare Part B eligible residents that are not reimbursed by Medicare because the person's condition is no longer improving; and

(ii) Other services performed but not required by physician orders.

(D) The following categories of therapy services are not allowable except as otherwise allowed under section (3) of this rule:

(i) Medicare Part A or Part B reimbursed services for Medicaid and other clients;

(ii) Privately reimbursed services, including insurance;

(iii) Services reimbursed by the Veterans Administration;

(iv) Services to non-Medicare eligible Medicaid residents except to the extent otherwise allowed under section (3) of this rule; and

(v) Services reimbursed by any third party.

(h) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355) and are non-allowable on the Nursing Facility Financial Statement.

(i) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or the Office of Medical Assistance Programs (OAR 411-070-0355), are non-allowable on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070, 736, 21, OL 2003
Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 4-1992, f. & cert. ef. 6-24-92; SSD 13-1992, f. 12-31-92, cert. ef. 1-1-93; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0365**
**Capital Assets**

(1) The following costs must be capitalized and depreciated: Expenses for depreciable assets with historical cost in excess of $1,000 per unit, or in aggregate, and a useful life greater than one year from the date of purchase.

(2) Repair costs in excess of $1,000 on equipment or buildings must be capitalized.

(3) The provider must maintain schedules of capital assets and depreciation, on a straight line basis, to document amounts on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0360 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0370**
**Depreciable Assets**

(1) Tangible assets of the following types in which a provider has an economic interest through ownership are subject to depreciation:

(a) Buildings — The basic structure or shell and additions thereto;

(b) Building Fixed Equipment — Attachments to buildings, such as wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(A) Affixed to the building and not subject to transfer;

(B) A fairly long life but shorter than the life of the building to which affixed.

(c) Movable Equipment — Such items as beds, wheelchairs, desks, vehicles, and other depreciable items. The general characteristics of these equipment are:

(A) Capable of being moved;

(B) Subject to control and meeting the definition of a capital asset.

(d) Land Improvements — Such items as paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, walls, etc. where replacement is the responsibility of the provider;

(e) Leasehold Improvements — Betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

(2) Land is not Depreciable. The cost of land includes the cost of such items as off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a non-depreciable nature, and the cost of curbs and side walks, replacement of which is not the responsibility of the provider.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0365 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0375**
**Depreciation Basis**

(1) Purchase of a Nursing Home:

(a) New Facility — The depreciation basis of a new facility must be the historical cost of building the facility, including preparation for use, or the purchase price from an unrelated organization not to exceed the fair market value, including preparation for use, less salvage value;

(b) Ongoing Facility — The depreciation basis of the purchase of an ongoing facility from an unrelated organization is limited to the lower of the following:

(A) The allowable acquisition cost of such asset to the first owner of record on or after July 18, 1984; or

(B) The acquisition cost of such asset to the new owner.

(c) To properly provide for costs or valuations of fixed assets, an appraisal by an appraisal expert will be required if the provider has no historical cost records, or has incomplete records of depreciable fixed assets, or purchases a facility without designation of purchase price for the classification of assets acquired. The appraisal is subject to the approval of the Department. In any case, the Department may require such an appraisal to establish the fair market value of the provider assets;

(d) If the purchase is from a related organization, the cost basis is the lower of the cost basis of the related organization or the cost basis as determined in subsections (b) and (c) of this section, less depreciation as determined by the provisions of these rules.

(2) The depreciation basis of other assets must be the historical cost to the provider from an unrelated organization plus set-up costs, less salvage value. In the case of a trade-in, the historical cost will consist of the sum of the book value of the trade-in plus the cash paid. In a case where the asset is purchased from a related organization, the depreciation basis must not exceed the asset's book value to the related organization as determined under the provisions of this guide.

(3) The depreciation basis of donated assets, defined as an asset acquired without making any payment for it in the form of cash, property, or services, must be the lessor of:

(a) Fair market value at the date of donation adequately documented in the provider's records or by appraisal by an appraisal expert, less salvage value; or

(b) If from a related organization, the depreciation basis must be the lesser of:

(A) Fair market value; or

(B) The depreciation basis the related party had or would have had for the asset under the program.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0370 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1984(Temp), f. 11-30-84, ef. 12-1-84; SSD 2-1985, f. & ef. 3-5-85; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0385**
**Depreciation Lives**

(1) The provider must use the "**Estimated Useful Lives of Depreciable Hospital Assets**" Revised 2004 guidelines for asset lives when computing depreciation.

(2) For assets not covered by the guidelines and with costs of more than $1,000 per unit, or in aggregate, the lives established by the provider are subject to approval by the Department.

(3) Depreciation and amortization schedules must be maintained.

(4) Depreciation expense is not allowed on land.

(5) Depreciation and amortization must be calculated on a straight line basis and prorated over the estimated useful life of the asset.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070

Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0380 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0400**
**Equity**

Equity is not an allowable expense for reimbursement but must be reported. Equity capital is the net worth of the provider (owner's equity in the net assets as determined under these rules), adjusted for those assets and liabilities that are not related to the provision of resident care:

(1) Generally accepted accounting principles are to be used unless otherwise specified in these rules for computing owner's equity.

(2) Assets and liabilities not related to providing resident care are not includable in the provider's equity capital.

(3) Loans from owners or related entities are considered as invested equity capital of the provider.

(4) Owner's equity in assets leased from related entities is includable in the equity capital of a proprietary provider.

(5) Goodwill is not includable as part of owner's equity.

(6) Invested funds that are diverted to income producing activities that are not resident related for more than six months will not be included as part of owner's equity.

(7) Amounts deposited in a funded depreciation account and the earnings on deposits are not included in equity capital. Interest earned on these funds is not offset against interest expense.

(8) Land, buildings, and other assets acquired in anticipation of expansion are not includable in equity capital. Construction-in-process and liabilities related to such construction are not includable in equity capital.

(9) Prepaid premiums on life insurance carried by a provider on officers and key employees, where the provider is designated as the beneficiary, are not included when computing equity capital.

(10) The costs of noncompetitive agreements are not includable in equity capital.

(11) The amount deposited and the earnings on self-insurance reserve funds are not includable in equity capital.

(12) When an asset is totally or partially destroyed by a casualty, the unrecovered loss is not included in equity capital.

(13) Working capital, defined as the difference between current assets and current liabilities, must be adjusted by any amount considered to be excessive for the necessary and proper operation of resident care activities. The excessive amount will not be included in equity capital.

(14) The cash surrender value of insurance is not includable in equity capital.

(15) Imputed salaries for proprietors will be offset in computing the equity capital.

(16) Any portion of an acquisition cost, incurred on or after July 18, 1984, that exceeds the depreciable basis is not includable in the owner's equity calculation.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0395 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 2-1985, f. & ef. 3-5-85; SSD 10-1986, f. & ef. 7-1-86; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0415**
**Offset Income**

(1) Income is offset against expenses unless specifically excluded in section (2) of this rule. If an adjustment is for a revenue producing activity representing a non-allowable cost, the revenue must be offset against the appropriate expense if the revenue is less than 2% of the total provider expense (sum of cost areas). Where the revenue is greater than 2% of the total provider expense (sum of cost areas), costs must be allocated to this area as described in OAR 411-070-0430, Allocation Methods.

(2) Income items that must not be offset are:

(a) Ancillary income and charges for routine services or supplies that are included in the all inclusive rate but charged to other residents (except as required in OAR 411-070-0359(3));

(b) Grants, unless designated for paying a specific operating cost; and

(c) Donations, unless designated for paying a specific operating cost.

(3)(a) Revenue received for pediatric residents will be offset against expenses. These revenues will not be subject to the 2% limitation established in section (1) of this rule.

(b) The revenue will be offset against cost centers in the same ratio as reported by the facility in accordance with OAR 411-070-0452.

(4) Mental Health revenues received from local governments to provide extra care to Medicaid residents must be reported in SPD Account 819, directly offset against the related expense and explained on Schedule A.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0410 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 5-1985, f. & ef. 5-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0420**
**Base Year Cost Finding**

(1) The provider must report its gross costs and must make reclassifications and adjustments to costs as provided in these rules. This process will determine net allowable costs on the Nursing Facility Financial Statement that includes a uniform chart of accounts provided by the Department. The gross costs and revenues must agree with the statement of earnings and expenses or profit and loss statement of the provider. Revenues are to be reported in the same manner as costs on the Nursing Facility Financial Statement. The provider must also use the balance sheet provided to report its gross assets, gross liabilities, and gross equity, make reclassifications and adjustments as provided by these rules.

(2) The per diem costs of care must be used to determine each provider's allowable per diem costs and must be effective for the same period as covered by the Nursing Facility Financial Statement.

(3) The per diem costs of each facility will be used to establish the basic rate on July 1 of each odd numbered year.

(4) Costs, revenues, assets, liabilities, and owner's equity attributable from a home office or regional office to a provider under OAR 411-070-0345 will be included on the Nursing Facility Financial Statement in the Home Office column. The home office financial data must be reconcilable to the home office financial statements and records.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0415 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 4-1989, f. & cert. ef. 4-18-89; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 10-1992, f. 10-30-92, cert. ef. 11-1-92; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0425**
**Resident Days**

The provider must keep census records on all residents.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0420 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 5-1985, f. & ef. 5-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0428**
**Cost Center Expenses**

(1) For purposes of establishment of payment rates under the system in effect on June 30, 1997, allowable expenses are divided into two categories for rate setting purposes. The categories are composed of the following accounts:

(a) Indirect Costs:
(A) Property Costs:
(i) 452 — Interest;
(ii) 453 — Rent — Building;
(iii) 454 — Lease — Equipment;
(iv) 455 — Depreciation — Building;
(v) 456 — Amortization — Land Improvement;
(vi) 457 — Depreciation — Building Improvement;
(vii) 458 — Depreciation — Equipment;
(viii) 459 — Amortization — Leasehold Improvement;
(ix) 461 — Miscellaneous Property.
(B) Administrative and General:
(i) 411 — Administrator;
(ii) 412 — Assistant Administrator;
(iii) 415 — Other Administrative Salaries;
(iv) 443B — Employee Benefits and Taxes;
(v) 425 — Office Supplies;
(vi) 426 — Communications;
(vii) 427 — Travel;

(viii) 429 — Advertising — Help Wanted;
(ix) 431 — Public Relations;
(x) 432 — Licenses — Dues — Subscriptions;
(xi) 433 — Accounting and Related Data Proc.;
(xii) 435 — Legal Fees;
(xiii) 450 — Long Term Care Facility Tax, effective 07/01/2004.
(xiii) 436 — Management Fees;
(xiv) 441 — Bad Debts;
(xv) 439 — Other Interest Expense;
(xvi) 445B — Education and Training;
(xvii) 446 — Contributions;
(xviii) 447 — Donated Services;
(xix) 448 — Freight;
(xx) 449 — Miscellaneous.
(C) Other Operating Support:
(i) 443D, E, F, G — Employees Benefits and Taxes;
(ii) 451 — Real and Personal Property Taxes;
(iii) 460 — Insurance;
(iv) 511 — Compensation — Repair and Maintenance;
(v) 512 — Heat and Electricity;
(vi) 515 — Water — Sewer — Garbage;
(vii) 516 — Maintenance Supplies and Service;
(viii) 521 — Compensation — Dietary;
(ix) 527, 537, 547 — Purchased Services;
(x) 528 — Dietary Supplies;
(xi) 531 — Compensation — Laundry;
(xii) 532 — Linen and Bedding;
(xiii) 538 — Laundry Supplies;
(xiv) 541 — Compensation -- Housekeeping;
(xv) 548 — Housekeeping Supplies;
(xvi) 519, 529, 539, 549 — Miscellaneous.
(b) Direct Costs:
(A) Food — 522 — Food;
(B) Direct Care Compensation:
(i) 443H — Employee Benefits and Taxes;
(ii) 601 — Compensation — Director of Nursing Services;
(iii) 611 — Compensation — Registered Nurses;
(iv) 621 — Compensation — LPNs;
(v) 631 — Compensation — Other Nursing;
(vi) 701 — Compensation — Physician;
(vii) 711 — Compensation — Pharmacy;
(viii) 721 — Compensation — Laboratory;
(ix) 731 — Compensation — X—Ray;
(x) 741 — Compensation — Activities and Recreation;
(xi) 751 — Compensation — Rehabilitation;
(xii) 761 — Compensation — Religious;
(xiii) 771 — Compensation — Other Services;
(xiv) 781 — Compensation — Other;
(xv) 787 — Purchased Services.
(C) Direct Care Supplies:
(i) 445I — Education and Training;
(ii) 625 — Medical Record Supplies;
(iii) 629 — Nursing Supplies;
(iv) 639 — Oxygen Supplies;
(v) 719 — Physician Fees;
(vi) 723 — Drugs and Pharmaceuticals — NH;
(vii) 728 — Drugs and Pharmaceuticals — Presc.;
(viii) 729 — Pharmacy Supplies;
(ix) 739 — Laboratory Supplies and Fees;
(x) 749 — X—Ray Supplies and Fees;
(xi) 759 — Activity and Recreational Supplies;
(xii) 769 — Rehabilitation Supplies and Fees;
(xiii) 782 — Utilization Review;
(xiv) 789 — Consultant Fees;
(xv) 799 — Miscellaneous.

(2) The allocation methods, identified in OAR 411-070-0430, will be used where allocation among separate levels of payment or activities is appropriate.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: SSD 10-1986, f. & ef. 7-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0430**
**Allocation Methods**

(1) The provider must use the allocation methods designated on the Nursing Facility Financial Statement: COST — ALLOCATION METHOD
(a) Property — Resident Days or Square Footage;
(b) Administrative and General — Resident Days;
(c) Other Operating Support — Resident Days;
(d) Food — Resident Days;
(e) Direct Care Compensation — Actual Cost or Resident Days;
(f) Direct Care Supplies — Actual Cost or Resident Days.

(2) Where costs are related to non-nursing facility activities, the provider must use an appropriate allocation method to reasonably and accurately allocate these costs (see OAR 411-070-0415). For residential care facility clients, the facility will use resident days for all areas except Direct Care Compensation and Direct Care Supplies and Property. The Direct Care Compensation and Direct Care Supplies allocation will be actual costs incurred. The Property allocation method may be based on either resident days or on square footage and must be designated on the Nursing Facility Financial Statement.

(3) Square footage will be used to allocate property costs to pediatric units as defined in OAR 411-070-0452.

(4) Actual payroll for the Pediatric Unit will be used as the basis for allocating Direct Care Compensation to pediatric units.

(5) If the Department determines that for a provider it is more reasonable and accurate to use a different allocation method than specified in sections (1) and (2) of this Rule, then such allocation method must be used.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0425 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0435**
**Appeals**

(1) The Department will send letters to a provider that inform the provider of any changes made by the Department from the provider Nursing Facility Financial Statement. A provider is entitled to an informal conference or a contested case hearing pursuant to ORS 183.413 -183.470, as described in sections (2) or (3) of this rule, to protest the change(s).

(2) The provider may request an informal conference, by notifying the Department in writing within 30 days of receipt of the letter from the Department that informs the provider of the change(s). The request for an informal conference must be postmarked within the 30-day limit and must state, specifically, the reason(s) for requesting the conference. At the informal conference, the provider may submit documentation and explain the basis for the provider's protest. Following the informal conference, the Department will notify the provider of its decision by mail. No judicial review is available following a decision from an informal conference. If the provider is not satisfied with the decision, the provider may request a contested case hearing pursuant to ORS 183.413-183.470 by notifying the Department in writing of the request for the hearing within 10 working days of the date of the decision letter from the informal conference. If a provider is not satisfied with the results from the contested case hearing, the provider may petition for judicial review pursuant to ORS 183.480-183.497.

(3) As an alternative to section (2) of this rule, the provider may request a contested case hearing pursuant to ORS 183.413–183.470 by notifying the Department in writing that a contested case hearing is requested within 30 days of receipt of the letter from the Department that informs the provider of the change(s). The request for the contested case hearing must be postmarked within the 30-day limit and must state, specifically, the reason(s) for requesting the hearing. If a provider is not satisfied with the results from the contested case hearing, the provider may petition for judicial review pursuant to ORS 183.480 - 183.497.

(4) If no request for an informal conference or contested case hearing is made within the specified time period, the most recent decision from the Department will automatically become a final order.

(5) A provider may request documentation supporting the change(s) from the Department; however, a request for documentation does not toll the time period within which an informal conference or contested case must be requested. The Department will produce these work papers within 30 days of receipt for a written request.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0430 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert.

ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0452**
**Pediatric Nursing Facilities**

(1) Pediatric Nursing Facility:

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21;

(b) A nursing facility that meets the criteria of subsection (1)(a) of this rule will be reimbursed as follows:

(A) It will be paid a per diem rate of $188.87 commencing on July 1, 1999. This is a prospective rate and is not subject to settlement;

(B) The per diem rate will be calculated as follows: The per resident day total cost from the desk reviewed or the field audited cost report for all pediatric nursing facilities are summed and divided by the total pediatric resident days. Once the weighted average cost is determined, the rebase relationship percentage (90.18%), determined in the implementation of the flat rate system in 1997, is applied to set the new rate. Before computing the weighted average cost, the facility-specific total costs are inflated by a change in DRI Index to bring the cost to the rebase year.

(C) On July 1 of each non-rebase year after 1999, the pediatric rate will be increased by the annual change in the DRI Index, as measured in the previous 4th quarter. Beginning in 2001 rate rebasing will occur in alternate years. Rebasing of pediatric nursing facility rates will be calculated using the method described in paragraph (1)(b)(B) of this rule.

(c) Even though pediatric facilities will be reimbursed in accordance with subsection (1)(b) of this rule, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

(2) Licensed Nursing Facility With a Self-Contained Pediatric Unit:

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that cares for pediatric residents (residents under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the care of pediatric residents and alternate uses must not interfere with the primary use;

(b) A nursing facility that meets the criteria of subsection (2)(a) of this rule will be reimbursed for its pediatric residents cared for in the pediatric unit at the per diem rate described in subsection (1)(b) of this rule commencing on July 1, 1999;

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements, and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96;SDSD 10-1999, f.11-30-99, cert.ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0462**
**Long-Term Care Upper Limit**

(1) The Department will establish upper limit adjustment payments to each non-State operated governmental nursing facility.

(2) The upper limit adjustment must be paid at least annually for each State Fiscal Year. The payment to each facility is in proportion to the facility's Medicaid days during the cost reporting period that ended immediately preceding the State Fiscal Year, relative to the sum of all Medicaid days during the same period for facilities eligible and participating in the adjustment. The total funds for the adjustment are established each State Fiscal Year subject to the anticipated level of nursing facility payments within the Year and to the payment limits of 42 CFR 447.272.

Stat. Auth.: ORS 410.070 & 42 CFR 447.272
Stats. Implemented: ORS 410.070 & 42 CFR 447.272
Hist.: SDSD 6-1999, f. 5-26-99, cert. ef. 6-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0464**
**Final Report**

(1) FINAL REPORTS. When a provider agreement is terminated for any reason, the provider must submit final reports in accordance with OAR 411-070-0300. Full payment for the month during which the provider agreement is terminated will not be made by the Department until final reports are received and desk reviewed. The Department will initially pay the provider the excess by which the payment for the month in which the provider agreement is terminated exceeds the maximum amount the Department can penalize a provider under OAR 411-070-0300(2)(c). The remainder of the payment must be made by the Department after receipt and desk review of final reports.

(2) Settlement rates based on Nursing Facility Financial Statements submitted for the period that ends June 30, 1997 must be calculated as defined by these rules as they existed on June 30, 1997.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0465**
**Uniform Chart of Accounts**

The following account definitions will be used to classify the dollar amounts on the Nursing Facility Financial Statement (NFFS). The account balance is to be reported in whole dollars under the facility gross column on the NFFS and referenced by the providers' chart of accounts number. It is the provider's responsibility to ensure that the balances reported reconcile to their fiscal year statements and general ledger balances with any differences explained on Schedule A to Form SPD 35 or SPD 35A. The provider is responsible for making adjustments to these accounts for non-allowable items and amounts using the adjustment column to arrive at the net allowable balance. Each adjustment is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(1) Current Assets — The following accounts include cash and other assets reasonably expected to be realized in cash or sold, or consumed during the normal nursing facility operating cycle, or within one year when the operating cycle is less than one year.

(a) 101 — Cash on Hand — This account balance represents the amount of cash on hand for petty cash funds.

(b) 102 — Cash in Bank — This account balance represents the amount in a bank checking account.

(c) 103 — Cash in Savings — This account balance represents the amount accumulated in a savings account.

(d) 104 — Resident Cash — This account balance represents the amount of resident funds entrusted to the provider and held as cash on hand in the bank.

(e) 109 — Accounts Receivable — This account balance represents the amounts due from or due on behalf of all residents at the end of the fiscal period being reported.

(f) 110 — Notes Receivable — This account balance represents the current balance of amounts owed to the facility (payee) that are covered by a written promise to pay at a specified time, and is signed and dated by the maker.

(g) 111 — Allowance for Doubtful Accounts — This account balance represents amounts owed to the facility and estimated to be uncollectible.

(h) 115 — Employee Advances — This account balance represents amounts paid in advance to employees for salaries or wages that will be liquidated in the next payroll cycle following the closing date of the financial statement.

(i) 120 — Inventory Nursing Supplies — This account balance represents the cost value of supplies on hand at the end of the reporting period, to be used in providing nursing care.

(j) 122 — Inventory Food — This account represents the cost value of food that is on hand at the end of the reporting period.

(k) 124 — Inventory — Other Supplies — This account balance represents the cost value of general operating supplies, such as laundry, housekeeping and maintenance supplies that are on hand at the end of the reporting period.

(l) 125 — Prepaid Expenses — This account balance represents the cost value of paid expenses not yet incurred covering regularly recurring costs of operation like rent, interest, and insurance.

(m) 149 — Other Current Assets — This account balance comprises all current assets not identified above. Each item in this account, including short-term savings certificates, must be explained on Schedule A to Form SPD 35 or SPD 35A.

(2) Non-Current Assets — The balances of the following accounts represent Assets not recognized as current.

(a) 151 — Land — This account balance represents the acquisition cost and other costs, like legal fees and excavation costs that are incurred to put the land in condition for its intended use.

(b) 153 — Building(s) — This account balance represents the acquisition cost of permanent structures and property owned by the provider used to house residents. It includes the purchase or contract price of all

permanent buildings and fixed equipment attached to and forming a permanent part of the building(s).

(c) 154 — Allowance for Depreciation — This account balance represents the accumulation of provisions made to record the expiration in the building(s) life attributable to wear and tear through use, lapse of time, obsolescence, inadequacy or other physical or functional cause. The straight line method is the only recognized depreciation method for cost reimbursement.

(d) 155 — Land Improvements — This account balance represents the acquisition cost of permanent improvements, other than buildings that add value to the land. It includes the purchase or contract price.

(e) 156 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(f) 157 — Building Improvements — This account balance represents the acquisition cost of additions or improvements that either add value to or increase the usefulness of the building(s). It includes the purchase or contract price.

(g) 158 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(h) 161 — Equipment — This account balance represents the acquisition cost of tangible property of a permanent nature, other than land, building(s) or improvements, used to carry on the nursing facility operations. It includes the purchase or contract price.

(i) 162 — Allowance for Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(j) 165 — Leasehold Improvements — This account balance represents the acquisition cost of any long-lived improvements or additions to the property being leased that will belong to the owner (lessor) at the expiration of the lease.

(k) 166 — Allowance for Amortization — This account is of the same nature and is used in the same manner as Account 154 except the cost of improvements or additions will be amortized over the lesser of the expected benefit life or the remaining life of the lease.

(l) 181 — Investments — This account balance represents the value of assets unrelated to the nursing facility operation. The detail of this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(m) 187 — Goodwill — This account balance represents the value of goodwill identified with the purchase of assets.

(n) 199 — Other — Non-Current Assets — This account balance comprises all non-current assets not identified above. Each item in this account, including long-term savings certificates, must be explained on Schedule A to Form SPD 35 or SPD 35A.

(3) Current Liabilities — The balances of the following accounts are considered current liabilities.

(a) 201 — Accounts Payable — This account balance represents the liabilities for goods and services received but unpaid at the end of the reporting period.

(b) 202 — Accounts Payable — Resident Account — This account balance represents the amount owed to residents for the cash entrusted to the facility in Account 104.

(c) 203 — Notes Payable — Other — This account balance represents the current portion of the amount owed by the facility that is covered by a written promise to pay at a specified time and is signed and dated by the facility (maker).

(d) 204 — Notes Payable to Owner — This account balance represents notes payable to the owner(s) and is of the same nature and is used in the same manner as Account 203.

(e) 205 — Accrued Interest Payable — This account balance represents the liabilities for interest accrued at the end of the reporting period but not payable until a later date.

(f) 207 — Other Accrued Payable — This account is of the same accrual nature and is used in the same manner as Account 205 and is to be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(g) 208 — Payroll Payable — This account balance is the accrued payroll, less withheld payroll taxes and other deductions, payable to employees at the end of the reporting period.

(h) 217 — Payroll Tax Payable — This account balance is the employer's share of accrued payroll taxes payable at the end of the reporting period.

(i) 218 — Payroll Deductions Payable — This account balance is the employee's share of accrued payroll taxes withheld from the employer's gross pay payable at the end of the reporting period.

(j) 219 — Deferred Income — This account balance represents the liability for revenue collected in advance.

(k) 229 — Other Current Liabilities — This account balance comprises all current liabilities not identified above. The nature and purpose of amounts included in this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(4) Long-Term Liabilities — The balances of the following accounts are considered long-term liabilities.

(a) 231 — Long-Term Mortgage Payable — This account balance represents the amount owed by the facility that is secured by a mortgage or other contractual agreement providing for conveyance of property at a future date.

(b) 233 — Long-Term Notes Payable — This account is of the same nature and is used in the same manner as Account 203 except the liability extends beyond one year.

(c) 234 — Long-Term Notes Payable Owner — This account is of the same nature and is used in the same manner as Account 204 except the liability extends beyond one year.

(d) 249 — Other Long-Term Liabilities — This account comprises all long-term liabilities not identified above. The amount and nature of items in this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(5) Net Worth — The balances of the following accounts represent the amount by which the facility's assets exceed its liabilities.

(a) 251 — Capital Stock — This account balance represents the amount of cash or property received in exchange for the corporation's capital stock.

(b) 255 — Retained Earnings — This account balance represents the amount of capital resulting from retention of corporate earnings.

(c) 261 — Capital Account — This account balance represents the book value of the proprietor or partner(s) equity in the facility.

(d) 265 — Drawing Account — This account balance represents the owners withdrawals of funds during the reporting period that were not paid as part of the payroll.

(e) 290 — Net Profit (Loss) — This account balance is the facility's revenue minus expenses for the reporting period.

(6) Resident Revenue — These accounts include revenue for routine service charges exclusive of ancillary charges. The intent is for revenue to be reported in gross, exclusive of any cost offsets. Routine service charges are to be reported in the following accounts:

(a) For cost reports filed for periods that end prior to July 1, 1997:

(A) 301A — Private Resident — NF Payment Category 4 — This account includes revenue for NF Payment Category 4 routine private resident care.

(B) 301B — Private Resident — NF Payment Category 2 — This account includes revenue for NF Payment Category 2 routine private resident care.

(C) 301C — Private Resident — Other — This account includes revenue for other than private NF Payment Category 4 or 2 residents and is to be explained on Schedule A to Form SPD 35 or SPD 35A. Private heavy cost resident revenue would be included in this account.

(D) 302A — Medicaid Resident — NF Payment Category 4 — This account includes revenue from all sources for NF Payment Category 4 Medicaid residents.

(E) 302B — Medicaid Resident — NF Payment Category 5 — This account includes revenue from all sources for NF Payment Category 5 Medicaid Residents.

(F) 302C — Medicaid Resident — NF Payment Category 2 — This account includes revenue from all sources for NF Payment Category 2 Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 3 — This account includes revenue from all sources for NF Payment Category 3 Medicaid residents.

(H) 302E — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(I) 302F — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1 through 5 and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(J) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(K) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(b) For cost reports filed for periods that end on and after July 1, 1997:

(A) 301A — Private Resident — Complex Medical Needs — This account includes revenue for Complex Medical Needs routine private resident care. These are private pay residents whose medical needs correspond to the Medicaid complex medical needs criteria.

(B) 301B — Private Resident — Basic Rate — This account includes revenue for basic rate routine private resident care. These are private pay residents whose medical needs correspond to the Medicaid basic rate needs criteria.

(C) 301C — Private Resident — Other — This account includes revenue for other than private Complex Medical Needs and Basic Rate residents and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(D) 302A — Medicaid Resident — Complex Medical Needs — This account includes revenue from all sources for Complex Medical Needs Medicaid residents.

(E) 302B — Medicaid Resident — Pediatric — This account includes revenue from all sources for Pediatric Medicaid Residents.

(F) 302C — Medicaid Resident — Basic Rate — This account includes revenue from all sources for Basic Rate Medicaid residents.

(G) 302D — Medicaid Resident — NF Payment Category 1 — This account includes revenue from all sources for NF Payment Category 1 Medicaid residents.

(H) 302E — Medicaid — Other — This account includes revenue for Medicaid resident care from all sources other than NF Payment Categories 1, Basic Rate, Complex Medical Needs and Pediatric and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(I) 303 — Medicare Resident — This account includes revenue from all sources for Medicare resident care.

(J) 304 — Other Governmental Resident — This account includes revenue from all sources for governmental program resident care other than Medicaid or Medicare and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(7) Ancillary Revenue — These accounts include revenue for professional and non-professional services and supplies not included in section (6) of this rule. Revenue other than that described above must be reported as gross revenue and related expenses to be reported in the appropriate expense accounts. Ancillary service charges are to be reported in the following accounts:

(a) 323 — Nursing Supplies — This account includes revenue from the sale of nursing supplies or services.

(b) 328 — Prescription Drugs — This account includes revenue from the sale of prescription drugs.

(c) 329 — Laboratory — This account includes revenue from laboratory services provided.

(d) 330 — Physical Therapy — This account includes revenue from physical therapy services provided.

(e) 331 — Speech Therapy — This account includes revenue from speech therapy services.

(f) 332 — Occupational Therapy — This account includes revenue from occupational therapy services.

(g) 341 — X-Ray — This account includes revenue from X-Ray services.

(h) 351 — Personal Purchases — This account includes revenue from residents for personal purchases.

(i) 361 — Barber and Beauty — This account includes revenue from residents for barber and beautician services.

(j) 399 — Other Ancillary — Items and amounts included in this account must be described on Schedule A to Form SPD 35 or SPD 35A.

(8) Other Revenue — These accounts include other revenue, exclusive of resident and ancillary revenue. The intent is for revenue to be reported in gross and the related expenses reported in the appropriate expense accounts. Other revenues are classified as follows:

(a) 803 — Grants — This account includes revenue amounts received in the reporting period from public and privately funded grants and awards.

(b) 805 — Donations — This account includes donations in the form of cash or goods and services received during the reporting period.

(c) 811 — Interest — This account includes revenue from any interest bearing note, bank account, or certificate.

(d) 813 — Staff & Guest Food Sales — This account includes revenue from facility food sales to individuals other than residents of the facility.

(e) 814 — Concession Sales — This account includes revenue from vending machines or for resale items not reported in Accounts 813 and 351.

(f) 815 — Equipment Rental Income — This account includes revenue from equipment rentals.

(g) 819 — Miscellaneous Other Revenue — Items and amounts, including revenues for Nurse Aide Training and Competency Evaluation, Mental Health revenues received from local governments, and Workers Compensation refunds, included in this account are to be described on Schedule A to Form SPD 35 or SPD 35A.

(9) Property Expenses — These accounts are for reporting property expenses.

(a) 452 — Interest — This account is for reporting all interest expense except other interest expense in Account 439.

(b) 453 — Rent Building — This account is for reporting all building rent or lease expenses.

(c) 454 — Leased Equipment — This account is for reporting all equipment rental and lease expense, except for other operating support and oxygen concentrators.

(d) 455 — Depreciation — Building — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 153.

(e) 456 — Depreciation — Land Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 155.

(f) 457 — Depreciation — Building Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 157.

(g) 458 — Depreciation — Equipment — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 161.

(h) 459 — Amortization — Leasehold Improvement — This account is for reporting amortization, for the reporting period, associated with assets capitalized in Account 165 and Account 166.

(i) 461 — Miscellaneous — Property — This account is for reporting other property costs, such as amortization of organizational costs, and items of equipment less than $1,000 that are for general use.

(10) Administrative and General Expenses — These accounts report expenses for administration of the facility and the business office, and items not readily associated with other departments.

(a) 411 — Compensation — Administrator — This account is for reporting all the compensation received by the licensed administrator of the facility. Compensation includes salary, bonuses, auto, moving, travel and all other allowances paid directly or indirectly by the facility.

(b) 412 — Compensation — Assistant Administrator — This account is to be used for reporting all compensation of the individual who is identified as, and has the specific duties of, Assistant Administrator.

(c) 415 — Compensation — Other Administrative — This account is for reporting all of the compensation received by administrative, clerical, secretarial, accounting, supply and personnel.

(d) 443B — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 attributable to administrative compensation expenses.

(e) 420 — Concession Expense — This account is for reporting expenses of non-medical, non-resident care items sold to the residents and non-residents including items sold through vending machines.

(f) 422 — Funeral & Cemetery Supplies & Services — This account is for reporting all expenditures associated with funeral and cemetery supplies and services.

(g) 423 — Personal Purchase — This account is for reporting all expenditures for personal items purchased for individual residents.

(h) 425 — Office Supplies — This account is for reporting expenses of all office supplies except those chargeable to Account 625. Materials include stationery, postage, printing, bookkeeping supplies, and office supplies.

(i) 426 — Communications — This account is for reporting all telephone, telegraph service, communication, cable television fees and paging system charges.

(j) 427 — Travel — This account is for reporting all transportation costs associated with vehicles used for resident care or resident recreation, exclusive of insurance and depreciation and for reporting all other travel expenses such as lodging and meals for conferences, conventions, workshops, or training sessions.

(k) 429 — Advertising — Help Wanted — This account is for reporting all help wanted advertising expense.

(l) 430 — Advertising — Promotional — This account is for reporting all expenditures of the facility related to promotional advertising including yellow page advertising.

(m) 431 — Public Relations — This account is for reporting all expenditures related to public relations.

(n) 432 — Licenses, Dues & Subscriptions — This account is for reporting all fees for facility licenses; dues in professional associations; and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff use.

(o) 433 — Accounting & Related Data Processing — This account is for reporting all accounting, payroll, and other data and report processing expenses.

(p) 435 — Legal Fees — This account is for reporting all legal fees and expenses. Legal fees must be reported in conformance with OAR 411-070-0359(1)(t).

(q) 436 — Management Fees — This account is for reporting all management fees charged to the facility, including management salaries and benefits at the home office.

(r) 439 — Other Interest Expense — This account is for reporting interest expense not attributable to the purchase of the facility and equipment.

(s) 441 — Bad Debts — This account is for reporting the expense recorded from recognizing a certain portion of accounts receivable as uncollectible.

(t) 445C — Education & Training — This account is for reporting registration, tuition, materials, and manual costs for training the staff included in Accounts 411, 412, 415, and 433.

(u) 446 — Contributions — This account is for reporting the expense of any gift or donation.

(v) 449 — Miscellaneous — This account is for reporting general administrative operating expenses not specifically included in other general administrative operating expense accounts. Entries must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(w) 450 — Long Term Care Facility Tax, effective 07/01/2003.

(11) Other Operating Support Expenses — The following accounts are included in this category.

(a) 443D, 443E, 443F, 443G — Employee Benefits and Taxes — This account is for reporting the allocated portion of Account 443 identified with Repair and Maintenance Salaries in Account 511, dietary salaries in Account 521, laundry salaries in Account 531, and housekeeping salaries in Account 541.

(b) 451 — Real Estate & Personal Property Taxes — This account is for reporting real estate and personal property tax expenses for the facility.

(c) 460 — Insurance — This account is for reporting all insurance expenses other than employee insurance expenses reportable in Account 440, Payroll Taxes, and Account 442, Employee Benefits.

(d) 511 — Compensation — Maintenance & Repair Employees — This account is for reporting all compensation received by employee(s) responsible for providing facility repair and maintenance.

(e) 512 — Heat & Electricity — This account is for reporting all facility heating and lighting expenses.

(f) 515 — Water, Sewer and Garbage — This account is for reporting all water, sewer and garbage expenses.

(g) 516 — Maintenance Supplies & Services — This account is for reporting all expenses required for building and equipment maintenance and repairs including preventative maintenance and not capitalized. All balances in Accounts 516E, 516F, 516G, and 516I will be consolidated in Account 516D prior to submission to the Department.

(h) 521 — Compensation — Dietary Employees — This account is for reporting all compensation received by employee(s) providing dietary services.

(i) 527 — Purchased Services — This account is for reporting all non—employee services required in the dietary, laundry and housekeeping department operations including dietary consulting expenses.

(j) 528 — Dietary Supplies — This account is for reporting the expense of all supplies, dishes and utensils, and non—capitalized equipment utilized within this department, exclusive of food.

(k) 531 — Compensation — Laundry Employees — This account is for reporting all compensation received by employees responsible for providing laundry services.

(l) 532 — Linen and Bedding — This account is for reporting the expense of all linen and bedding utilized within the facility.

(m) 538 — Laundry Supplies — This account is for reporting the expense of all supplies utilized by the laundry.

(n) 541 — Housekeeping Salaries — This account is for reporting all compensation received by employees responsible for providing housekeeping services.

(o) 548 — Housekeeping Supplies — This account is for reporting the expense of all supplies utilized to provide housekeeping services.

(p) 549 — Miscellaneous — This account is for reporting other operating support expenses not specifically included in an identified account, including lease and rent expenses attributable to other operating support services. Entries must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(12) Food — 522 Food — This account is for reporting all food products and supplements used in food preparations.

(13) Direct Care Operating Expenses — These accounts include compensation, supplies and services used in providing direct resident care.

(a) Compensation

(A) 443H Employee Benefits & Taxes — This account is for reporting the allocated portion of Account 443 attributable to this area.

(B) 601 Compensation — Director of Nursing Services — This account is for reporting all compensation received by employee(s) responsible for directing the nursing services of the facility.

(C) 611 Compensation — Registered Nurses — This account is for reporting all compensation received by registered nurse employees of the facility who provide nursing care, other than the Director of Nursing Services. If a Registered Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(D) 621 Compensation — Licensed Practical Nurses — This account is for reporting all compensation received by Licensed Practical or Licensed Vocational Nurse employees of the facility who provide nursing care. If a Licensed Practical Nurse provides nursing care part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(E) 631 Compensation — Other Nursing Employees — This account is for reporting all compensation received by aides, attendants, orderlies and other non-licensed, non-professional employees who provide nursing care. If such employees provide nursing care part of the time and carry out other duties the rest of the time, these employees' compensation will be allocated to the appropriate account based on time spent on each activity.

(F) 701 Compensation — Physicians — This account is for reporting all compensation received by physicians providing resident medical care.

(G) 711 Compensation — Pharmacy Employees — This account is for reporting all compensation of licensed pharmacists and technicians employed by the facility.

(H) 721 Compensation — Laboratory Employees — This account is for reporting all compensation of pathologists and technicians employed by the facility to provide laboratory services.

(I) 731 Compensation — X-Ray Employees — This account is for reporting all compensation of radiologists and technicians employed by the facility to provide X-Ray services.

(J) 741 Compensation — Activities & Recreational Employees — This account is for reporting all compensation of employees engaged in the planning and carrying out of resident recreational activities.

(K) 742 Compensation — Social Workers — This account is for reporting all compensation of social workers and assistants employed to provide social service activities.

(L) 751 Compensation — Rehabilitation Employees — This account is for reporting all compensation of occupational and physical therapists, and technicians, and aides employed to provide resident rehabilitation activities or services. This account will be subdivided in accordance with OAR 411-070-0359(3)(g) on Schedule A to Form SPD 35 or SPD 35A.

(M) 761 Compensation — Religious Employees — This account is for reporting all compensation for individuals employed who provide religious services.

(N) 771 Compensation — Other Service Employees — This account is for reporting all compensation for ward clerks and medical records clerks employed by the facility.

(O) 781 Compensation — Other Employees — This account is for reporting all compensation for dentists, barbers, beauticians, research, and other non-identified personnel employed by the facility and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(P) 787 Purchased Services — This account is for reporting the expense attributable to employment agencies that provide part-time employees on a fee and salary basis for direct care. The expenses will be allocated to the appropriate payroll account in the adjustment column.

(b) Direct Care Supplies and Services

(A) 625 — Medical Records Supplies — This account is restricted to materials used in resident charting.

(B) 445I — Education & Training — This account is for reporting registration, tuition, and book expense associated with education and training of direct care personnel.

(C) 629 — Nursing Supplies — This account is for reporting all medical supplies consumed by this department, exclusive of oxygen, used in providing direct care.

(D) 639 — Oxygen Supplies — This account is for reporting the expense of all oxygen (gas) and concentrator rentals.

(E) 646 — Nursing Assistant (Aide) Training and Competency Evaluation — This account is for reporting all expenses associated with OAR 411-070-0470 (which excludes salaries of nurse aide trainees).

(F) 719 — Physician Fees — This account is for reporting all expenditures for physician treatment, care and evaluation of the resident.

(G) 723 — Drugs and Pharmaceuticals — Nursing Home — This account is for reporting all expenditures meeting the criteria of 411-070-0085(2)(j).

(H) 728 — Drugs & Pharmaceuticals — Prescriptions — This account is for reporting all expenditures for legend drugs and biologicals prescribed by a licensed physician and not meeting the criteria of 411-070-0090.

(I) 729 — Pharmacy Supplies — This account is for reporting the expense of all materials utilized in the facility pharmacy operation.

(J) 739 — Laboratory Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility laboratory operation and fees paid for non-employee pathologist and laboratory technician services.

(K) 749 — X-Ray Supplies & Fees — This account is for reporting the expense of all materials utilized in the facility X-Ray department and fees for non-employee radiologists and X-Ray technician services.

(L) 759 — Activities & Recreational Supplies — This account is for reporting the expense of all materials, except transportation, used in providing resident recreational activities.

(M) 769 — Rehabilitation Supplies & Fees — This account is for reporting the expense of all materials used in providing occupational and physical therapy including fees for non-employee related services. This account must be subdivided in accordance with OAR 411-070-0359(3)(I) on Schedule A to Form SPD 35 or SPD 35A.

(N) 782 — Utilization Review — This account is for reporting the expenses of all non-employee fees associated with utilization review.

(O) 789 — Consultants — This account is for reporting all expenditures for consultant fees, including travel and lodging, exclusive of dietary and management consultants and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(P) 799 — Miscellaneous — Expenses reported in this account, including supplies for barber and beauty, must be explained in detail on Schedule A to Form SPD 35 or SPD 35A. The cost of non-employee Barber and Beautician services will be reported in this account.

(14) Payroll Taxes & Employee Benefits — These accounts are for reporting payroll taxes and employee benefits.

(a) 440 — Payroll Taxes — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment, Workers Compensation and other payroll taxes not withheld from the employee's pay.

(b) 442 — Employee Benefits — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners and gifts. Established vacation, holiday and sick pay programs and child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account.

(c) 443 — Employee Benefits and Taxes — This account is for reporting the sum of Accounts 440 and 442 and is allocated to the specific subaccounts by actual cost of the payroll category, or by percentage of the payroll category amount to the total facility payroll.

(d) These costs may be allocated on a percentage basis equivalent to the payroll distribution or on an actual basis by cost center. All facility payroll taxes and employee benefits will be allocated by the same method, if actual is not used.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0460 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

**411-070-0470**

**Nursing Assistant Training and Competency Evaluation Programs Cost Reports**

(1) COST REPORT REQUIRED. Medicaid certified facilities must file a Nursing Assistant Training and Competency Evaluation Program (NATCEP) cost report (Form SDS 451) quarterly with the Department's Financial Audit Unit that meets the following standards:

(a) Due Date, Period. A NATCEP cost report is due and must be postmarked by the last day of the calendar quarter subsequent to the quarter that it covers (or postmarked the first business day after the quarter if the last day of the quarter is a Sunday or holiday). The cost report must identify all costs incurred and related revenues (not including NATCEP payments from the Department) received during the reporting period. If a facility fails to file a report postmarked as described, NATCEP reimbursement must be reduced by three percent for each business day the report is past due until received.

(b) Format and Content. A cost report must:

(A) Be submitted on a form provided by the Department;

(B) Include actual costs incurred and paid by the facility. The Department will not reimburse a facility prospectively;

(C) Include all revenue (not including NATCEP payments from the Department) received by the facility for conducting nurse aide training. All revenue must be used to offset the costs incurred and paid in the period;

(D) Include appropriate documentation to support each specific area identified for payment by the state; for example, invoices for equipment purchases or to reimburse contract trainers, time sheet for qualified facility training staff, evidence an aide paid for NATCEP and was reimbursed by the facility as specified in section (2) of this rule. Failure to provide required documentation will result in the form being rejected and returned to the facility;

(E) Include all appropriate NATCEP costs and revenues only. NATCEP costs, including costs disallowed, must not be reimbursed as part of the facility's all-inclusive rate; however, NATCEP costs, revenues and reimbursement must be included on the facility's annual Nursing Facility Financial Statement; and

(F) Include only true and accurate information. If a facility knowingly or with reason to know files a report containing false information, such action must constitute cause for termination of the facility's provider agreement with the Department. Providers filing false reports may be referred for prosecution under applicable statutes.

(2) CHARGING OF FEES PROHIBITED. The nursing facility must not charge a trainee any fee for participation in NATCEP or for any textbooks or other materials required for NATCEP if the trainee is employed by or has an offer of employment from a nursing facility on the date on which the NATCEP begins.

(3) FEES PAID BY EMPLOYER.

(a) All charges and materials required for NATCEP and fees for nursing assistant certification must be paid by the nursing facility if it offered employment at the facility on the date training began.

(b) If a nursing assistant who is not employed by a Medicaid certified facility and does not have an offer of employment by a Medicaid nursing facility on the date on which the NATCEP began becomes employed by or receives an offer for employment from a nursing facility within twelve months after completing a NATCEP, the employing facility must reimburse the Certified Nursing Assistant (CNA) on a monthly basis for any NATCEP fees paid (including any fees for textbooks or other required course materials) by the CNA. Evidence the nurse aide paid for training must include the graduation certificate from the school and receipt of payment.

(c) Such reimbursement must be calculated on a pro rata basis. The reimbursement must be determined by dividing the cost paid by the nursing assistant by 12 and multiplying by the number of months during this twelve-month period in which the aide worked for the facility. The facility must claim the appropriate pro rata amount on each report it submits not to exceed the lesser of 12 months or the total number of months the CNA was employed at that facility. The facility must submit evidence provided by the CNA of the training costs incurred at an approved training facility.

(4) REIMBURSEMENT BY THE DEPARTMENT. The Department will reimburse the facility for the Medicaid portion of the costs described in this section unless limited by the application of section (5). This portion is calculated by multiplying the eligible costs paid by the facility by the percentage of resident days that are attributable to Medicaid clients during the reporting period. The Department's payment to the facility for the NATCEP cost is in addition to payments based upon the facility's all-inclusive rate.

(a) Employee Compensation. Reimbursement for trainer hours must not exceed 1 1/3 times the number of hours required for certification. A

facility may claim reimbursement for the portion of an employee's compensation attributable to nurse aide training if:

(A) The employee meets the qualifications of 42 CFR 483.152 and OAR chapter 851, division 061 (licensed nursing personnel or persons licensed in other health care professions);

(B) The employee directly conducts training or testing in a certified program;

(C) The employee's compensation, including benefits, is commensurate with other RN compensation paid by the facility;

(D) The employee's total compensated hours do not exceed 40 in any week during which NATCEP reimbursement is claimed;

(E) No portion of the claimed reimbursement is for providing direct care services while assisting in the training of nurse aides if providing direct care services is within the normal duties of the employee; and

(F) The facility provides the Department with satisfactory documentation to support the methodology for allocating costs between facility operation and NATCEP.

(b) Training Space and Utilities. Costs associated with space and utilities are eligible only if the space and utilities are devoted 100 percent to the NATCEP. The facility must provide documentation satisfactory to the Department to support the need for and use of the space and utilities.

(c) Textbooks and Course Materials. A portion of the cost of textbooks and materials is eligible if textbooks and materials are used primarily for NATCEP. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50%. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of textbooks and materials.

(d) Equipment. A portion of the cost of equipment is eligible if used primarily for NATCEP. However, equipment purchased for $500 or more per item must be prior approved by the Department to qualify for reimbursement. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50%. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of the equipment. Disposition of equipment and software purchased in whole or in part under the Title XIX Medicaid Program must meet the requirements of the facility's provider agreement.

(e) Certification Fees. Nursing assistant certification and recertification fees paid to the Oregon State Board of Nursing for facility employees are eligible.

(f) Reimbursement for CNAs. Reimbursement provided to nursing assistants pursuant to section (3) of this rule is eligible. The training must have occurred at an approved training center, including nursing facilities in Oregon or other states.

(g) Contract Trainers. Payment for nurse aide certification classes provided under contract by persons who meet the qualifications of 42 CFR 483.152 is eligible for reimbursement. For this purpose, either the facility or the contractor must be certified for NATCEP. Allowable contract trainer payments will be limited to the lesser of actual cost or the salary calculation described in subsection (4)(a) of this rule.

(h) Ineligible Costs — Trainee Wages. Wages paid to nursing assistants in training are not eligible for NATCEP reimbursement, but may be claimed as part of the daily reimbursement costs.

(i) Reimbursement for Combined Classes. If two or more Medicaid certified facilities cooperate to conduct nurse aide training, the Department will not reimburse any participating facility for the combined training class until all participating facilities have filed a cost report. For a combined class, the Department will apportion reimbursement to participating facilities pro rata based on the number of students enrolled at the completion of the first 30 hours of classroom training or in any other equitable manner agreed to by the participating facilities. However, when cooperating facilities file separate NATCEP cost reports, nothing in this subsection authorizes the Department to deny or limit reimbursement to a facility based on a failure to file or a delay in filing by a cooperating facility.

(5)(a) Notwithstanding section (4) of this rule, the Department will calculate the 80th percentile of the Medicaid portion of reported NATCEP costs per trainee completing the training. If a facility's Medicaid portion exceeds the 80th percentile of costs, the Department will evaluate the facility's NATCEP costs to determine whether its costs are necessary due to compelling circumstances including, but not limited to:

(A) Rural or isolated location of the training facility;

(B) Critical client care need;

(C) Shortage of certified nursing aides available in the local labor market; or

(D) Absence or inadequacy of other training facilities or alternative training programs, e.g., community college certification programs.

(b) If, under the analysis in subsection (5)(a) of this rule, the Department finds that a facility's NATCEP costs are justified, the Department will reimburse the reported costs pursuant to section (4) of this rule. However, if, under the analysis in subsection (5)(a) of this rule, the Department finds that a facility's NATCEP costs are not justified, the Department will reimburse the reported costs pursuant to section (4) of this rule, but limited by the cost plateau.

(6)(a) Recordkeeping, Audit and Appeal. The facility must maintain supportive documentation for a period of not less than three years following the date of submission of the NATCEP cost report. This documentation must include records in sufficient detail to substantiate the data reported. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited.

(b) The Department will analyze by desk review each timely filed and properly completed NATCEP cost report. All cost reports are also subject to field audit at the discretion of the Department. The facility will be notified in writing of the amount to be reimbursed and of any adjustments to the cost statement. Settlement of any amounts due to the Department must be made within 30 days of the date of notification to the facility.

(c) A facility is entitled to an informal conference and contested case hearing pursuant to ORS 183.413 through 183.470, as described in OAR 411-070-0435, to protest the reimbursement amount or the adjustment. If no request for an informal conference or contested case hearing is made within 30 days, the decision becomes final.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: SSD 8-1992, f. 7-29-92, cert. ef. 8-1-92; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06

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## Department of Public Safety Standards and Training
## Chapter 259

**Rule Caption:** Minimum age of 18 for certification as Fire Service Professional.
**Adm. Order No.:** DPSST 1-2006(Temp)
**Filed with Sec. of State:** 1-23-2006
**Certified to be Effective:** 1-23-06 thru 6-1-06
**Notice Publication Date:**
**Rules Adopted:** 259-009-0059
**Subject:** 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—(503) 378-2431

**259-009-0059**
**Minimum Standards for Employment as a Fire Service Professional**

(1) No person may be certified as a Fire Service Professional who has not yet attained 18 years of age.

(2) Only training received after attaining the age of 16 may be applied for certification purposes.

(3) DPSST Fire Service Agency affiliation may be attained after the age of 16 via submission of a PAF-1 (Personnel Action Form).

Stat. Auth.: ORS 181.610 & 181.640
Stats. Implemented: ORS 181.610 & 181.640
Hist.: DPSST 1-2006(Temp), f. & cert. ef. 1-23-06 thru 6-1-06

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**Rule Caption:** Establishes maintenance requirements, defines "track" and adopts new standards for fire service personnel.
**Adm. Order No.:** DPSST 2-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:** 9-1-05
**Rules Amended:** 259-009-0005, 259-009-0062, 259-009-0065
**Subject:** Housekeeping issue to define "track"; Establishes maintenance requirements for track(s); Adopts Wildland Fire Investigator standards and adopts eleven (11) specialty certifications for fire service personnel from the Oregon Urban Search and Rescue (USAR) recommendations.
**Rules Coordinator:** Bonnie Salle—(503) 378-2431

**259-009-0005**
**Definitions**

(1) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(2) "Agency Head" means the chief officer of a fire service agency directly responsible for the administration of that unit.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(5) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(6) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(7) "Content Level Course" is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Director" means the Director of the Department of Public Safety Standards and Training.

(10) "Entry Level Fire Fighter" means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(11) "Field Training Officer" means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(12) "Fire Company" means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(13) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(14) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(15) "Fire Service Agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(16) "Fire Service Professional" means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(17) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(18) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(19) "NFPA Driver-Operator" means a member of a fire service agency licensed to operate a fire service agency vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who have met the Entry Level Fire Fighter requirements. Fire service agency vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with an attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

(20) "NFPA Fire Fighter I" means a member of a fire service agency who has met the level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(21) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(22) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the level I job performance requirements of NFPA Standard 1031.

(23) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes ands standards. This individual has met the level II job performance requirements of NFPA standard 1031.

(24) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(25) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(26) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(27) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(28) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(29) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(30) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(31) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(32) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(33) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(34) "Track" means a field of study required for certification.

(35) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06

**259-009-0062**
**Fire Service Personnel Certification**

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance evaluations if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard No. 1001, Edition of 1997, entitled "Fire Fighter Professional Qualifications," including Tentative Interim Amendment 97-1 are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(B) Delete section 1-3 (Note: this references NFPA 1500).

(C) Delete section 2-1(c) (Note: this references NFPA 1582).

(D) Delete section 2-2 (Note: These are physical requirements for Fire Fighter).

(E) Entry Level Fire Fighter shall mean an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard No. 1403, Edition of 1997, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to

perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(F) All applicants for certification as a Fire Fighter I shall complete either the Task Performance Evaluation or a Department approved Task Book.

(b) The provisions of the NFPA Standard No. 1002, Edition of 1998, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) Delete Section 1-3.2.

(B) 3-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 3-1 through 3-2, shall be met prior to certification as a fire service agency driver/operator-pumper.

(C) 4-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 4-1 through 4-2, shall be met prior to certification as a fire service agency driver/operator-aerial.

(D) 5-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Chapter 4 and Section 5-2, shall be met prior to certification as a fire service agency driver/operator-tiller.

(E) 6-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 6-1 through 6-2, shall be met prior to certification as a fire service agency driver/operator-wildland fire apparatus.

(F) 7-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 7-1 through 7-2, shall be met prior to certification as a fire service agency driver/operator-aircraft rescue and fire-fighting apparatus (ARFF).

(G) 8-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 8-1 through 8-2, shall be met prior to certification as a fire service agency driver/operator-mobile water supply apparatus.

(H) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program, Section 4-2" from Sections 2-3.1, 3-1.3, 4-1.3, 5-2.2, 6-1.3, 6-1.4-1.3, and 8-1.3.

(I) Either a Task Performance Evaluation must be completed or a Task Book for Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator must be completed and signed off by the Agency head or Training Officer before an applicant can qualify for certification as a Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator.

(J) An individual who completes the requirements of Chapter 2 and meets the requirements of Entry Level Fire Fighter, may be certified as a Driver.

(c) The provisions of the NFPA Standards No. 1003, Edition 1994, entitled "Standard for Airport Fire Fighter Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) Complete an approved task book.

(B) Amend section 1-3.1 by deleting "Airport fire fighters who drive aircraft rescue and fire fighting (ARFF) vehicles shall meet the requirements of Chapter 7 of NFPA 1002, Standard for Fire Department Vehicle Driver/Operator Professional Qualifications."

(d) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through January 1, 2005, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as an NFPA Fire Inspector I shall:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(C) All applicants for certification as an NFPA Fire Inspector II shall:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(D) All applicants for certification as an NFPA Fire Inspector III shall:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(E) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(e) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033.

(ii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after January 1, 2005.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after January 1, 2005.

(iv) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department approved Task Book prior to passing a written certification exam administered by the Department. Exception: Anyone holding a valid IAAI Fire Investigator Certification is exempt from taking the Department's Fire Investigator written exam.

(C) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years fire investigation experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(f) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services&"

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "&using state-approved prepared forms and guidelines&"

(VII) 1-4.22 Add "or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(iii) Bridging will be available for 12 months after adoption of the standard. To bridge to Juvenile Firesetter Intervention Specialist I, a person will be eligible to take an 8-hour update class if s/he documents all of the following:

(I) Involvement in three fire investigations;

(II) Use of the 10-J and Oregon Screen Tool forms three times;

(III) Five years experience in fire service or a related field;

(IV) Attendance in the current Juvenile Firesetter Intervention class or show participation in the Juvenile Firesetter Network by having the application signed off by the local network.

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(g) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II.

(i) This requirement is effective for any application for certification after January 4, 2002.

(h) The provisions of the NFPA Standard No. 1021, Edition of 1997, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 2-1 General. For certification at the Fire Officer Level I, the candidate shall be certified at Fire Fighter II, as defined by the Department, and meet the job performance requirements defined in Sections 2-2 through 2-7 of this standard.

(i) 2-1.1 General requisite Knowledge: the organizational structure of the department, departmental operating procedures for administration, emergency operations, and safety; departmental budget process; information management and record keeping; the fire prevention and building safety codes and ordinances applicable to the jurisdiction; incident management system; socioeconomic and political factors that impact the fire service; cultural diversity; methods used by supervisors to obtain cooperation within a group of subordinates; the rights of management and members; agreements in force between the organization and members; policies and procedures regarding the operation of the department as they involve supervisors and members.

(ii) 2-1.2 General Prerequisite Skills: the ability to communicate verbally and in writing, to write reports, and to operate in the incident management system. These skills may be documented through the following course work: Advanced Writing (such as WR121 or equivalent); Advanced Speech (such as SP111 or equivalent); Technical Writing (such as WR227 or equivalent); Math (such as MTH 052 or equivalent); Physical Science (such as PH201 or equivalent). Through December 31, 2001, an individual with five years experience as a chief officer shall be deemed as meeting the General Prerequisite Skills. The following are recognized courses for portions of the training requirements 2-2 through 2-7: Fire Fighter Law; Managing Fire Personnel currently #39-13; Increasing Personal Effectiveness & Increasing Team Effectiveness or 3 or more credit college level course in principles of supervision or NFA Leadership I, II, and III; Fire Fighter Safety and Survival for Company Officers currently #61-01; MCTO-P, D & T; Instructor I or equivalent.

(iii) Successfully complete an approved task book for Fire Officer 1.

(B) 3-1 General. For certification as Fire Officer Level II, the candidate shall be certified as Fire Officer I and NFPA Instructor 1, as defined by the Department, and meet the job performance requirements defined in Section 3-2 through 3-7 of this standard.

(i) 3-2.3 Existing Curricula: Public Education, Relations, and Information; College Fire Codes and Ordinances; or National Fire Academy Fire Inspection Principles; or International Fire Codes Institute Uniform Fire Code Certificate; Fire Detection Systems & Alarms; College or State Major Emergency Strategy and Tactics; or National Fire Academy Command and Control of Fire Department Operations at Multi-Alarm Incidents; or National Fire Academy Command and Control of Fire Department Operations at Target Hazards; or National Fire Academy Hazardous Materials Incident Management; Incident Safety Officer; NFPA Instructor 1; or Department of Public Safety Standards and Training Instructor Development Course; National Fire Academy Initial Fire Investigation; or National Fire Academy Arson Detection for Fire Responders; or College Fire Investigation Course; or National Fire Academy Fire Cause Determination for Company Officers; or Fire Investigation #35-10; Washington Oregon Interface/National Wildfire Coordinating Group (WOI-NWCG) — S-205 (Wildland); College Strategy and Tactics; or National Fire Academy Managing Company Tactical Operations — Tactics and Decision Making; or National Fire Academy Incident Command System; or National Fire Academy Fire Command Operations.

(ii) Successfully complete an approved task book for Fire Officer II.

(C) 4-1 General. For certification at the Fire Officer III/Administrator Level, the candidate shall be certified as Fire Officer II as defined by the Department, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard; or, for certification at the Fire Protection Administrator Level, the candidate shall be certified as either Fire Officer II, Fire Prevention Officer III/NFPA Fire Inspector III, Public Education Officer III/NFPA Public Fire & Live Safety Educator II, Instructor II, or Fire Investigator III/NFPA Fire Investigator as defined by the Department, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard.

(i) 4-1.3 Existing Curricula — Basic Institute Classes which would meet Fire Protection Administrator Course Requirements: Inspection and investigation; Emergency Service Delivery Principles of Fire Protection Management; Personnel Management; Organization for Fire Protection; Legal Aspects; Fiscal Management.

(D) 5-1 General. For certification at the Fire Officer IV/Executive Level, the candidate shall be certified as Fire Officer III as defined by the Department, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard, or, for certification at the Fire Protection Executive Level, the candidate shall be certified as Fire Officer III/Fire Protection Administrator as defined by the Department, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard.

(i) 5-1.2 General requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(i) Hazardous Materials Responder (DPSST-P-12 1/96).

(j) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in nine areas:

(i) Fire Resistive Building Construction;

(ii) Ordinary Building Construction;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Water Supplies;

(v) Strategy and Tactics I, II, and III;

(vi) Incident Command System;

(vii) Fire Investigation.

(D) A task book shall be completed before certification is awarded.

(k) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).

(l) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

(m) Certification guide for Wildland Fire Investigator (August, 2005).

(n) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(o) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06

**259-009-0065**
**Maintenance**

(1)(a) The Training Officer must verify that individuals have successfully performed essential functions for each certification through service delivery (see OAR 259-009-0005(29)), task performance (see OAR 259-009-0005(31)), or sufficient education or training hours to verify each member's certification pursuant to OAR 259-009-0065(2). Any certificate not verified by the agency will be recalled.

(b) Verification that maintenance requirements have been completed must be submitted to the Department by December 31st of every even year.

(2) Maintenance requirements must be demonstrated by completing any combination of one or more of the following:

(a) Service Delivery;

(b) Task Performance;

(c) Education;

(d) Training.

(3) Operation Track:

(a) NFPA Fire Fighter I, NFPA Fire Fighter II, NFPA Driver, Hazmat First Responder, Hazmat Technician, NFPA Airport Fire Fighter, NFPA Pumper Operator, NFPA Aerial Operator, NFPA Tiller Operator, NFPA Aircraft Rescue and Firefighting Apparatus Operator, Wildland Fire Apparatus Operator, NFPA Mobile Water Supply Apparatus Operator, NFPA Fire Officer I, NFPA Fire Officer II, Fire Ground Leader, NFPA Rescue Technician (Rope, Water, Vehicle, Confined Space, Structural, Trench), On Scene Incident Command, Wildland Interface (Fire Fighter, Engine Boss, Strike Team Leader, Wildland Interface Division Supervisor), Maritime Operator (Awareness, Deck Hand, Boat Operations, Rescue Boat, Fire Boat) certification levels must complete maintenance requirements for Operation Track.

(b) If the Training Officer chooses to verify maintenance requirements through training or education, the maintenance requirements for the Operation Track is sixty (60) hours completed annually.

(4) Instructor Track:

(a) Instructor I, II and III certification levels must complete maintenance requirements for Instructor Track.

(b) If the Training Officer chooses to verify maintenance requirements through training or education, the maintenance requirements for the Instructor Track is four (4) hours completed annually.

(5) Prevention/Public Education/Administration Track:

(a) NFPA Public Fire/Life Safety Educator I, NFPA Public Fire/Life Safety Educator II, Public Fire/Life Safety Educator III, NFPA Public Information Officer, NFPA Juvenile Firesetter Intervention Specialist I, NFPA Juvenile Firesetter Intervention Specialist II, NFPA Fire Officer III, NFPA Fire Officer IV, Investigator, Wildland Investigator, NFPA Fire Inspector I, NFPA Fire Inspector II, NFPA Fire Inspector III certification levels must complete maintenance requirements for Prevention/Public Education/Administration Track.

(b) If the Training Officer chooses to verify maintenance requirements through training or education, the maintenance requirement for the Prevention/Public Education/Administration Track is twelve (12) hours completed annually.

(6) A Fire Service Professional certified and performing duties in more than one track must complete the maintenance requirements for each track.

(7) A minimum passing score of 70 percent must be achieved for any level of certification that requires completion of a written test.

(8) Failure to notify the Department that the Fire Service Professional's maintenance requirements have been completed will result in a warning notification letter being sent to the agency head and the Training Officer.

(a) A three (3) month extension will be automatically authorized if requested in writing.

(b) Failure to complete maintenance requirements and submit the completed appropriate form, after the warning notification letter and before the three (3) month extension has expired, will result in the recall of the Fire Service Professional's certification.

(c) Subject to Department approval, re-certification following a recall may be obtained by submitting the following:

(A) The employing agency head must request certification, and submit documentation explaining why the maintenance requirements were not completed or verified; and

(B) Submit verification that the maintenance requirements have been completed.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06

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## Department of Revenue
## Chapter 150

**Rule Caption:** Nonresident taxation and severance pay; unemployment compensation; stock options; partnership and limited liability company sales.
**Adm. Order No.:** REV 1-2006
**Filed with Sec. of State:** 1-20-2006
**Certified to be Effective:** 1-20-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 150-316.127-(A), 150-316.127-(D)

**Subject:** 150-316.127-(A) - Amended to clarify how severance pay, unemployment compensation and income from stock options is taxed to a nonresident.

150-316.127-(D) - Amended to provide that a nonresident limited partner is not taxable on the gain or loss from the sale of the partnership interest unless the interest has acquired business situs in Oregon.

**Rules Coordinator:** Durinda Goodwin—(503) 947-2099

**150-316.127-(A)**
**Gross Income of Nonresidents; Personal Services**

(1) *Personal service.*

(a) Except as provided in section (2) of this rule, the gross income of a nonresident (who is not engaged in the conduct of a business, trade, profession or occupation on the nonresident's own account, but receives compensation for services in the status of employee) includes compensation for personal services only to the extent that the services were rendered in this state.

(b) Compensation for personal services rendered by a nonresident wholly outside this state and in no way connected with the management or conduct of a business in this state is excluded from gross income regardless of the fact that payment is made from a point within this state or that the employer is a resident individual, partnership or corporation.

(c) Compensation for personal services rendered by a nonresident wholly within this state is included in gross income although payment is received at a point outside this state or from a nonresident individual, partnership or corporation.

(2) *Exception:* Various federal laws affecting certain non-residents are explained separately. See OAR 150-316.127-(E).

(3) *Allocation of personal services.*

(a) Where compensation is received for personal services rendered partly within and partly without this state, that part of the income allocable to this state is included in gross income. In general, income is allocable to this state to the extent the employee is physically present in this state at the time the service is performed. Physical presence is determined by the location of the employee at the time services are rendered. Physical presence is not dependent on the location of the employer or the location from which payment of compensation is made. Employees who work in Oregon and at an alternate work site located outside of Oregon may allocate their compensation under the provisions of this rule.

**Example 1:** Dick, a nonresident, works as a medical transcriptionist for an Oregon employer. During the year, Dick spends about 80 percent of his time working from his home in Washington. Dick spends the remainder of his work time in the Portland office. Only the time Dick spends at the Portland office is considered time worked in Oregon.

(A) The gross income from commissions earned by a nonresident traveling salesperson, agent, or other employee for services performed or sales made, whose compensation is in the form of a specified commission on each sale made, or services rendered, includes the specific commissions earned on sales made, or services rendered, in this state; and allowable deductions must be computed on the same basis.

(B) If nonresident employees are employed in this state at intervals throughout the year, as would be the case if employed in operating boats, planes, etc., between this state and other states and foreign countries, and are paid on a daily, weekly or monthly basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the total number of actual working days employed within the state bears to the total number of working days both within and without the state.

(C) If the employees are paid on a mileage basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the number of miles traversed in Oregon bears to the total number of miles traversed within and without the state.

(D) If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Oregon that portion of the total compensation which is reasonably attributable to personal services performed in this state.

(b) The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of actual working days employed within this state bears to the total number of actual working days employed both within and without this state during the taxable period.

**Example 2:** Jan is a nonresident of Oregon. She works for A-Corp. Jan manages offices in Oregon and Washington. A-Corp pays her a salary of $30,000 for the management of both offices. She worked in Oregon 132 days. She would figure her compensation subject to Oregon tax as follows:

Days actually worked in Oregon 132
Total days actually worked in both states 220 x $30,000 = $18,000
Her compensation subject to Oregon tax is $18,000.

An exception to this general rule is made when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within this state. In the case of corporate officers and executives who spend only a portion of their time within this state, but whose compensation paid by a corporation operating in Oregon is exclusively for managerial services rendered by such officers and executives, the entire amount of compensation so earned is taxable without apportionment.

**Example 3:** John is a nonresident of Oregon. He works for B-Corp. John manages B-Corp's only office, which is located in Oregon. B-Corp pays him a salary exclusively for managerial services in the total amount of $30,000. Even though John may perform some administrative duties from his home, the compensation he receives is for managing the Oregon office. The entire $30,000 is taxable to Oregon.

(c) Total compensation for personal services includes sick leave pay, holiday pay, and vacation pay. Sick leave days, holidays, and vacation days are not considered actual working days either in or out of this state and are to be excluded from the calculation of the portion of total compensation for personal services taxable to this state.

**Example 4:** Joan is a nonresident of Oregon. She actually worked a total of 220 days during the year and was paid for 40 non-working days (holidays, sick days and vacation days). She worked 110 days in Oregon. Her compensation (including compensation for holidays, sick leave and vacations) was $26,000. She would figure her compensation subject to Oregon tax as follows:

Days actually worked in Oregon 110
Total days actually worked everywhere 220 x $26,000 = $13,000
Her compensation subject to Oregon tax is $13,000.

(d) *Payment in forms other than money.* Total compensation for personal services includes amounts paid in a form other than money. To the extent the payments are recognized as compensation income for federal income tax purposes, the payments will be recognized as compensation income for Oregon tax purposes and must be apportioned as provided in section (3) of this rule. Examples include but are not limited to, nonstatutory stock options, taxable fringe benefits such as personal use of a business asset, and employer-paid membership fees.

(A) *Nonstatutory stock options with a readily ascertainable fair market value.* Compensation income will be allocated to Oregon in the year an option is required to be reported on the federal return if a nonresident taxpayer performed services in connection with the grant of such option in Oregon during the year in which the option was granted and:

(i) Is required to report under IRC section 83(a) as compensation income the value of a nonstatutory stock option granted in connection with the performance of services that has a "readily ascertainable fair market value," as described in Treasury Regulation 1.83-(7)(b), as of the date the option was granted; or

(ii) Elects under IRC 83(b) to report the value of such an option as of the date the option was granted. If a nonresident taxpayer performed personal services partly within and partly without Oregon in the year in which the option was granted, the taxpayer must use the allocation applied to the taxpayer's other compensation under section (3) of this rule for the tax year in which the option was granted and apply that ratio to the compensation income required to be reported on the federal return. For example, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 25 percent of his time in Oregon during the year the option was granted, he must include in Oregon income 25 percent of the compensation income related to the option included in federal taxable income. Generally, Oregon will not tax the subsequent gain or loss on the sale of the stock unless the stock has acquired a business situs in Oregon. See OAR 150-316.127-(D).

(B) *Nonstatutory stock options without a readily ascertainable fair market value that are taxable at exercise, or in a pre-exercise disposition.* If a nonstatutory stock option granted in connection with performance of services that does not have a readily ascertainable fair market value at the date of the grant is recognized as compensation income for federal tax purposes and the taxpayer worked in Oregon during the year the option was granted, the taxpayer must allocate the compensation related to the option to Oregon in the same year it is taxable for federal purposes. The income that is recognized for federal purposes must be allocated to Oregon if the taxpayer worked in Oregon during the tax year the option was granted. The amount of compensation includable in Oregon source income is computed using the following formula: [Formula not included. See ED. NOTE.] Any further appreciation or depreciation in the value of the stock after the date of exercise represents investment income or loss and is not includable in the Oregon source income of a nonresident unless the stock acquired a business situs in Oregon (see OAR 150-316.127(D)).

(C) *Treatment of taxable fringe benefits.* Income recognized for federal purposes must be allocated to Oregon if the nonresident worked in Oregon during the tax year the benefit was received. The nonresident must use the same allocation rules applicable to the taxpayer's other compensation under section (3) of this rule to the taxable fringe benefits. For exam-

ple, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 55 percent of his time in Oregon, 55 percent of the amount of the taxable fringe benefit that is included in federal taxable income is included in Oregon taxable income.

(e) *Unemployment compensation.* Total compensation includes unemployment compensation benefits to the extent the benefits pertain to the individual's employment in Oregon. If unemployment compensation benefits are received for employment in Oregon and in one or more other states, the unemployment compensation benefits must be apportioned to Oregon using any method that reasonably reflects the services performed in Oregon.

**Example 5:** Gary, a nonresident, worked in Oregon and Washington for the last 5 years. On January 1, 2005, he was laid off by his employer and received unemployment compensation of $2,000. Gary may use the Oregon wages as a percentage of total wages reported on his nonresident tax return for the prior year (2004) to determine the percentage of unemployment benefits to be included in Oregon income for 2005. In 2004, Gary earned a total of $45,000 of which $30,000 was earned in Oregon. The unemployment compensation taxable to Oregon is $1,334, computed as follows: [Formula not included. See ED. NOTE.] Oregon will tax Gary's unemployment compensation even though he received it in a tax year when he did not work in Oregon because the unemployment compensation is based on Oregon employment.

(f) *Severance pay.* Compensation includes severance pay to the extent the pay is attributable to services performed in Oregon. For purposes of this rule, "severance pay" means compensation payable on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, or some other method but does not include "retirement income" as defined in ORS 316.127(9). If severance pay is received for employment within and without Oregon, the severance pay is allocated to Oregon using any method that reasonably reflects the services performed in Oregon. Severance pay is taxable to Oregon even though a taxpayer received it in a tax year when the taxpayer did not work in Oregon if the severance pay is based on Oregon employment.

**Example 6:** JT, a nonresident, worked for Plumbing Inc. for twenty years: eight years in Idaho and twelve years in Oregon. At the end of his 20th year, Plumbing Inc. reorganized and eliminated JTs position. Because of JTs loyalty to the company for his twenty years of service, the company gave JT a lump-sum payment of $36,000. This lump-sum was based on 3% of his final annual salary ($60,000 x 3% = $1,800) multiplied by his number of years of service (20). The lump-sum payment was made because of prior services, thus it is allocable to Oregon to the extent the services were performed in Oregon. JT will include $36,000 in federal taxable income and $21,600 in the Oregon taxable income, computed as follows: [Formula not included. See ED. NOTE.]

**Example 7:** Shawn, a nonresident, worked for Lincoln Foods, Inc. for six years before resigning from the company. Lincoln Foods, Inc. and Shawn entered into a termination agreement that provided $25,000 for Shawn to release a specific claim he may have against the company for wrongful termination or other potential claims. The termination agreement also provided $10,000 to require that Shawn not work for any other food chain within a 100 mile radius of Lincoln Foods, Inc. for a period of 36 months. No employment agreement, benefit plan, or any facts or circumstances indicate that Shawn is entitled to a payment for services he rendered prior to resigning from the company. The payment that Shawn receives pursuant to the termination agreement is in exchange for the release of the wrongful termination claim and the covenant not to compete and is not allocable to Oregon because it is not based on services performed in Oregon.

**Example 8:** Assume the same facts in Example 7 except that the termination agreement also provided for a lump-sum payment of one month's salary per year worked ($42,000) in addition to a $25,000 payment for release of a wrongful termination claim and $10,000 payment for the covenant not to compete. No employment agreement, benefit plan, or other agreement indicates that Shawn is entitled to a payment for services he rendered prior to resigning from the company. The $25,000 payment for the release of the wrongful termination claim and the $10,000 payment for the covenant not to compete are not allocable to Oregon because neither is based on services performed in Oregon. The $42,000 lump-sum cash payment based on Shawn's salary and years of service associates the payment with the employer-employee relationship. It is allocable to Oregon because the facts and circumstances indicate that it is paid because of prior performance of services and no other reason.

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

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.127

Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87, Renumbered from 150-316.127 to 150-316.127-(A); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 1-2006, f. & cert. ef. 1-20-06

**150-316.127-(D)**
**Gross Income of Nonresidents; Other Income and Sale of Property**

(1) *Income from intangible personal property.*

(a) *Business situs.* Intangible personal property, including money or credits, of a nonresident has a situs for taxation in Oregon when used in the conduct of the taxpayer's business, trade, or profession in Oregon. Income from the use of such property, including dividends, interest, royalties, and other income from money or credits, constitutes a part of the income from a business, trade, or profession carried on in Oregon when such property is acquired or used in the course of such business, trade, or profession as a capital or current asset and is held in that capacity at the time the income arises.

(b) If a nonresident pledges stocks, bonds, or other intangible personal property in Oregon as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Thus, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales of the property, regardless of where the sale is consummated, is income from sources within this state and is taxable to the nonresident.

(2) *Sales of property.*

(a) *Tangible property.* The gain from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in Oregon is taxable, even though it is not connected with a business carried on in this state. The loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition of real property or tangible personal property located in Oregon is determined in the same manner and recognized to the same extent as the gain or loss from a similar transaction by a resident.

(b) *Intangible property.* The gain from the sale, exchange, or other disposition of intangible personal property, including stocks, bonds, and other securities is not taxable unless the intangible personal property has acquired a business situs in Oregon. See section (1) of this rule. Likewise, losses from the sale, exchange, or other disposition of such property are not deductible, unless they are losses incurred in a business carried on within Oregon by the nonresident taxpayer.

(c) *S corporation stock.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of S corporation stock is not attributable to a business carried on in this state and is not Oregon source income. The gain or loss from the S corporation stock may not be used in the determination of Oregon taxable income unless the stock has acquired a business situs in this state. See section (1) of this rule.

(d) *General Partnership Interests.* A nonresident's gain or loss from the sale, exchange, or disposition of a general partnership interest in an Oregon partnership is attributable to a business carried on in Oregon and is Oregon source income. The gain or loss is allocated as provided in ORS 314.635.

(e) *Limited Partnership Interests.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of a limited partnership interest is not attributable to a business carried on in Oregon and is not Oregon source income. The gain or loss from the sale of the interest will not be used in the determination of Oregon taxable income unless the limited partnership interest has acquired a business situs in this state (see section (1) of this rule.).

(f) *Limited Liability Company Interests.* The taxation of a nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability company (LLC) operating in Oregon is Oregon source income and is taxed in the same manner as:

(A) The sale of a general partnership interest under subsection (2)(d) of this rule if the selling member is a member-manager of the LLC; or

(B) The sale of a limited partnership interest under subsection (2)(e) of this rule if the selling member is not a member-manager of the LLC.

(C) For purposes of this rule, a person is a "member-manager" of an LLC if that member has the right to participate in the management and conduct of the LLC's business. For an LLC that is designated as a member-managed LLC in its articles of organization, all members of the LLC will be member-managers. For an LLC that is designated as a manager-managed LLC in its articles of organization, only those persons who are both members of the LLC and are designated as a manager in the LLC's operating agreement (or elected as managers by the LLC members pursuant to the operating agreement) will be member-managers.

(g) *Limited Liability Partnership Interests.* A nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability partnership is taxed in the same manner as if it were a general partnership interest under subsection (2)(d) of this rule.

(3) *Interest income received on contract sale of property.* Interest income received by a nonresident from the sale of Oregon property is not Oregon source income. The source of the income is not from the sale of the property but rather from the use of the money permitted the buyer in an installment contract.

(4) *Distribution of a trust's income accumulation to a nonresident.* See ORS 316.737 and OAR 150-316.737 for the treatment of trust income accumulation distributions.

(5) *Net operating losses.* See OAR 150-316.007 and 150-316.014 for the treatment of net operating losses.

(6) *Passive activity losses.* See OAR 150-314.300 for the treatment of passive activity losses.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 4-2003, f. & cert. ef. 12-31-03; REV 1-2006, f. & cert. ef. 1-20-06

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## Department of Transportation
## Chapter 731

**Rule Caption:** Adoption of the Attorney General's Model Rules of Procedure.
**Adm. Order No.:** DOT 1-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:**
**Rules Amended:** 731-001-0005
**Subject:** This rule adopts the Attorney General's Model Rules of Procedure. The amendment adopts the model rules in effect January 1, 2006.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**731-001-0005**
**Model Rules of Procedure**

Pursuant to ORS 183.341, the Oregon Transportation Commission adopts the following portions of Oregon Administrative Rules chapter 137 as in effect on January 1, 2006 as the general administrative procedural rules for the Oregon Transportation Commission and the Oregon Department of Transportation: division 1, division 2, division 3 excluding OAR 137-003-0001 through 137-003-0092, division 4 and division 5.

[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 Transportation.]
Stat. Auth.: ORS 183.341, 184.616 & 184.619
Stats. Implemented: ORS 183.341
Hist.: HC 1207, f. & ef. 10-9-69; HC 1245, f. & ef. 2-12-71; HC 1276, f. & 3-3-72, ef. 3-15-72; 1 OTC 1(Temp), f. & ef. 7-18-73; 1 OTC 2, f. & ef. 9-26-73; 1 OTC 3, f. 10-15-73, ef. 11-25-73; 1 OTC 68, f. & ef. 1-23-76; 1 OTC 3-1978, f. & ef. 3-29-78; 1 OTC 3-1980(Temp), f. & ef. 1-16-80; 1 OTC 7-1980, f. & ef. 3-28-80; 1 OTC 4-1981, f. & ef. 11-24-81; 1 OTC 1-1984, f. & ef. 1-6-84; 1 OTC 3-1986, f. & ef. 4-28-86; DOT 1-1988, f. & ef. 8-22-88; DOT 4-1990, f. & cert. ef. 8-14-90; DOT 1-1992, f. & cert. ef. 5-12-92; DOT 2-1994, f. & cert. ef. 3-17-94; DOT 2-1995, f. 11-21-95, cert. ef. 1-1-96; DOT 2-1997, f. & cert. ef. 12-23-97; DOT 2-2000, f. & cert. ef. 6-8-00; DOT 1-2002, f. & cert. ef. 1-17-02; DOT 2-2004, f. & cert. ef. 2-23-04; DOT 1-2006, f. & cert. ef. 1-24-06

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**Rule Caption:** Adds/increases rates for record requests; adds option for electronic transmission of requested information.
**Adm. Order No.:** DOT 2-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 731-001-0025
**Subject:** The Department of Transportation amends OAR 731-001-0025 to add and increase rates for record requests and add the option for electronic transmission of requested information. The fees are intended to more adequately cover the cost of providing the records. Sections are also added to address the cost of an attorney to redact material as provided by House Bill 2545 (2005) and petition for unreasonable denial of fee waiver and reduction.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**731-001-0025**
**Public Records Request Requirements and Fees**

All information in the custody of the Director of the Oregon Department of Transportation (Department) will be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) As used in this rule, the following definitions apply:

(a) "Non-Standard" means:

(A) Audio tapes;

(B) Video Tapes;

(C) Microfilm; and

(D) Machine readable formats such as computer hard drives, and magnetic tape.

(b) "Certified copies" means, photocopies, that on the date copied, are true and accurate copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

(c) "Research" means the compilation of information:

(A) That is not readily and immediately available from a single source or a group of related sources; or

(B) That requires a search to locate the requested information.

(2) A request for photocopies, facsimile (fax) copies, electronically distributed (email) copies and certifications of public records that are on file with the Department can be made verbally, in writing, by fax or by email.

(a) The request must:

(A) Include name and address of the person requesting the public record;

(B) Include telephone number of the person requesting the public record; and

(C) Adequately describe the record(s) requested including subject matter, approximate creation date(s) and name(s) of person(s) involved in creation.

(b) The request should:

(A) Be dated;

(B) Be signed by the person requesting the public record; and

(C) Indicate a date by which the records are being requested.

(3) The Department will respond to the request in a reasonable amount of time and acknowledge the request, identify an estimate of the expected cost of meeting the request, and the expected date and location at which the information will be provided. The regular discharge of duties of the Department will be neither interrupted nor interfered with because of time or effort required to respond to the request.

(4) Unless otherwise provided by statute or other administrative rule, the fees will be calculated as follows:

(a) $0.25 per page for photocopies.

(b) The cost of records transmitted by fax is $5.00 for the first page and $1.00 for each additional page, limited to a 20-page maximum, not including the cover page.

(c) The cost of records transmitted by email is $5.00 per email and is limited to 10 MB in size per email.

(d) Actual cost for use of material and equipment for producing copies of non-standard records.

(e) Upon request, copies of public records may also be provided on a 3.5-inch computer disk or compact disk (CD) if the document(s) are stored in the Department's computer system. Disks will be provided at a cost of $5.00 per disk and may contain as much information as the disk will hold. Due to the threat of computer viruses, the department will not permit requestors to provide disks for electronic reproduction of computer records.

(f) Labor charges that include researching, locating, compiling, editing or otherwise processing information and records:

(A) No charge for the first 15 minutes of staff time.

(B) Beginning with the 16th minute, the charge per total request is $25.00 per hour or $6.25 per quarter-hour. A prorated fee is not available for less than a quarter-hour.

(g) The actual cost for delivery of records such as postage and courier fees.

(h) $5.00 for each true copy certification.

(5) Electronic Records. Copies of requested electronic records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records.

(6) The Department may charge a fee for the cost of time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. Records request fees will include actual attorney fees charged to the Department related to the request. The Department will not charge a fee greater than $25.00 under this section unless the Department first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the Department to proceed with making the public record available.

(7) Pre-payment may be requested by the Department prior to record(s) being provided.

(8) Provisions in this rule do not apply to records available through the Driver and Motor Vehicle Services Division of the Department of Transportation listed in Oregon Administrative Rule chapter 735.

(9) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

Stat. Auth.: ORS 184.616, 184.619, 192.430 & 192.440
Stats. Implemented: ORS 192.410 - 192.505
Hist.: DOT 1-1995, f. & cert. ef. 1-6-95; DOT 2-2006, f. & cert. ef. 1-24-06

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**Rule Caption:** Process for application for a loan or grant from the Multimodal Transportation Fund (ConnectOregon).
**Adm. Order No.:** DOT 3-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:** 11-1-05
**Rules Adopted:** 731-035-0010, 731-035-0020, 731-035-0030, 731-035-0040, 731-035-0050, 731-035-0060, 731-035-0070, 731-035-0080
**Rules Repealed:** 731-035-0010(T), 731-035-0020(T), 731-035-0030(T), 731-035-0040(T), 731-035-0050(T), 731-035-0060(T), 731-035-0070(T), 731-035-0080(T)
**Subject:** Senate Bill 71 requires ODOT to adopt rules specifying the process by which a public body or private entity may apply for a loan or grant from the Multimodal Transportation Fund. SB 71 authorizes the State Treasurer to issue lottery bonds to finance grants and loans for air, marine, public transit and rail transportation projects. These rules establish the Multimodal Transportation Fund Program and include eligibility standards, application requirements, criteria for application review and project selection, provisions of agreements with the Department and sanctions. These rules replace temporary rules that became effective November 21, 2005.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**731-035-0010**
**Purpose**

Chapter 816, Oregon Laws 2005, created the Multimodal Transportation Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects that involve air, marine, rail or public transit. The purpose of division 35 rules is to establish the Multimodal Transportation Fund Program.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0020**
**Definitions**

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department (or Oregon Department of Aviation) and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.

(4) "Aviation" is defined in ORS 836.005(5).

(5) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(6) "Commission" means the Oregon Transportation Commission.

(7) "Department" means the Oregon Department of Transportation.

(8) "Director" means the Director of the Oregon Department of Transportation.

(9) "Freight Advisory Committee" means the committee created in ORS 366.212.

(10) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

(11) "Program" means the Multimodal Transportation Fund Program established by division 35 rules to administer the Multimodal Transportation Fund.

(12) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.

(13) "Public Body" is defined in ORS 174.109.

(14) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(15) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(16) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(17) "State Aviation Board" means the board created in ORS 835.102.

(18) "Transportation Project" or "Project" is defined in ORS 367.010(11). A Multimodal Transportation Fund Program Project must involve one of more of the following modes of transportation: air, marine, rail or public transit. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals or people.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0030**
**Application Submission Periods**

(1) The Department will announce periods for submitting applications for funding from the Multimodal Transportation Fund.

(2) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0040 and as prescribed in 731-035-0050.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0040**
**Application Requirements**

Applicants interested in receiving funds from the Multimodal Transportation Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0050**
**Application Review**

(1) The Department will review applications received to determine whether the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the eligible grant Project cost.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

(4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 30 days of receipt of the application:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application request is ineligible.

(5) The Department will make all eligible applications available for review, as applicable, to the State Aviation Board, the Oregon Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0060**
**Project Selection**

(1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.

(2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission will solicit recommendations from:

(a) The State Aviation Board for Aviation Transportation Projects.

(b) The Oregon Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule.

(4) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses.

(b) Whether a proposed Project benefits or connects two or more modes of transportation.

(c) Whether a proposed Project is a critical link in a statewide or regional transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan.

(e) Whether a Project creates construction or permanent jobs in the state.

(f) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is at a comparable stage.

(g) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(h) Whether the Applicant for a grant can meet the requirement to contribute 20 percent of the eligible Project costs.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0070**
**Grant and Loan Awards and Match**

(1) At least 15 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 816, Oregon Laws 2005. The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(2) Applicants may use a combination of grant and loan funds to finance a Project.

(3) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of cash and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) The Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the funds provided by Chapter 816, Oregon Laws 2005, may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

(D) Prior to entering into a loan Agreement, the Department will determine if an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completion and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

**731-035-0080**
**Project Administration**

(1) The Department will administer all non-aviation Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursal of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursal of Program Funds.

(b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant or loan funds.

(c) Disbursal of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursal per month. The Director or the OTC may make exceptions to the reimbursement basis if the Department finds that the applicant would have difficulty meeting this requirement.

(d) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(e) Recipients must separately account for all moneys received from the Multimodal Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(f) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(g) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(h) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued pursuant to the authority of Chapter 816, Oregon Laws 2005.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in Chapter 816, Oregon Laws 2005 and this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project, and those corrective actions are not, or will not be, made within a reasonable time.

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the Applicant from applying for future assistance.

(e) Other remedies that may be incorporated into grant and loan Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06

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

**Rule Caption:** Establish selection criteria for pilot trainee applicants for the Coos/Yaquina Bay pilotage grounds.
**Adm. Order No.:** BMP 1-2006
**Filed with Sec. of State:** 1-30-2006
**Certified to be Effective:** 1-30-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 856-010-0026
**Subject:** Establish selection criteria for pilot trainee applicants for the Coos/Yaquina Bay pilotage grounds.
**Rules Coordinator:** Susan Johnson—(971) 673-1530

**856-010-0026**
**Pilot Trainee Selection – Coos Bay Bar and Yaquina Bay Bar Pilotage Grounds**

(1) Applicants for trainee positions must submit their applications to the Board of Maritime Pilots on forms provided by the Board. When the Board determines that a need for a trainee exists, it shall select from among the eligible applicants the best qualified for training. Selection must be based upon numerical ranking according to the point system set forth below. The person selected shall be appointed for training on both pilotage grounds.

(2) Applicants for trainee positions shall be ranked based upon a point system, with points awarded for each of the following categories:

(a) Academic: Graduation from high school or equivalent certification: 10 points. Two or more years at an accredited college or university: 5 points. Post-graduate or professional degree: 5 points. Completion of a four-year course of study at an accredited maritime academy: 10 points. Maximum total points under this section is 25.

(b) Previous Maritime Experience and Licensure: Federal First Class Pilot License for the Coos Bay Bar or the Yaquina Bay Bar: 10 points. Federal unlimited radar observer endorsement: 5 points. 1,460 or more active working days as master of towing vessels: 20 points. 1,460 or more working days as master of vessels greater than 1600 gross tons: 10 points. 50 or more crossings of the Coos Bay or Yaquina Bay Bar as master of towing vessels or master of vessels greater than 1600 gross tons: 20 points. Unlimited state pilot license for a pilotage ground other than Coos Bay Bar or Yaquina Bay Bar: 10 points. Additional certified training in each of the following categories: Bridge Resource Management, Emergency Medical Training, Hazardous Materials, Marine Firefighting, Oil Spill Control: 1 point each, up to a maximum of 5 points. Maximum total points under this section is 55.

(c) Interview: Every applicant with a combined point total of 35 or more from points awarded under subsections (a) and (b) shall be interviewed by three or more members of the Board, provided at least one member is a public member, one member is a pilot member from the Coos Bay Bar or Yaquina Bay Bar Pilotage Ground, and one member is a member engaged in the activities of a company that operates commercial ocean-going vessels. Each person interviewed shall be assigned from 0 to 35 points based on the interviewee's poise and confidence, potential as an asset to the pilotage system, recommendations from within the maritime community, knowledge of trade and commerce, and such other factors as may be deemed relevant by the Board.

Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115, 776.300
Hist.: BMP 1-2006, f. & cert. ef. 1-30-06

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

**Rule Caption:** Reasons for a new distinguishing number on a driver license, driver permit or identification card.
**Adm. Order No.:** DMV 1-2006
**Filed with Sec. of State:** 2-15-2006
**Certified to be Effective:** 2-15-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 735-062-0130
**Rules Repealed:** 735-062-0130(T)
**Subject:** Chapter 241, Oregon Laws 2005 (SB 74) amends ORS 807.150 and ORS 807.400 to require DMV to establish by rule the reasons DMV will issue a driver license, driver permit or identification card with a different distinguishing number from the one being replaced. The amendments to OAR 735-062-0130 set forth the reasons DMV will issue a different distinguishing number, which are: (1) fraudulent use of the person's current number and name; and (2) when a victim of abuse, stalking, or physical violence is taking steps to protect his or her identity. The amendments also set forth the evidence necessary to establish the person qualifies for a different distinguishing number. This permanent rule replaces a temporary rule that was effective January 1, 2006.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**735-062-0130**
**Issuance of a Replacement Driver License, Driver Permit or Identification Card with a New Number**

(1) For purposes of this rule:

(a) "Customer number" means the distinguishing number assigned to a driver license, driver permit or identification card;

(b) "Fraudulent use" means the use of another person's name and customer number for the purpose of misrepresenting a person's identity in order to commit the crime of identity theft, to receive financial gain, or to avoid legal responsibility after committing an offense. Examples include but are not limited to:

(A) Fraudulent use of a person's name and customer number to open a bank account, order checks or cash a forged check;

(B) Fraudulent use of a person's name and customer number to open a credit card account; or

(C) Giving another person's name and customer number to a police officer who is enforcing the motor vehicle laws in order to avoid legal responsibility for a traffic offense, resulting in a conviction(s) being posted to the other person's driving record.

(2) Upon request, the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will issue a person a replacement driver license, driver permit or identification card with a different customer number if the person provides evidence satisfactory to DMV to show:

(a) The fraudulent use of the person's name and customer number; or

(b) That the person is a victim of abuse, stalking, or physical violence and the person is taking steps to protect his or her identity including a legal name change.

(3) Evidence submitted to DMV of the fraudulent use of a name and customer number must show that both the name and the customer number

have been used for a fraudulent purpose. The person must provide at least one of the following types of documents:

(a) A copy of a police report or letter from a police agency;

(b) A report or letter from a credit card company, credit reporting bureau or financial institution;

(c) A report or letter from the Oregon Department of Revenue or Internal Revenue Service;

(d) A document issued by a Court; or

(e) A letter from a District Attorney.

(4) A person who is the victim of abuse, stalking, or physical violence must provide a court judgment showing a legal name change and at least one of the following types of documents that show the person has been a victim of abuse, stalking, or physical violence:

(a) A copy of a police report or letter from a police agency;

(b) A document issued by a Court;

(c) A letter from a District Attorney;

(d) A letter or report from a state agency or a community crisis center for domestic violence or physical or sexual abuse; or

(e) A letter or report from a physician, physician assistant, nurse practitioner, psychologist, licensed clinical social worker or licensed professional counselor who provided treatment or counseling services to the person.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.160, 807.400
Stats. Implemented: ORS 807.160, 807.400
Hist.: MV 26-1989, f. & cert. ef. 10-3-89; DMV 30-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thur 6-29-06; DMV 1-2006, f. & cert. ef. 2-15-06

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**Rule Caption:** Change in the accepted input and processing of medical information required for probationary permit application.
**Adm. Order No.:** DMV 2-2006
**Filed with Sec. of State:** 2-15-2006
**Certified to be Effective:** 2-15-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 735-064-0005, 735-064-0040, 735-064-0090, 735-064-0100, 735-064-0110
**Subject:** ORS 807.270(6)(b) requires that an applicant for a probationary permit submit a report of a diagnostic examination conducted by a private physician showing to the satisfaction of the State Health Officer that the applicant is physically and mentally competent to operate a motor vehicle. The amendment to OAR 735-064-0040(5) authorizes a licensed physician to submit the information on a medical report form or on the Hardship/Probationary Permit Application. This is intended to simplify the application process and reduce the amount of paperwork received by the State Health Officer for review. Oregon Laws 2005, Chapter 471, section 11 (SB 880) amends ORS 807.240 to authorize a certified nurse practitioner to submit a signed statement regarding medical treatment if needed by an applicant for a hardship permit. The amendment to OAR 735-064-0040(7)(c) implements this statutory change. The amendment to OAR 735-064-0040(4) specifies that an SR22 submitted because of a DUII suspension must show at least the coverage amounts required by ORS 806.075. Other changes to these rules are to update the references, including the Office of Mental Health and Addiction Services and the DMV internet address, and to clarify language.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**735-064-0005**
**Definitions**

As used in Division 64 rules, unless the context requires otherwise:

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) "DUII" means driving under the influence of intoxicants.

(3) "Family necessities" means driving to and from grocery shopping, driving a household member to and from work, driving the applicant or the applicant's children to and from school, driving the applicant's children to and from child care, driving to and from medical appointments and caring for elderly family members.

(4) "Fee" is an amount defined in ORS 807.370.

(5) "Hardship/probationary permit" means a restricted driving privilege issued to a person whose privilege is both suspended and revoked and who is required to install an IID due to a DUII suspension.

(6) "IID" means ignition interlock device.

(7) "Intoxicants" means intoxicating liquor, any controlled substance, any inhalant or any combination of the three.

(8) "Immediate family" means the applicant's spouse, children, stepchildren, brother, sister, mother, father, mother-in-law, father-in-law, grandmother or grandfather.

(9) "OMHAS" means Office of Mental Health and Addiction Services.

(10) "Oregon resident" means a person who is domiciled in this state as defined by ORS 803.355 or is a resident of this state as defined by ORS 807.062(4) and (5).

(11) "Private transportation" means family members, friends or fellow employees who are able to serve the applicant's transportation needs.

(12) "Public transportation" means bus, shuttle or commuter service that is able to serve the applicant's transportation needs.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240 & 807.270
Stats. Implemented: ORS 807.240, 807.270 & 813.520
Hist.: DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2001, f. & cert. ef. 1-17-01: DMV 15-2001, f. & cert. ef. 9-21-01; DMV 2-2006, f. & cert. ef. 2-15-06

**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 must:

(a) Complete a Hardship/Probationary Application, Form 735-6044. This form is available at any DMV office and on the Internet at www.oregondmv.com; 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 must 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 must submit a recommendation for issuance of a hardship or probationary permit from a program approved by OMHAS.

(4) Unless driving privileges are suspended for a DUII conviction, an applicant for a hardship permit must 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, must submit an SR22 certificate as proof of financial responsibility that shows at least the minimum coverage amounts specified in ORS 806.075. 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 must submit to DMV a medical report form or a report on the Hardship/Probationary Permit Application (form 735-6044), completed by a licensed physician showing to the satisfaction of the State Health Officer that the applicant has no medical condition or impairment that makes it unsafe for the applicant to operate a motor vehicle.

(6) An applicant for a probationary permit must 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 must provide the following information, depending upon the driving privileges sought:

(a) An applicant who is required to drive for employment purposes must provide the routes, counties, days and times the applicant is required to drive. In addition, this information must be supported by any of the following that apply:

(A) The applicant must 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 must 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 must 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 must 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, must 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 must submit a signed statement from the physician or certified nurse practitioner 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 must 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, will 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; DMV 2-2006, f. & cert. ef. 2-15-06

**735-064-0090**
**How to Change the Hardship or Probationary Permit Driving Restrictions**

(1) When the person needs to change the driving restrictions on a hardship or probationary permit, the person must submit a Hardship/Probationary Application or a letter with new information to the Driver Suspensions Unit, DMV, 1905 Lana Avenue N.E., Salem, Oregon 97314.

(2) The person must submit verification of employment as required by OAR 735-064-0040(7)(a)(A), if the change requested is employment related.

(3) The person 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 must submit a recommendation for the change from a program approved by OMHAS.

(4) The person who is eligible to drive to and from medical treatment as described in OAR 735-064-0040(7)(c), must submit a signed statement from the physician as required in OAR 735-064-0040(7)(c).

(5) After the requirements of sections (1), (2), (3) and (4) of this rule have been met, DMV will mail the applicant a hardship or probationary permit with new driving restrictions. The person must carry the hardship or probationary permit in addition to a valid driver license at all times while driving.

Stat. Auth.: ORS 184.616, 802.010, 807.240 & 807.270
Stats. Implemented: ORS 807.240, 807.270 & 813.500
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 735-031-0115; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2006, f. & cert. ef. 2-15-06

**735-064-0100**
**Hardship or Probationary Permit Restrictions**

(1) A person issued a hardship or probationary permit must not do any of the following:

(a) The person must not drive outside the hardship or probationary permit driving restrictions;

(b) The person must not be convicted of or forfeit bail for more than one traffic offense listed in ORS 809.600(2)(b) (including city traffic offenses and similar offenses under federal or state law) within any 12-month period. See OAR 735-064-0220 for a list of offenses and statutory references;

(c) The person must not be convicted of or forfeit bail for an offense as specified in ORS 809.600(1)(a) through (f). These offenses are: murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing, or criminal mischief resulting from the operation of a motor vehicle; reckless driving, driving while under the influence of intoxicants, failure to perform the duties of a driver involved in an accident or collision, criminal driving while suspended or revoked, fleeing or attempting to elude a police officer;

(d) The person must not use intoxicants and drive;

(e) The person must not refuse to submit to a chemical breath test, blood test or urine test;

(f) The person must not be convicted of or forfeit bail for an offense under ORS 811.170; or

(g) The person must not falsify any information appearing on the Hardship/Probationary Application.

(2) The person required to have an IID must not violate the following provisions:

(a) Drive any vehicle which does not have an IID installed unless exempted by statute and administrative rule;

(b) Drive an employer's owned or leased vehicle without an IID unless the person is carrying a copy of an employer's exemption letter, Employer IID Exemption form or medical exemption letter in his or her possession;

(c) Tamper with the IID or remove it from the vehicle; or

(d) Solicit another person to blow into the IID.

(3) The person must maintain any required recommendation from a program approved by OMHAS and the court recommendation for a hardship or probationary permit during the term of the hardship or probationary permit.

(4) Evidence that a restriction has been violated includes, but is not limited to the following:

(a) Police reports;

(b) Accident reports;

(c) Reports from rehabilitation/treatment agencies;

(d) Written reports from family members or the general public;

(e) An official report which indicates the person has driven outside the hardship or probationary permit restrictions;

(f) An official report which indicates the person has been driving after using intoxicants;

(g) Receipt of a copy of a report from a police officer that indicates the person has refused the chemical breath test, blood test or urine test following an arrest for driving under the influence of intoxicants;

(h) An official report from a police officer;

(i) A court conviction; and

(j) A written, signed statement from an approved IID installer.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.270 & 813.510
Stats. Implemented: ORS 807.240, 807.270, 813.100, 813.510, 813.602, 813.608, 813.610, 813.612, & 813.614
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 735-031-0120; MV 30-1989, f. & cert. ef. 10-3-89; DMV 4-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2006, f. & cert. ef. 2-15-06

**735-064-0110**
**Consequences of Violations of Restrictions, Conditions, Limitations or Requirements of a Hardship or Probationary Permit**

(1) DMV will revoke a person's hardship or probationary permit when a person commits a violation of any of the restrictions, conditions, limitations or requirements of a hardship or probationary permit as listed in OAR 735-064-0100, except as provided in section (2) of this rule.

(2) When a program approved by OMHAS, withdraws a required recommendation under ORS 813.500:

(a) Upon first withdrawal of the recommendation, DMV will suspend the hardship or hardship/probationary permit until the ending date of the DUII suspension or until the driver obtains a new recommendation, whichever is sooner; and

(b) Upon a second withdrawal of the recommendation, DMV will revoke the hardship or hardship/probationary permit.

(3) The person whose hardship permit is revoked will not be eligible for another hardship permit during the suspension period or for one year from the date of revocation, whichever is shorter.

(4) The person whose probationary permit is revoked will not be eligible for another probationary permit for one year from the date of the revocation of the probationary permit.

(5) A person whose hardship or probationary permit is revoked based on a notice from a court as specified in ORS 809.140, is entitled to an administrative review under ORS 809.440(2). The revocation will remain in effect pending the outcome of the administrative review.

(6) A person whose hardship or probationary permit is revoked based on information other than that described in ORS 809.140, is entitled to a contested case hearing under ORS 183.310 to 183.550. The revocation will remain in effect pending the outcome of the hearing.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.270 & 813.510
Stats. Implemented: ORS 807.240, 807.270, 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 735-031-0125; MV 4-1991, f. 6-18-91, cert. ef. 7-1-91; MV 17-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 5-1995, f. & cert. ef. 3-9-95; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-2002, f. & cert. ef. 3-14-02; DMV 2-2006, f. & cert. ef. 2-15-06

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

**Rule Caption:** Deletes prohibition against using structures at rest areas for distribution of coffee and cookies.
**Adm. Order No.:** HWD 1-2006
**Filed with Sec. of State:** 1-24-2006
**Certified to be Effective:** 1-24-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 734-030-0010, 734-030-0025
**Subject:** These rules establish the requirements for issuance of permits for distribution of coffee, other nonalcoholic beverages, and cookies by non profit organizations in rest areas ("Free Coffee" program). The rules also establish the types of activities prohibited in rest areas. Chapter 256, Oregon Laws 2005 (Senate Bill 481) amended ORS 366.490 to delete prohibitions against using structures at a rest area for distribution of coffee and cookies. The amendments make similar changes to the rules, clarify the conditions under which a permit may be issued for the "Free Coffee" program, and clarify the activities that are prohibited in a rest area.
**Rules Coordinator:** Brenda Trump—(503) 945-5278

**734-030-0010**
**Prohibited Activities**

The following activities are prohibited in a rest area:

(1) Lighting a fire except at locations where fireplaces are provided.

(2) Picking up or removing plant life or forest products.

(3) Hunting birds or animals or discharging firearms.

(4) Mutilating, defacing, damaging or removing any structure or facility.

(5) Digging up, defacing, or removing any dirt, stone, rock, or other natural substance.

(6) Operating a concession or selling merchandise or services, except for a permitted "free coffee" service, public telephones, or articles dispensed by vending machines pursuant to an agreement with the Department of Transportation.

(7) Operating a motor vehicle in any area not constructed or designed for motor vehicles. Parking motor vehicles outside the designated parking areas.

(8) Allowing a pet to run loose. Allowing a pet on a leash except a guide animal in any area except designated pet areas. Allowing a pet, except a guide animal, in any building. Allowing livestock to run at large.

(9) Depositing refuse of any kind except in designated containers.

(10) Dumping, spilling or allowing to leak any sewage or waste water from the vehicle.

(11) Using restroom facilities to bathe, wash clothing, dishes or other materials.

(12) Participating in a public demonstration, disturbance, or riotous or other behavior which interferes with the reasonable use of the rest area by other rest area visitors.

(13) Setting up a tent or other structure, camping, or remaining in a rest area for more than 12 hours within any 24-hour period.

(14) Creating noise by any means which interferes with the reasonable use of the rest area by other rest area visitors.

Stat. Auth.: ORS 184.616, 184.619 & 366.205
Stats. Implemented: ORS 164.805, 374.305, 377.030 & 810.030
Hist.: HC 476a, f. & ef. 10-7-54; HC 801, f. 11-24-59, ef. 1-1-60; 1 OTC 70, f. & ef. 3-5-76; 2HD 5-1984, f. & ef. 4-18-84; HWY 8-1990(Temp), f. & cert. ef. 4-20-90; HWY 14-1990, f. & cert. ef. 12-5-90; HWD 1-2006, f. & cert. ef. 1-24-06

**734-030-0025**
**"Free Coffee" Program**

The "free coffee" program is a service sponsored by non-profit organizations in rest areas; permissible under federal regulations and state law; and found by the Department of Transportation (Department), in certain instances, to be in the interest of public safety. "Free coffee" service will be permitted subject to the following conditions:

(1)(a) Non-profit organizations may make written requests for permission to sponsor a "free coffee" service at a specific rest area directed to the District Manager (DM) for the district in which the rest area is located not more than 60 days prior to the date(s) requested. Requests must be submitted on form 734-2081, "Free Coffee Program Application and Permit" available from the district;

(b) The non-profit organization must certify that the organization is granted non-profit status by the Internal Revenue Service (IRS) and may be required at the discretion of the DM to provide a copy of the IRS determination letter;

(c) The DM will grant permission for the activity by way of a standard permit issued to the selected non-profit organization. The selection will be made not less than 30 days in advance of the date(s) requested from all written requests received, and will be based on a random drawing conducted by the DM if multiple requests for the same date(s) and location are received. For purposes of issuing permits, if a rest area is sited on both sides of the highway, each side of the rest area will be considered a separate location;

(d) Permits will be issued in 24-hour increments with a maximum of 72 hours. No more than three permits will be issued to one organization in a calendar month;

(e) Only one organization will be granted a permit for a rest area location for any particular date or time;

(f) The DM may decline to issue any permits for a particular rest area or for any particular date or time; and

(g) A copy of the permit must be on-site during operation of the "free coffee" service.

(2) The "free coffee" service will be located in a designated area of the rest area. The area will be designated by the DM. The service is not permitted to obstruct access to any building or other structure in the rest area. The area is to be kept neat and free of litter, cups, etc., associated with the service.

(3) The distribution of "free coffee" may include coffee, other nonalcoholic beverages and cookies but may not include other food items. Cookies offered must come from a licensed facility. The non-profit organization shall comply with all state and local health department rules and regulations. For the purposes of this rule, "cookie" will include brownies but not cake, bagels, donuts, coffee cake, candy bars, or other similar items.

(4) Carbonated beverages shall not be distributed under the "free coffee" program in rest areas where carbonated beverages are available in vending machines.

(5) Coffee, other non-alcoholic beverages and cookies are to be free of charge to the public. Donations may be received by the non-profit organization but not sought or requested, except for the allowed use of one opaque container with the words "donations" or "contributions" in a maximum of one-inch letters.

(6) No more than two signs or posters with a maximum area of ten square feet each may be used to identify the "free coffee" service and the non-profit organization by name only i.e. "Free Coffee — Served By — (organization name)". Signs or posters may only be placed in the area designated for the service including on vehicles within which the service is provided, and must be removed when the service is closed and upon expiration of the permit. No signs are to be placed outside the rest area confines by the organization other than official "Free Coffee" signs that may be provided by the Department at the discretion of the DM.

(7) The non-profit organization is responsible for all products and supplies necessary to provide "free coffee" service in the rest area including any extraordinary costs incurred by the Department as a result of this service. The Department may provide access to limited electricity and water as determined by the DM.

(8) Permits are not transferable and are revocable for non-compliance with any state statute, rest area rules, or the terms of the permit. Repeated failure to comply with the rules and regulations may result in non-profit organization's forfeiture of right to future participation in the program.

Stat. Auth.: ORS 184.616, 184.619 & 366.490
Stats. Implemented: ORS 366.490
Hist.: 2HD 5-1984, f. & ef. 4-18-84; 2HD 8-1986, f. & ef. 11-24-86; HWY 2-1993, f. & cert. ef. 4-15-93; HWY 2-1994, f. & cert. ef. 2-28-94; HWD 1-2006, f. & cert. ef. 1-24-06

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## Department of Veterans' Affairs
## Chapter 274

**Rule Caption:** Educational Aid Benefits for Veterans.
**Adm. Order No.:** DVA 1-2006
**Filed with Sec. of State:** 1-27-2006
**Certified to be Effective:** 1-27-06

**Notice Publication Date:** 1-1-06
**Rules Amended:** 274-010-0100, 274-010-0115, 274-010-0120, 274-010-0135, 274-010-0145, 274-010-0155, 274-010-0160, 274-010-0170, 274-010-0175
**Rules Repealed:** 274-010-0140, 274-010-0150
**Subject:** The passage of House Bill (HB) 3504 of the 73rd Oregon Legislative Assembly - 2005 Regular Session amended the amount of monthly benefits a veteran may apply for if he/she is a full-time student at an institution accredited by the United States Department of Veterans Affairs. Part-time students and World War II veterans are no longer eligible to apply for educational aid through this program.

The passage of HB 2932 of the 73rd Oregon Legislative Assembly - 2005 Regular Session established the Department of Veterans' Affairs. The rights and obligations of the Director of Veterans' Affairs are transferred to the Department of Veterans' Affairs.

The text of the repealed rules has either been incorporated into the amended rules listed above or removed in its entirety due to the passage of HB 3504.
**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

**274-010-0100**
**Definitions for 274-010-0100 to 274-010-0175**

As used in these regulations or any amendments to them, or in any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the Director or any of his duly authorized agents or employees in connection with the administration of the provisions of ORS 408.010 to 408.110, unless otherwise required by context:

(1) "Active Duty" or "Active Service" means that status in the Armed Forces in which the person on "active duty" is under the command of military or naval authorities, subject to military or naval discipline and on active duty pay status in the respective arm or branch of the Armed Forces in which the person is serving.

(a) Members of the reserve components of the Armed Forces, persons on a retired status in the military or naval forces of the United States, Cadets at West Point, Air Force Academy, and United States Coast Guard Academy and Midshipmen at the Naval Academy were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having been activated under Title 10 of the United States Code of Federal Regulations;

(2) "Armed Forces" means and includes:

(a) Army;

(b) Navy;

(c) Marines;

(d) Air Force;

(e) Coast Guard;

(f) Coast and Geodetic Survey (while serving with Army or Navy);

(g) Commissioned Officers of Public Health Service while serving with Army, Navy, Marine Corps, or Coast Guard.

(3) "Beneficiary" means any person eligible for educational aid as defined in ORS 408.010(2).

(4) "Veteran" means any person who served on active duty with the Armed Forces of the United States as defined in ORS 408.225(3).

(5) "Under Honorable Conditions" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's active duty service with the Armed Forces are characterized as "honorable" or "under honorable conditions."

(6) "Alien" means any person who is not a citizen of the United States.

(7) "Alien Enemy" means any person who is a citizen of any nation, country, or state, or ally thereof, with which the United States is at war.

(8) "Conscientious Objector" means any person who during his period of service refused on conscientious, political, or other grounds to subject himself to full military discipline and unqualified service.

(9) "Combat Zone" means any area designated by the President of the United States by executive order in which the Armed Forces of the United States or any subdivision thereof are or have engaged in combat.

(10) "Other Like Training Program" means college training while in service, which compares with the civilian professional training for which college credit was, or could be, obtained to apply toward graduation from an approved institution of higher learning.

(11) "Domicile" or "Residence" means that place which a person intends as their fixed place of abode or habitation; which they consider to be their permanent home; and to which, whenever away, they always intend to return:

(a) Temporary absence from the state does not destroy domicile;

(b) Temporary presence in the state without an intention to establish a permanent home does not support a contention of being domiciled within the state.

(12) "Accredited Institution" means any institution where training is offered that has been certified as meeting the minimum requirements prescribed by the accrediting agency having jurisdiction over standards of uniformity and accreditation (the State Department of Education).

(13) "Approved Course of Study or Vocational Training" means any course of training outlined in the material submitted to and approved by the State Department of Education.

(14) "Full Time College Course" means that the particular course has met the following standards:

(a) "Full time" — As defined by the approved institution where the course is being pursued;

(b) "College" — An institution fully accredited by the appropriate accrediting agency, as recognized by the State Approving Agency (the State Department of Education).

(15) "Current Term" means:

(a) Fall, winter, spring, or summer term in those institutions operating on a term or quarter basis;

(b) First or second semester or summer session in those institutions operating on a semester or half year basis; or

(c) Not later than six weeks following enrollment in a training institution where training is a continuous program, not divided into terms or semesters.

(16) "Executive Head of the Institution" means:

(a) The President of the University or College;

(b) The Principal of the School;

(c) The Director of the Training establishment; or

(d) The person or persons to whom the executive head of the institution has delegated authority to act in his stead.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.010 - 408.090
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0115**
**Evidence Required to Establish Eligibility**

Eligibility Form 1004-M shall be submitted to the Department of Veterans' Affairs accompanied by:

(1) Certified copy of evidence of separation.

(2) Proof of current Oregon residence.

(3) Proof of change in name:

(a) Where veteran's name has been legally changed since discharge, a certified copy of the Court Order, marriage certificate, or divorce decree will be furnished to the Department of Veterans' Affairs;

(b) Where veteran's name has been changed, but not legally, an affidavit from the veteran and affidavits from at least two disinterested persons will be required to show such change.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.010 - 408.040
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0120**
**Applications**

(1) All applications for educational aid shall be made upon Form ED-1 (Application Form), and shall be filed with the head of the training institution involved.

(2) Upon approval of training, the head of the institution shall forward the application to the Department of Veterans' Affairs.

(3) When an application is made for benefits to attend a course which may be considered an avocation or recreational in nature, or for a single subject course which is not directly related to the student's educational objective, the applicant shall include with the usual application a statement indicating how the desired courses will better prepare him to engage in a more gainful occupation.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.010 - 408.040
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0135**
**Additional Information and Evidence**

The Department of Veterans' Affairs may, in addition to the information and evidence specified in the application, instructions, or rules and regulations, require such additional information and evidence as he deems necessary to establish the applicant's eligibility.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.010 - 408.070
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0145**
**Computation of Payments**

The following factors shall be used in computing the amount payable to the beneficiary:

(1) Length of service shall be computed in full months.

(2) For each month of time served, not exceeding 36 months, claimant shall be entitled to receive up to $150 per month for each month of full-time study or professional training.

(3) One month of entitlement will be deducted for each monthly payment covering any part of a calendar month.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.050 & 408.060
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0155**
**Approval to Receive Benefits**

(1) The Department of Veterans' Affairs shall determine the applicant's eligibility to receive benefits.

(2) The Department of Veterans' Affairs shall then determine:

(a) That the institution of learning is accredited and qualified to provide the training;

(b) That the tuition and other charges are reasonable;

(c) That the beneficiary has qualifications to pursue the course of training;

(d) That the course of training, is satisfactorily completed, is likely to enable the beneficiary to become a more useful citizen.

(3) If all the conditions provided in section (2) of this rule are met, the Department of Veterans' Affairs shall approve the application.

(4) Where a satisfactory showing is made that the required training is not available at an approved Oregon institution, the Department of Veterans' Affairs shall permit the applicant to attend an out-of-state school or college.

(5) Upon approval of the application by the Department of Veterans' Affairs, benefits are payable:

(a) Beginning with the first day of applicant's attendance, subject to conditions under OAR 274-010-0120(2); or

(b) Beginning on the date application is filed with executive head of the institution. If the applicant has failed to file promptly following registration and the delay is found to be caused by inexcusable oversight or neglect.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.025 - 408.070
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0160**
**Reports by Executive Head of Educational Institution**

On or before the tenth day of each calendar month, the executive head of each institution of learning shall submit certified copies of Form 1006-M (Statement of Educational Aid), containing the following information.

(1) Name of each beneficiary;

(2) Amount of training; and

(3) Progress.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.050
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 9-1993, f. 9-13-93, cert. ef. 11-4-93; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0170**
**Addition, Amendment, or Repeal of Rules or Regulations**

These rules and regulations shall have the effect of law and shall be binding in all instances on persons making application for educational aid, under ORS 408.010 to 408.110, but if any part of these regulations are found to be void or illegal, such illegality shall not affect the remaining provisions of the rules and regulations.

Stat. Auth.: ORS 408
Stats. Implemented: ORS 408.010 - 408.090
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65; DVA 1-2006, f. & cert. ef. 1-27-06

**274-010-0175**
**Procedure for Hearings**

(1) Any interested person may petition the director requesting the promulgation, amendment, or repeal of any rule.

(a) Petition shall be in writing and shall set forth the requested change in detail;

(b) Director shall set time for hearing and shall notify petitioner of same;

(c) Petitioner may present any evidence he deems necessary in support of his request; and

(d) The final determination shall be made by the director.

(2) Any applicant making application for educational aid may request a review of the Department of Veterans' Affairs' decisions pertaining to educational benefits by filing a petition with the director.

(a) Petition shall be in writing and signed by or on behalf of the applicant. Petition shall contain a statement of facts requesting specific relief and sufficient information to indicate that the applicant is entitled to relief;

(b) Director shall set the time and place for a hearing and shall notify the applicant of same;

(c) Applicant may present any evidence he deems necessary in support of his request at the hearing; and

(d) The final determination shall be made by the director.

Stat. Auth.: ORS 183 & 408
Stats. Implemented: ORS 408.040, 408.050 & 408.060
Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 32, f. 12-2-65, ef. 12-25-65; DVA 6-1996, f. & cert. ef. 7-22-96; DVA 1-2006, f. & cert. ef. 1-27-06

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## Economic and Community Development Department
## Chapter 123

**Rule Caption:** Amendment allows the department to extend loan guarantees under the Credit Enhancement Fund for a longer period of time.
**Adm. Order No.:** EDD 1-2006
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 2-10-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 123-021-0090
**Subject:** Allows the Oregon Economic and Community Development Department to extend loan guarantees under the Credit Enhancement Fund for longer than five years (with year by year approval) for working capital loans.
**Rules Coordinator:** Paulina Bernard—(503) 986-0036

**123-021-0090**
**Loan Insurance Programs**

The Department shall offer the following Insurance Programs:

(1) Conventional Insurance, under which the Department may insure up to 90 percent of a loan to a maximum of $500,000. Should a Borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department would pay the Financial institution up to 90 percent of the deficiency. The balance of any loss is absorbed by the Financial institution. Loan payments and the proceeds of collateral are applied pro rata to the insured and uninsured portion of a loan. The Department's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the Financial institution's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of $500,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan authorization.

(2) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent, on a pro rata basis, of a line of credit Working capital loan, not to exceed the lesser of $250,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan Authorization. Eligible borrowers include persons or enterprises without or about to be without existing line of credit Working capital loans. To participate in the Evergreen Entrants Program, the Department must be satisfied the Financial institution has the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the Financial institution approved by the Department.

(3) First Loss Insurance, under which the Department may insure 100 percent of any loss to a Financial institution up to the lesser of 25 percent of the original loan amount or $300,000. If a Financial institution makes a payment request, the Department's obligation would be limited to 100

percent of the amount of principal, accrued interest and the Financial institution's reasonable costs of collecting the loan, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of: 25 percent of the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral, but not taking into account the proceeds of liquidation and payments by guarantors, or an amount equal to the insured percentage of the original loan, or $300,000.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 90 percent of a new increment of a line of credit Working capital loan, with maximum insurance of $300,000. If a Financial institution makes a payment request for any deficiency remaining after liquidation of collateral and payment by any guarantors, the Department's obligation would be limited to the lesser of:

(A) A ratable share of the total default charges; or

(B) 90 percent of the deficiency.

(b)The formula for calculating the Department's ratable share of total default charges is:

Guaranteed Loan Amount
(as set out in Authorization)
Total credit facility made available
X
(Principal outstanding upon default
plus accrued interest and liquidation charges)

(c) Qualified businesses include persons or enterprises with existing line of credit Working capital loans. To participate in the Evergreen Plus program, a Financial institution must have in place and operating a lending program specializing in loans secured by accounts receivable and inventory, as determined by the Department. The Department must be satisfied that the Financial institution is sufficiently experienced and capable of operating an effective Evergreen Plus Program.

(5) The Conventional and First Loss Insurance Programs are available for all types of loans for eligible purposes, including Working capital loans that are secured by fixed assets.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481
Stats. Implemented: ORS 285.474(4)
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06

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**Rule Caption:** Amendments to the Marine Navigation Improvement Fund rules further clarify to allow both loans and grants for the same project.
**Adm. Order No.:** EDD 2-2006
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 2-10-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 123-027-0040, 123-027-0050, 123-027-0056, 123-027-0060, 123-027-0070, 123-027-0106, 123-027-0156, 123-027-0161, 123-027-0166, 123-027-0211
**Rules Repealed:** 123-027-0171, 123-027-0201
**Subject:** In 2003, the Oregon Ports, with the Oregon Economic and Community Development Department support, were successful in securing about $3.5 million in lottery funding for marine navigation (primarily dredging) projects in the state. The funding is provided through the Marine Navigation Improvement Fund (MNIF) as a new classification of projects; the 'non-federal' projects. These are the projects that do not qualify for federal funding, which is the first priority of projects in the MNIF. The revised rules further clarify, allow both loans and grants for the same project, and align the grant and loan provisions in the rule with the authorizing statutes. The revised rules do not make significant changes to the federally funded projects.
**Rules Coordinator:** Paulina Bernard—(503) 986-0036

**123-027-0040**
**Definitions**

For the purposes of these rules, the following terms will have the following definitions, unless the text clearly indicates otherwise:

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Federally authorized project" means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(4) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(5) "Fund" means the Marine Navigation Improvement Fund.

(6) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

(8) "Port" means a port incorporated under ORS chapter 777 or 778, and may be known as a "port authority" or "port district."

(9) "State of Oregon" means State of Oregon government departments or agencies.

(10) "New Navigation Improvement Project" means, for the purpose of ORS 777.267(1)(b) a water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel. To be characterized as 'new', the dredging activity must go beyond previously maintained improvements such as deeper channel depths or wider breadth of area being served. However, "New Navigational Improvement project" does not include dredging deeper than the depths of the federally authorized navigation improvement project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0050**
**Project Eligibility, Priority and Funding**

(1) To be eligible for funding, Federally Authorized Projects must meet the following criteria:

(a) The project is federally authorized;

(b) The project is listed in the Port's business or strategic plan; and

(c) The project has confirmed positive benefit/cost ratios as required by the National Economic Development Plan and has completed all federally required studies.

(2) First priority for assistance from the Fund shall be given to eligible Federally Authorized Projects.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0056**
**Federally Authorized Project Application Requirements**

The Port shall notify the Department of a potential federally authorized project at the time it initiates the project with the United States Army Corps of Engineers and it shall submit written documentation to the Department evidencing its participation with the United States Army Corps of Engineers. The written documentation must:

(1) Describe the nature and purpose of the project, including: proposed project scheduling; project term; estimated project cost; the Port's estimated non-federal share of the total project cost; and, the required schedule for payment of the Port's non-federal share of the total project cost;

(2) Contain federal documents that authorize the project, including Reconnaissance/Feasibility Studies; and

(3) Contain a copy of the Port's proposed Local Cost Share Agreement with the United States Army Corps of Engineers for undertaking and carrying out the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0060**
**Federally Authorized Project Application Review and Approval**

Based upon a review of the information described in OAR 123-027-0056, the Department will determine whether the project is eligible for assistance from the Fund. If the documentation is not adequate to determine eligibility, the Department will require the Port to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction, 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0070**
**Federally Authorized Project Award and Funding**

(1) The Department and the Port shall execute a contract prior to disbursal of moneys from the Fund. The contract shall be in a form and content as provided by the Department.

(2) Payments from the Fund shall be disbursed in accordance with the executed contract.

(3) The Port must provide the Department with a written report, records, and a detailed accounting of costs in the format required by the Department:

(a) Within 30 days following the close of each federal fiscal year; and

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0106**
**Non-Federal Project Eligibility**

Non-federally authorized projects that meet the following criteria are also eligible for assistance from the Fund:

(1) The project is listed in a Port's business or strategic plan;

(2) The project is ready to begin in the biennium for which funding is requested;

(3) The project is a new navigation improvement project; and

(4) The project meets the criteria of a freight project, or a commercial/recreation project, as follows:

(a) A freight project facilitates transportation for at least 5,000 tons of freight or cargo annually;

(b) A commercial/recreation project supports at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or it is to support the operation of at least one tour boat.

(5) Navigation improvement projects that can't meet the criteria listed in subsection (4) may still qualify for funding if:

(a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (4); and

(b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (4) within the first two years of operation and exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0100 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0156**
**Non-Federal Project Application Requirements**

(1) A Port may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0161**
**Non-Federal Project Application Review and Approval**

To approve an application for assistance from the fund, the Department must make the determinations as follows:

(1) The project is an eligible project. If the Department determines that the project is not eligible, it may reject an application or require further documentation from the Port;

(2) The requisite need for the project has been demonstrated to the Department in the application or the local planning process;

(3) If application is for a loan, the loan security includes the pledge of revenues and/or other funds, and is sufficient, when considered with other security, to assure repayment;

(4) The Port is willing and able to enter into a contract with the Department; and

(5) Moneys in the fund are or will be available for the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0166**
**Non-Federal Project Award and Funding**

(1) The Department and the Port will execute a contract prior to disbursal of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(a) Payments from the fund will be disbursed in accordance with the executed contract.

(b) The Port must provide the Department with written reports, records, and an accounting of detailed costs for a project as described in the contract.

(2) All eligible projects may be awarded loan funding of up to 100% of the total project cost, or for the required local match, under the following terms:

(a) Interest rates will be determined by Department at time of award, according to Department policy; and

(b) The loan term will not exceed 25 years.

(3) If Department determines 100 % loan funding is not feasible due to the financial hardship of the port, grants may be awarded if Department determines at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose any applicable permits and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

(4) Projects eligible due to the provisions of subsection 0106(4) may be awarded grant funding up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) Projects eligible due to the provisions of subsection 0106(5) may be awarded grant funding up to 50 percent of the project cost. A 50 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(6) The Port must secure, and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(7) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

**123-027-0211**
**Federal and Non-Federal Project Appeals and Exceptions**

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.

(3) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 777.262 - 777.267
Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0110 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

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## Employment Department
## Chapter 471

**Rule Caption:** SUTA Dumping OAR 471-031-0139, OAR 471-031-0140, OAR 471-031-0141 and OAR 471-031-0142.
**Adm. Order No.:** ED 3-2006
**Filed with Sec. of State:** 2-3-2006
**Certified to be Effective:** 2-5-06

**Notice Publication Date:** 1-1-06
**Rules Adopted:** 471-031-0139
**Rules Amended:** 471-031-0140, 471-031-0141, 471-031-0142
**Subject:** These rule changes are as a result of HB 2124 SUTA Dumping, adding a rule for employing enterprise and prohibited activities, amending language in Transfer of Experience setting out calculating combined experience ratings, amending language in Partial Transfer of Experience defining consolidation of tax rate experience, amending language in Acquiring an Employing Entity to clarify the definition of acquiring an employing entity.
**Rules Coordinator:** Lynn M. Nelson—(503) 947-1724

**471-031-0139**
**Employing Enterprise and Prohibited Activities**

(1) As used in chapter 657, an employing enterprise is a business, including all of the component parts of the business necessary to carry out day-to-day operations. Formation of a distinct legal entity for any component part of the employing enterprise may be disregarded for purposes of determining the experience rating of the employing enterprise.

(2) For the purposes of ORS 657.480(2)(c), any activity or inactivity that would hide or attempt to hide the actual experience of an employing enterprise as referenced in ORS 657.430 is prohibited.

Stat. Auth: ORS 657
Stats. Implemented: ORS 657.462, 657.480, 657.485
Hist.: ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

**471-031-0140**
**Transfer of Experience Determination, Tax Rate, Consolidation**

(1) For purposes of ORS 657.480, an employing unit is a total successor to the experience of an employing enterprise when all or substantially all of the components parts of the employing enterprise are transferred to or otherwise acquired by the employing unit, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer. If at the time of the purchase or transfer the acquired employing entity is inactive, no transfer of experience shall be allowed.

(2) An employer whose tax rate for a calendar year is determined in accordance with either ORS 657.462 or 657.435 and which has become final in accordance with ORS 657.485 shall pay taxes at the determined rate on all wages paid by all employing units of the employer during the calendar year for employment as defined in ORS chapter 657.

(3) Combined experience ratings will be calculated as follows:

(a) The tax rate experience will be consolidated for the entire year's rate determination if the effective date of the transfer occurs on or before June 30;

(b) If the effective date of the transfer occurs after June 30, the experience rate will be consolidated for the next year's rate determination.

(4) When an employing unit acquires the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), the penalty tax rate will transfer.

(5) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.435, 657.462, 657.480 & 657.485
Hist.: 1DE 153, f. 12-23-77, ef. 1-1-78; ED 2-1989, f. & cert. ef. 10-30-89; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

**471-031-0141**
**Partial Transfer of Experience**

(1) Under ORS 657.480(1) A new or existing employing unit is a partial successor to the experience of an employing enterprise when an identifiable and segregable portion of the employing enterprise is transferred to or otherwise acquired by the employing unit, including the employees of that portion of the employing enterprise necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(2) For the period beginning with the date of the transfer of the employment experience record through the end of the calendar year in which the transfer occurs, the contribution rate of the predecessor shall be the same as if there had been no transfer. Upon determination for partial transfer the Director shall:

(a) Assign a contribution rate for a successor that is a new employing unit, to be effective from the date of the transfer through the end of the calendar year in which the transfer occurs; and

(b) Notify the successor in writing of the tax rate assigned in subsection (2)(a) of this rule.

(3) In a partial consolidation, when both employing units are existing employers, the tax rate experience shall be consolidated.

(a) For the entire year's rate determination if the effective date of the transfer occurs on or before June 30 or

(b) If the effective date of the transfer is after June 30, the experience rate will be consolidated for the next year's rate determination, and

(c) Notify the successor in writing of the tax rate assigned in subsection (3)(a) of this rule, and

(d) Notify the successor in writing of the successorship determination under (3)(b).

(4) The percentage of employment experience attributable to the transfer shall be calculated by dividing the number of employees hired by the successor that are attributable to the transfer by the total number of employees of the predecessor prior to the transfer. This percentage, rounded to the nearest percentage number, shall then be applied to the benefit charges and taxable payroll of the predecessor and the resulting amounts shall comprise the employment experience to be transferred to the successor's account. The experience shall be added to the successor's account in the same quarter it is removed from the predecessor's account. The percent transferred plus the percent not transferred shall equal one hundred percent.

(5) The Director may use other reasonable means of determining the percentage in section (4) that is attributable to the transfer.

(6) Benefits charged to the predecessor in the quarter in which the transfer occurs and the next three quarters shall be split between the predecessor and successor in accordance with the percentage established in section (4) of this rule. For each quarter thereafter, none of the benefits charged to the predecessor shall be transferred to the successor.

(7) For the limited purpose of calculating experience rates under this rule, if the transfer occurs after the fifteenth day of the middle month of a calendar quarter, wages paid by the predecessor during such quarter shall be split between the predecessor and successor in accordance with the percentage calculated in section (4) of this rule. If the transfer occurs on or before the fifteenth day of the middle month of a calendar quarte, none of the wages paid by the predecessor during such quarter shall be split.

(8) For each calendar year commencing on or after the date of the transfer, the successor's contribution rate shall be based on its experience with taxable payroll and benefit charges, including the experience of the acquired portion of business as determined in sections (2), (3), (4), (5), (6) and (7).

(9) The successor, if not an employer at the time of the transfer, shall become an employer as of the date of the transfer.

(10) In determining excess wages over the taxable wage amount, a successor may use the wages paid by the predecessor prior to the transfer.

(11) When the Employment Department determines that a partial transfer has occurred, the Employment Department shall give the successor notice of the determination and its effects to the partial successor. The partial successor may request a hearing in accordance with the provisions of ORS 657.683.

(12) Notwithstanding sections (2), (3), (4), (5), (6) and (7), when an employing unit acquires a portion of the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), a proportionate share of the penalty tax rate will transfer and be added to its calculated rate.

(13) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.480
Hist.: ED 1-2000, f. 3-31-00, cert. ef. 4-2-00; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

**471-031-0142**
**Acquiring an Employing Entity: Active or Inactive**

(1) When an employer begins business and has or expects to have payroll for employees, or when the Tax Section makes a determination that a business has or expects to have payroll for employees, the Employment Department Tax Section may open an account for purposes under ORS chapter 657.

(2) The Employment Department Tax Section may close an account when an employer ceases operations and reports the closure of the business to the Tax Section, or when the Tax Section makes a determination that the business is not likely to have additional payroll.

(3) For the purposes of ORS 657.430 and 657.480, when an employing unit acquires a business that no longer has an open account the tax rate

assigned the acquiring employing unit will be based solely on the experience of the acquiring employing unit and any of its predecessors.

(4) For the purposes of ORS 657.430 and 657.480, a business with a closed account may request that the Tax Section reopen the account. The Tax Section may reopen a closed account only in circumstances where the business owner entity is the same and where the business activity is the same or substantially the same as prior to the closing.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.610 & 657.405 - 657.575
Hist.: ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

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## Insurance Pool Governing Board
## Chapter 442

**Rule Caption:** OPHP is making some technical changes and clarifying language that may have been ambiguous.
**Adm. Order No.:** IPGB 1-2006(Temp)
**Filed with Sec. of State:** 1-17-2006
**Certified to be Effective:** 1-17-06 thru 7-1-06
**Notice Publication Date:**
**Rules Amended:** 442-004-0010, 442-004-0080, 442-004-0085, 442-004-0130, 442-004-0150, 442-004-0160, 442-004-0170
**Subject:** The Office of Private Health Partnerships is modifying the rules for the FHIAP program in order to accomplish the following:

• Clarify that gross income is used to determine eligibility and that educational grants or scholarships are not to be counted as income.

• Clarify that investments and savings are counted as an applicant's if any member of the family has a beneficial interest in the investment or savings; that FHIAP counts commercial property as an investments and savings, but does not count a 529 Educations Savings Plan as an investments and saving.

• Clarify the definition of misrepresentation.

• Clarify that FHIAP may verify eligibility factors at any time during the application process, and that if required documentation is not received, FHIAP may deny an applicant.

• Allow the agency administrator to designate a staff person to appoint a case management panel to review extenuating circumstances.

• To include civil penalties as overpayments.

• Clarify in the appeals and hearings sections that members may also appeal or request a hearing, that appellants have 21 calendar days to file an appeal or request a hearing, that FHIAP may allow an applicant or member may request to send additional information, and that FHIAP will notify applicants of the appeal decision.

• Changes an ORS cite as a technical correction.

• Changes a rule cite as a technical correction.

**Rules Coordinator:** Nicole Shuba—(503) 378-4676

**442-004-0010**
**Definitions**

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996.

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen.

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996.

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training).

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means the opportunity for an applicant to request and receive administrative review by Board staff of a decision made or action taken by the Third Party Administrator (TPA) or state agency regarding program eligibility, subsidy level, termination, re-enrollment, overpayments, misrepresentation, or any other decision adverse to the applicant.

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined or redetermined to be eligible to receive such subsidy or continued subsidy.

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Board in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government. Plans that do not cover services that are available through community resources may be approved for FHIAP subsidy.

(5) "Board" means the Insurance Pool Governing Board established under ORS 735.704.

(6) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Certified carrier" means a carrier that has been certified by the Board to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(8) "Dependent" for the purposes of FHIAP means:

(a) An applicant's spouse.

(b) All of the applicant's and applicant's spouse's unmarried children and step children (dependent children, unless otherwise stipulated in this section, must be under the age of 19 and reside with the applicant at least 50 percent of the time as stipulated in an official court document; or, who are full-time college students under the age of 23 who may or may not reside with the applicant while attending college. The term "full-time" will be as defined by the institution in which the dependent is enrolled; the burden of proving full-time college student status will be on the applicant).

(c) An applicant's and applicant's spouse's unmarried legally adopted children or children placed under the legal guardianship of the applicant or their spouse. All of the children described in this subsection (c) must also meet the criteria in subsection (b) directly above.

(d) An applicant's and applicant's spouse's unmarried child over the age of 18 with a severe disability as documented by the Social Security Administration.

(e) An unborn child of any applicant or their dependent as verified by written correspondence from a licensed medical practitioner.

(9) "Family" is defined in ORS 735.720(2).

(10) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(11) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(12) "Health Benefit Plan" is defined in ORS 735.720(3)(a) and (b).

(13) "Health insurance producer" means a person who holds a current, valid license pursuant to ORS 774.089 as an insurance producer, where such producer is authorized to transact health insurance.

(14) "Incarcerated" means a person living in a correctional facility. The following individuals are considered to be living in correctional facilities:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center;

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work;

(c) Individuals on short-term leave, fewer than 30 days, from a correctional facility;

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(15) "Income" includes, but is not limited to, earned and unearned gross income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds. For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund.

(a) In order for FHIAP to take this deduction in income, the applicant must provide proof of the support payments by sending FHIAP either a printout from the Support Enforcement Division, or by sending copies of cancelled checks showing the payments made to the obligee.

(b) Income does not include educational grants or scholarships.

(16) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, non-retirement qualified annuities, other securities easily converted to cash, and the tax-assessed value, as indicated by the county assessor, of any residential or commercial property. Any of the above investments and savings that are owned by or in which a beneficial interest is held by the applicant or any member of the applicant's family will be considered investments and savings of the applicant.

(a) "Investments and savings" does not include one property maintained by the applicant or the applicant's family as a primary residence. If the applicant or applicant's family maintain multiple residences or own real property as residential rentals, those properties (other than one single primary residence) are included within the definition of "investments and savings."

(b) "Investments and savings" also excludes 529 Educational Savings Plans and qualified retirement accounts, including but not limited to IRAs and 401(k) plans.

(17) "Liable adult" means a person or persons who applied for or receives a subsidy for themselves or others. Children are not considered liable adults if their parent or guardian applied for or received a subsidy on the child's behalf.

(18) "Medicaid," see OHP.

(19) "Medicare" is a federal health insurance program for those who are 65 or older, disabled, or have permanent kidney failure. May include both Parts A and B, or may only include Part A or Part B.

(20) "Member" means a person enrolled in FHIAP and eligible for or receiving a subsidy from the program.

(21) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(22) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(23) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member.

(24) "Overpayment amount" means:

(a) The total amount of subsidy payments the Board has paid to, or on behalf of, an ineligible member; or

(b) The total amount of subsidy payments in excess of the correct subsidy amount paid to, or on behalf of, an eligible member; or

(c) Both (a) and (b).

(25) "Postmark" means the postmark date affixed by the United States Postal Service.

(26) "Public institution" means state-funded residential facilities such as Eastern Psychiatric Center, Oregon State Hospital, or Eastern Oregon Training Center.

(27) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply.

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. 5303A(d).

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training).

(m) The spouse or dependent child of a person described in either (k) or (l) above.

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(28) "Redetermination" means the periodic review and determination of a member's continued eligibility or subsidy level.

(29) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state agency as authorized by ORS 735.724.

(30) "Resident" means an individual who demonstrates to the Board that the individual is lawfully residing in Oregon and intends to reside in Oregon permanently.

(a) There is no minimum amount of time a person must have lived in Oregon to be a resident;

(b) Applicants and their families must intend to remain in Oregon, except for full-time students attending school in another state who are eligible for coverage under the terms of the health benefit plan selected by the member.

(31) "Self-employment" criteria include, but are not limited to, applicants who submit with their FHIAP application an Internal Revenue Service (IRS) Schedule C tax form or a federal form 1099, and for adult foster care givers proof that the recipient of the care resides in the applicant's home. Self-employment does not include partnerships, S-corporations, C-corporations, limited liability corporations, and adult foster caregivers whose care recipient does not reside in the applicant's home. Any income reported on the IRS Schedule E is also not considered self-employment and will not be subject to any deductions

(32) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family

(33) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

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

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 4-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03; IPGB 1-2003, f. & cert. ef. 6-16-03; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06; Administrative correction 1-19-06; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0080**
**Application Process**

(1) An application form developed by the Board, and any documentation required on the form, will be used to determine eligibility and subsidy level.

(2) The Board will establish procedures for the application process with the goal of more equally distributing funds between the employer-sponsored health benefit market and the individual health benefit market. This may require the board to release applications from one reservation list ahead of the other reservation list.

(3) To apply for FHIAP, prospective applicants must first be in accordance with OAR 442-004-0070(3).

(4) The application process as stipulated in this application section, OAR 442-004-0080, will be the only time when applicants can submit information proving their program eligibility.

(5) As funds are available, prospective applicants on a reservation list are notified in writing of their eligibility to apply for FHIAP in accordance with OAR 442-004-0070(9). An application form is included with the notice.

(6) The applications will be processed according to the timelines stipulated in OAR 442-004-0070(9):

(a) If the completed application is not postmarked within the timelines stipulated in OAR 442-004-0070(9), the prospective applicant must get back on the appropriate FHIAP reservation list in order to receive another application as space permits.

(b) FHIAP has 30 calendar days to take action on the application for subsidy. The action may be approval, denial, or a request for further information from the applicant.

(A) When further information is requested, the applicant has 45 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not received within 30 calendar days from the date on the request, the Board will mail a "15-day notice" to the applicant advising that only 15 days remain in which to provide the additional information. If an applicant does not provide all requested information within 45 days of the initial request, the application is denied.

(B) Once an applicant has been denied because the applicant failed to respond to the request for further information, the applicant must make a new reservation request to FHIAP to be sent an application in the future. Their name may be placed on the reservation list in the manner prescribed in OAR 442-004-0070.

(c) FHIAP may screen applications for FHIAP for potential eligibility for OHP. If FHIAP discovers that such potential eligibility exists, FHIAP will advise the applicant in writing of this possibility.

(7) Documents that verify required information provided on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of residency for all adult applicants;

(b) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the three months prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, support printouts and unemployment benefit stubs or printouts;

(c) Documents verifying income from self-employment for the six months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(d) Documents verifying income from farming, fishing and ranching for the 12 months prior to the signature date on the application, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) The most recently filed federal tax return and all schedules.

(f) A copy of any employer sponsored insurance handbook, summary, or contract that is available to any applicant.

(g) A completed Group Insurance Information (GII) form, if the applicant has employer sponsored insurance available to them.

(8) Additional verification must be provided when FHIAP requests it.

(a) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported. Such information includes, but is not limited to:

(A) Information reported is inconsistent;

(B) Information provided on the application is inconsistent;

(C) Other information received by FHIAP is inconsistent with information on the FHIAP application;

(D) Information reported on previous applications is inconsistent with a current FHIAP application.

(b) FHIAP may decide at any time during the application process that additional eligibility factors must be verified.

(c) FHIAP may deny an application or end ongoing subsidy when acceptable verification or required documentation is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06; Administrative correction 1-19-06; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0085**
**Extenuating Circumstances**

The agency administrator or designee will appoint a case management panel to review extenuating circumstance requests that may result in exceptions to application of the administrative rules. Requests relating to life circumstances beyond the applicant's control will be considered.

(1) Exceptions will not be granted for any eligibility requirements except that the timeframes associated with submitting information, including, but not limited to the application, income verification, and information specifically requested by the eligibility specialist may be extended.

(2) Exceptions may also be granted for non-payment of the member's portion of the insurance premium.

Stat. Auth.: ORS 735.734 & 735.720 - 35.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0130**
**Overpayments**

(1) An overpayment may result from administrative error, member error, civil penalty or misrepresentation.

(2) Any overpayment amount is a debt owed to the State of Oregon and is subject to collection.

(3) An overpayment is considered to be the fault of the member if it is caused by misunderstanding or unintended error by the member. Examples of member error include, but are not limited to, instances where the member intentionally or unintentionally:

(a) Did not provide correct or complete information to FHIAP;

(b) Did not report changes in circumstances to FHIAP;

(c) Misused a subsidy payment.

(4) An administrative error overpayment is caused by any of the following circumstances:

(a) FHIAP committed a calculation, procedural, or typing error that was no fault of the member;

(b) FHIAP failed to compute or process a subsidy payment correctly.

(5) The FHIAP member is having the health insurance premium subsidized by another state government program, such as, but not limited to OHP, and such subsidy results in a double payment for the same health insurance premium.

(6) The FHIAP member is currently enrolled in other health insurance coverage, including simultaneous receipt of FHIAP subsidized health insurance plan benefits and receipt of benefits from any part of the OHP.

(7) FHIAP will mail notification of overpayments to the member. This written notice shall:

(a) Inform the member of the amount of and the reason for the overpayment;

(b) Inform each liable adult that they must elect a method of repayment;

(c) Inform the member of what action the Board will take to collect the overpayment; and

(d) Inform members of their appeal rights.

(8) The Board will collect overpayment amounts in one lump sum if the member is financially able to repay the overpayment amount in that manner. If the member is financially unable to pay the amount due in one lump sum, FHIAP will accept regular installment payments in one or more of the installment methods listed below. Any former FHIAP members wishing to re-apply to FHIAP who owe a debt to FHIAP must, in addition to meeting the eligibility criteria in OAR 442-004-0050, either have their debt to FHIAP paid in full or have one or more of the following payment methods in place:

(a) A minimum of $10 per month or the amount necessary to collect the overpayment amount in one year, whichever is greater; or

(b) An offset against any future monthly subsidy payment in the amount necessary to collect the overpayment amount in one year.

(9) If FHIAP is unable to recover the overpayment amount from the member in keeping with OAR 442-004-0130(8) above;

(a) FHIAP may, with any remaining balance not collected in full within one year, renegotiate or refer the balance to the Department of Revenue or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's amount due.

(b) FHIAP may file civil action to obtain a court ordered judgment for the amount of the debt. The Board may also assert a claim for costs and fees associated with obtaining a court judgment for the debt. When a judgment for costs is awarded, the Board will collect this amount in addition to the overpayment amount, using the methods of recovery allowable under state law and administrative rule.

(10) If the member submits an appeal request, FHIAP will not continue any attempts at collection until the conclusion of the appeal.

(11) If the appeal decision is in the member's favor, FHIAP must refund to the member any money collected to recover the overpayment amount.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0150**
**Appeals**

(1) All notifications of decisions and determinations made by FHIAP will inform the applicant or member of appeal rights and outline the steps to be taken to file an appeal.

(2) An applicant or member may appeal any decision made or action taken by FHIAP.

(3) To appeal a decision or action, the applicant or member must advise FHIAP in writing of their desire to appeal within 21 calendar days of the date on the notice or action. The 21 calendar days will be established using the postmark on the envelope containing the appeal letter.

(4) The letter of appeal must include the reasons for the appeal and the reasons must be based on the notification addressed in subsection 1 of this section and be relevant to the information already submitted by the applicant or member.

(5) If necessary during the appeal process, or if asked by the applicant or member, FHIAP may request additional information. If further information is requested, the applicant or member has 15 calendar days from the date on the request to provide the additional information. If the information requested by FHIAP is not postmarked within 15 calendar days from the date on the request, the decision being appealed will be upheld.

(6) Once FHIAP has made a decision on appeal, the applicant or member will be notified of the appeal decision.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0160**
**Hearings**

(1) An applicant or member may request a hearing on FHIAP's appeal decision.

(2) To receive a hearing, the hearing request must be in writing, signed by either the applicant or member or their attorney and be postmarked no later than 21 calendar days following the date of the appeal decision notice. The 21 calendar days will be established using the postmark on the envelope containing the appeal decision notice.

(3) The letter requesting a hearing must include the reasons for the hearing and be relevant to the information already submitted by the applicant or member.

(4) The reasons for a hearing request shall be limited to the issue(s) cited in the appeal decision notice.

(5) FHIAP will conduct a contested case hearing pursuant to ORS 183.413 to183.470.

(6) Once a hearing is requested, FHIAP will not pursue collection of any alleged overpayment until FHIAP has issued a final order affirming the overpayment.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 1-2004, f. & cert. ef. 11-1-04; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

**442-004-0170**
**Rule Authorizing Agency Representative**

(1) Subject to the approval of the Attorney General, an officer or employee of this agency is authorized to appear on behalf of the agency in the following type of hearing conducted by this agency: A hearing that may result in the change or termination of program benefits as well as in some cases imposing civil penalties.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(3) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

(4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal argument as defined in subsection (2)(a).

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2005(Temp), f. & cert. ef. 7-7-05 thru 1-1-06; Administrative correction 1-19-06; IPGB 1-2006(Temp), f. & cert. ef. 1-17-06 thru 7-1-06

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## Land Conservation and Development Department
## Chapter 660

**Rule Caption:** Conform Statewide Planning Goal 8 to statutes regarding destination resorts, amended in 2003 and 2005 (Or Laws 2003, chapter 812 (SB 911) and Or Laws 2005, chapter 205 (SB 1044)).
**Adm. Order No.:** LCDD 1-2006
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 2-10-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 660-015-0000
**Subject:** These amendments conform Statewide Planning Goal 8 to statutes regarding destination resorts, amended in 2003 and 2005 (Or Laws 2003, chapter 812 (SB 911) and Or Laws 2005, chapter 205 (SB 1044)).

The statewide planning goals, including Goal 8, are adopted and referenced by OAR 660-015-0000. The goals are publications available from the Department of Land Conservation and Development.
**Rules Coordinator:** Shelia Preston—(503) 373-0050

**660-015-0000**
**Statewide Planning Goals and Guidelines #1 through #14**

(1) #1 — Citizen Involvement;
(2) #2 — Land Use Planning;
(3) #3 — Agricultural Lands;
(4) #4 — Forest Lands;
(5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;
(6) #6 — Air, Water, and Land Resources Quality;
(7) #7 — Areas Subject to Natural Disasters and Hazards;
(8) #8 — Recreational Needs;
(9) #9 — Economy of the State;
(10) #10 — Housing;
(11) #11 — Public Facilities and Services;
(12) #12 — Transportation;
(13) #13 — Energy Conservation; and
(14) #14 — Urbanization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 197 & 215
Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240 & 197.245
Hist.: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 1-2006, f. & cert. ef. 2-10-06

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**Rule Caption:** OAR chapter 660, divisions 004, 006, and 033 amended to reflect recent statutory changes and to clarify existing provisions.
**Adm. Order No.:** LCDD 2-2006
**Filed with Sec. of State:** 2-15-2006
**Certified to be Effective:** 2-15-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 660-004-0000, 660-004-0022, 660-006-0027, 660-006-0031, 660-033-0120, 660-033-0130
**Subject:** The amendments to administrative rules implementing Statewide Planning Goals 2, 3 and 4 regarding Exceptions, Agricultural Lands, and Forest Lands (OAR chapter 660, divisions 004, 006 and 033) conform these rules to 2005 statutory amendments to ORS chapters 197 and 215: 2005 Or Laws, chapters 67 (HB 2438), 289 (HB 3313), 354 (SB 346), 609 (HB 2069), 625 (HB 2932), 693 (SB 863), and 737 (HB 3117). Amendments to OAR chapter 660, division 033, clarify that processed crops and livestock from a farm operation, or from other farm operations in the local agricultural area, may be sold at farm stands as a farm product, rather than as a retail incidental item, along with farm products from throughout Oregon. Other amendments to clarify these rules or to correct errors.
**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

**660-004-0000**
**Purpose**

(1) The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions". Except as provided for in OAR chapter 660, division 14, "Application of the Statewide Planning Goals to the Incorporation of New Cities" this Division interprets the exception process as it applies to statewide Goals 3 to 19.

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal or why a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide Goal.

(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDD 2-2006, f. & cert. ef. 2-15-06

**660-004-0022**
**Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)**

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660, division 014, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

(4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10), appropriate reasons and facts include but are not limited to the following:

(a) A demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

(A) The use requires a location near a resource located on rural land; or

(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

(i) For industrial use, it would have a significant comparative advantage due to its location (i.e., near a rural energy facility, or near products available from other activities only in the surrounding area; or it is reliant on an existing work force in an existing unincorporated community);

(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or UGB, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.

(b) Need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and UGBs in the area. "Area" encompasses those communities, exception areas, and UGBs which may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors;

(c) Expansion requires demonstrated ability to serve both the expanded area and any remaining infill development potential in the community at time of development with the level of facilities determined to be appropriate for the existing unincorporated community.

(5) Expansion of Urban Unincorporated Communities: Expansion of an urban unincorporated community defined under OAR 660-022-0010(9) shall comply with OAR 660-022-0040.

(6) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses which are neither water-dependent nor water-related within the setback line required by Section C.3.k of the Goal may be approved where reasons demonstrate the following:

(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;

(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;

(c) The use will provide a significant public benefit; and

(d) The use is consistent with the Legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by LCDC under ORS 390.322.

(7) Goal 16 — Water Dependent Development: To allow water dependent industrial, commercial, or recreational uses in development and conservation estuaries which require an exception, an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period considering the following:

(a) Factors of Goal 9 or for recreational uses the factors of Goal 8;

(b) The generally predicted level of market demand for the proposed use;

(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements; and

(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use;

(e) The economic analysis must be based on Goal 9 element of the County Comprehensive Plan and consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.

(8) Goal 16 — Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS Chapter 541, in any of the following circumstances:

(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material including adjacent upland soils or stockpiling of material from approved dredging projects can not reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;

(b) Dredging to maintain adequate depth to permit continuation of present level of navigation in the area to be dredged;

(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;

(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;

(e) Dredge or fill or other alteration for expansion of an existing public nonwater- dependent use or a nonsubstantial fill for a private nonwater-dependent use (as provided for in ORS 541.625) where:

(A) A Countywide Economic Analysis based on the factors in Goal 9 demonstrates that additional land is required to accommodate the proposed use; and

(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and

(C) That the size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.

(f) In each of the situations set forth in subsections (7)(a) to (e) of this rule, the exception must demonstrate that proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner which minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(9) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas:

(a) These Coastal Shoreland Areas include:

(A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites;

(B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to non-resource use and in unincorporated communities pursuant to OAR chapter 660, division 022 (Unincorporated Communities) that are suitable for water dependent uses;

(C) Designated dredged material disposal sites;

(D) Designated mitigation sites.

(b) To allow a use which is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (9)(a) of this rule the exception must demonstrate:

(A) A need, based on the factors in Goal 9, for additional land to accommodate the proposed use;

(B) Why the proposed use or activity needs to be located on the protected site considering the unique characteristics of the use or the site which require use of the protected site; and

(C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and where applicable consistent with protection of natural values.

(c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area;

(d) Uses which would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible, be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.

(e) Exceptions to designate and protect for water-dependent uses an amount of shorelands less than is required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate compliance with the following:

(A) Based on the factors of Goals 8 and 9, there is no need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-dependent use needs of all local government jurisdictions along the estuary, including the port authority if any, and be consistent with the Goal 8 and Goal 9 elements of the comprehensive plans of those jurisdictions.

(B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on one or more of the requirements of Goals 3 to 18.

(10) Goal 18 — Foredune Breaching: A foredune may be breached when the exception demonstrates an existing dwelling located on the foredune is experiencing sand inundation and the grading or removal of sand is:

(a) Only to the grade of the dwelling;

(b) Limited to the immediate area in which the dwelling is located;

(c) Sand is retained in the dune system by placement on the beach in front of the dwelling; and

(d) The provisions of Goal 18 Implementation Requirement 1 are met.

(11) Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:

(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or is of minimal value; and

(b) The use is designed to minimize adverse environmental effects;

(c) The provisions of OAR 660-004-0020 shall also be met.

(12) Goal 12 — Transportation Improvements on Rural Lands. Transportation improvements not allowed on rural lands as provided for in OAR 660-012-0065 require an exception pursuant to OAR 660-012-0070 and this division.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.732
Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2006, f. & cert. ef. 2-15-06

**660-006-0027**
**Dwellings in Forest Zones**

(1) Dwellings authorized by OAR 660-006-0025(1)(d) are:

(a) A dwelling may be allowed if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (b) of this section:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

(b) For purposes of subsection (a) of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(c) For purposes of subsection (a) of this section the dwelling must be located:

(A) On a tract in western Oregon that is composed of soil is not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(i) A United States Bureau of Land Management road; or

(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(B) On a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(i) A United States Bureau of Land Management road; or

(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(d) A dwelling authorized under subsection (a) of this section shall comply with the following requirements:

(A) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based;

(B) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.

(e) If a dwelling is not allowed pursuant to subsection (a) of this section, a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract that does not include a dwelling:

(A) In eastern Oregon of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph;

(B) In western Oregon of at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph.

(f) In western Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(A) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(i) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(B) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(g) In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(A) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

(i) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(B) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

(i) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(C) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(h) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsections (1)(f) and (1)(g) of this section.

(i) A proposed dwelling provided for by subsection (1)(f) and (1)(g) is not allowed if the tract on which the dwelling will be sited includes a dwelling.

(2) Except as provided by subsection (3) of this section, if the tract under subsection (1)(f) or (g) of this rule abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(3)(a) If a tract 60 acres or larger described under subsection (1)(f) or (g) of this rule abuts a road or perennial stream, the measurement shall be made in accordance with section (2) of this rule. However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within 1/4 mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract.

(b) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(4) A proposed dwelling under this rule is not allowed:

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law;

(b) Unless it complies with the requirements of OAR 660-006-0029 and 660-006-0035;

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for the other lots or parcels that make up the tract are met.

(5) The following definitions shall apply to this rule:

(a) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway;

(b) "Commercial Tree Species" means trees recognized under rules adopted under ORS 527.715 for commercial production.

(6)(a) The applicant for a dwelling authorized by paragraph (1)(e)(A) or (B) of this rule that requires one or more lot or parcel to meet minimum acreage requirements shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(c) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section;

(e) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts which do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(7) Notwithstanding subsection (4)(a) of this rule, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in subsections (1)(f) or (g) or sections (2) or (3) of this rule, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle.

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

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 2-1990, f. & cert. ef. 3-9-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06

**660-006-0031**

**Youth Camps**

(1) A youth camp may be established in compliance with the provisions of this rule. The purpose of this rule is to provide for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment.

(2) The provisions of this rule shall not apply to youth camps established prior to the effective date of this rule.

(3) A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience primarily for the benefit of persons twenty-one (21) years of age and younger. Youth camps do not include any manner of juvenile detention center or juvenile detention facility.

(4) An application for a proposed youth camp shall comply with the following:

(a) The number of overnight camp participants that may be accommodated shall be determined by the governing body, or its designate, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. Except as provided by subsection (4)(b) of this rule a youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff.

(b) The governing body, or its designated may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants allowed under subsection (4)(a) of this rule.

(c) Overnight stays for adult programs primarily for individuals over twenty-one years of age, not including staff, shall not exceed 10% of the total camper nights offered by the youth camp.

(d) The provisions of OAR 660-006-0025(5)(a).

(e) A campground as described in ORS 215.283(2)(c), 215.213(2)(c) and OAR 660-006-0025(4)(e) shall not be established in conjunction with a youth camp.

(f) A youth camp shall not be allowed in conjunction with an existing golf course.

(g) A youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.

(5) The youth camp shall be located on a lawful parcel that is:

(a) Suitable to provide a forested setting needed to ensure a primarily outdoor experience without depending upon the use or natural characteristics of adjacent and nearby public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. A youth camp shall be located on a parcel of at least:

(A) 80-acres if located in eastern Oregon.

(B) 40-acres if located in western Oregon.

(b) Suitable to provide a protective buffer to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the governing body, or its designate sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

(A) The proposed setback will prevent conflicts with commercial resource management practices;

(B) The proposed setback will prevent a significant increase in safety hazards associated with vehicular traffic; and

(C) The proposed setback will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

(c) Suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the governing body or its designate shall verify that a proposed youth camp will not result in the need for a sewer system.

(d) Predominantly forestland if within a mixed agricultural/forest zone as provided for under 660-006-0050.

(6) A youth camp may provide for the following facilities:

(a) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horse back riding or swimming that can be provided in conjunction with the site's natural environment.

Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.

(b) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the governing body, or its designate, may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.

(c) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters.

(d) Up to three camp activity buildings, not including primary cooking and eating facilities.

(e) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.

(f) Covered areas that are not fully enclosed.

(g) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant.

(h) An infirmary may provide sleeping quarters for the medical care provider, (e.g. Doctor, Registered Nurse, Emergency Medical Technician, etc.).

(i) A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of this rule, if no other dwelling exists on the subject property.

(7) A proposed youth camp shall comply with the following fire safety requirements:

(a) The fire siting standards in OAR 660-006-0035;

(b) A fire safety protection plan shall be developed for each youth camp that includes the following;

(A) Fire prevention measures;

(B) On site pre-suppression and suppression measures; and

(C) The establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

(c) Except as determined under subsection (7)(d) of this rule, a youth camp's on-site fire suppression capability shall at least include:

(A) A 1000 gallon mobile water supply that can access all areas of the camp; and

(B) A 30 gallon-per-minute water pump and an adequate amount of hose and nozzles; and

(C) A sufficient number of fire fighting hand tools; and

(D) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

(d) An equivalent level of fire suppression facilities may be determined by the governing body, or its designate. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

(e) The provisions of OAR 660-006-0031(7)(d) may be waived by the governing body, or its designate, if the youth camp is located in an area served by a structural fire protection provider and that provider informs the governing body in writing that on-site fire suppression at the camp is not needed.

(8) The governing body, or its designate, shall require as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, or operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(9) Nothing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing land use regulations such as the requirements addressing other resource values (e.g. Goal 5) which exist on forest lands.

(10) The provisions of this rule shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3) commencing 120 days following the effective date of this rule. A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this rule, or to ensure compliance with any standards or criteria.

Stat. Auth.: ORS 183, 197 & 215
Stats. Implemented: ORS 184.618, 195.025, 197.040 - 197.717 & 215.750 - 215.755
Hist.: LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06

**660-033-0120**
**Uses Authorized on Agricultural Lands**

The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) R — Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(3) * — Use not permitted.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 183, 197.040, 197.245 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06

**660-033-0130**
**Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses**

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations

on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS Chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards setforth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards setforth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards setforth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) — (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the

dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(u) or 215.283(1)(t). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 004.

(18) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like

development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 004.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multiunit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies

the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29) Except for those composting facilities that are a "farm use" as defined in OAR 660-033-0020(7), composting facilities allowed on land not defined as high-value farmland under this section shall be limited to the composting operations and facilities defined by the Environmental Quality Commission under OAR 340-096-0024(1), (2) or (3). Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 195 & 197
Stats. Implemented: ORS 197.040 & 215.213
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994 , f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LDCD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06

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## Oregon Department of Aviation
## Chapter 738

**Rule Caption:** The new proposed language would further clarify specifics as to the lessee's responsibility as it relates to infrastructure improvements on commercial facilities.
**Adm. Order No.:** AVIA 1-2006
**Filed with Sec. of State:** 1-27-2006
**Certified to be Effective:** 1-27-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 738-015-0005
**Subject:** The new language would further clarify specifics as to the Lessee's responsibility as it relates to infrastructure improvements on commercial facilities. Additionally, the Oregon Department of Aviation (ODA) would be apprised of potential infrastructure issues at the time the permit review process was transpiring and could then determine if future development at the airport should proceed.
**Rules Coordinator:** John Wilson—(503) 378-2521

**738-015-0005**
**Leasing Application for Commercial Aeronautical Activities**

(1) To obtain a commercial lease at a State-owned airport, a person shall submit a written application to Oregon Department of Aviation (the Department or ODA) for review, in the form specified by ODA. As a prerequisite to granting commercial aeronautical activity privileges or occupancy at a State-owned airport, the prospective Lessee must submit a specific, detailed description of the scope of the intended commercial aeronautical activities, as well as the means and methods to be employed to accomplish the contemplated activities.

(2) Required information that must accompany an application for commercial lease shall include:

(a) The legal name of the person applying as prospective Lessee, and its business name if different;

(b) The name(s), address(es), and telephone number(s) of the person and the name of the primary contact individual;

(c) The names, addresses, and telephone numbers of all owners of five percent (5%) or more equity interest, management control, or debt in the entity;

(d) The proposed date for commencement of the intended activities and proposed base lease term for conducting these activities;

(e) A comprehensive listing of all activities proposed to be offered, along with copies of all applicable Federal, State, or local operating certificates and licenses held;

(f) For proposed agreements to lease existing structures or improvements, a description of the size, location, and proposed utilization of office, hangar, tiedown area(s), and vehicle parking area(s) to be utilized;

(g) For proposed agreements to lease unimproved State-owned airport areas, a layout (to scale) of the size, configuration, and location of the property proposed for occupancy, and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle

parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media;

(h) The number of persons to be employed, including the name and qualifications of each management/supervisory person, and specifications as to whether the employees will be full-time, part-time, or seasonal;

(i) The number of aircraft to be utilized in connection with the proposed commercial aeronautical activities and, as soon as known, the make, model, passenger seating capacity, cargo capacity, aircraft registration number, and copies of applicable operating certificates for each aircraft; and

(j) A comprehensive list of the equipment, vehicles, and inventory proposed to be utilized in connection with the intended activities.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

(4) At its option, the Department may:

(a) Request to review a written business plan; and

(b) Request a metes and bounds legal description of lease property boundaries.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 1-2006, f. & cert. ef. 1-27-06

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**Rule Caption:** The new proosed language would further clarify specifics as to the Lessee's responsibility as it relates to infrastructure improvements on non-commercial facilities.
**Adm. Order No.:** AVIA 2-2006
**Filed with Sec. of State:** 1-27-2006
**Certified to be Effective:** 1-27-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 738-015-0075
**Subject:** The new language would further clarify specifics as to the Lessee's responsibility as it relates to infrastructure improvements on non-commercial facilities. Additionally, the Oregon Department of Aviation (ODA) would be apprised of potential infrastructure issues at the time the permit review process was transpiring and could then determine if future development at the airport should proceed.
**Rules Coordinator:** John Wilson—(503) 378-2521

**738-015-0075**
**ODA Review of Application for Non-Commercial Aeronautical Activities**

(1) The Department shall review the application for lease for non-commercial aeronautical activities at a State-owned airport, as well as the financial responsibility documentation, and determine whether to approve or deny the application. The decision shall be made in writing to the prospective Lessee.

(2) The Department may deny any prospective Lessee's application if it is determined that:

(a) The proposed construction would create a safety hazard at the airport or the surrounding community;

(b) The prospective Lessee, for any reason, does not meet the qualifications, standards, and requirements of the Department or exhibit adequate financial responsibility or capability to undertake and complete the proposed construction (the burden of proof shall be on the applicant and the standard of proof shall be by clear and convincing evidence);

(c) The granting of the lease application will require the Department to expend funds, or supply labor or materials in connection with the proposed activity and/or construction, or will result in a financial loss (or hardship) for the airport;

(d) No appropriate, adequate, or available site or building(s) exist(s) to accommodate the needs of the prospective Lessee as presented in the lease application, nor is such contemplated within a reasonable time frame;

(e) The proposed development does not comply with the Airport Master Plan and/or Airport Layout Plan in effect at that time, or those plans anticipated to be in effect within the time frame proposed by the prospective Lessee;

(f) The development or use of the area requested by the prospective Lessee is likely to result in congestion of aircraft or airport buildings, or will unduly interfere with operations or activities of any present Lessee on the airport, and/or will prevent adequate access to the assigned lease area of any present Lessee;

(g) The prospective Lessee has failed to make full disclosure, or has misrepresented or omitted material facts in the application or in supporting documents;

(h) The prospective Lessee, or a principal of the prospective Lessee, has a record of violating the rules, regulations, statutes, ordinances, laws or orders of any airport, or any civil air regulations, FAA regulations or any other rules, regulations, statues, ordinances, laws or orders applicable to airports;

(i) The prospective Lessee, or a principal of the prospective Lessee, has defaulted in the performance of any other agreement with the State;

(j) The prospective Lessee cannot or will not provide a performance bond or applicable insurance in the amounts and type required by the Department for the proposed development; or

(k) It is determined that the prospective Lessee's proposed development, activities and/or operations could be detrimental in any way whatsoever to the airport.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA, prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 2-2006, f. & cert. ef. 1-27-06

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## Oregon Department of Education
## Chapter 581

**Rule Caption:** Definition of process and standard for review of decisions in other than eligibility cases.
**Adm. Order No.:** ODE 1-2006
**Filed with Sec. of State:** 1-20-2006
**Certified to be Effective:** 1-20-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 581-021-0042
**Subject:** The current administrative rule, 581-021-0035, establishes the process for appeals of decisions of interscholastic activity organizations regarding student eligibility. The proposed rule will define the process and the standard for review of decisions in other than eligibility cases.

If you have a question about this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, Ext. 2348 or e-mail debby.ryan@state.or.us
**Rules Coordinator:** Debby Ryan—(503) 378-3600, ext. 2348

**581-021-0042**
**Appeals from Voluntary Organization Decisions Regarding Interscholastic Activities**

Except as provided in OAR 581-021-0035 and 581-021-0045, the following rule applies to appeals from decisions concerning interscholastic activities by voluntary organizations authorized to administer interscholastic activities.

(1) A decision of a voluntary organization concerning interscholastic activities that adversely affects or aggrieves a person or entity may be appealed by such person or entity to the State Board of Education (Board). Appeal may be brought only after exhaustion of internal review by the voluntary organization.

(2) The appeal shall be brought by making written complaint to the State Superintendent of Public Instruction (Superintendent) as provided herein within thirty (30) days from the date of the decision except for appeals regarding decisions made in 2005 which shall be brought within 120 days from the date of the decision. A petitioner has the right to demand a hearing be held as soon as practicable if the appeal is brought within 10 days from the date of the decision being appealed. The complaint shall be deemed made when deposited for delivery by first class mail or when deposited for delivery by an equivalent service.

(3) The complaint shall state:

(a) The name and address of the person or entity making the complaint, who is designated the petitioner; the relation of the petitioner to the dispute; and how the decision adversely affects or aggrieves the petitioner.

(b) The decision by a voluntary organization upon which appeal is brought;

(c) A statement of the facts surrounding the dispute;

(d) A statement setting forth the ground(s) of appeal; and

(e) The relief requested.

(4) The Board delegates the Superintendent as hearing officer, to cause appropriate notices of hearing to be served upon the voluntary organization and the petitioner, to engage in all administrative functions necessary or reasonable and to render a final order in the appeal. The matter shall be heard as a contested case pursuant to ORS 183.310 to 183.502.

(5) The hearing shall be held in the county within Oregon mutually agreed upon by the parties, or if the parties are unable to agree, a site determined by the Superintendent.

(6) Any authority delegated to the Superintendent may be assigned by the Superintendent to a designee hearing officer, except a hearing officer will issue a proposed order and the Superintendent shall issue all final orders.

(7) At any time prior to the rendering of the final order, the Superintendent, or the hearing officer, may remand the matter back to the voluntary organization for proceedings consistent with the order of remand.

(8) The Superintendent may reverse or modify a decision of a voluntary organization if the petitioner establishes that the decision of the voluntary organization was in error. A decision of a voluntary organization is in error when the decision violates federal or state constitutions or laws; rules of the Board; the voluntary organization's own rules in a manner that if not done in error would alter the decision; or, if there is no rational basis for the decision. The Superintendent will consider the voluntary organization's interpretations of its rules, policies or standards unless such interpretation is not reasonable, as determined by the Superintendent. Review of the decision of the voluntary association will not be confined to the record of the voluntary association if to do so would deprive the petitioner of an opportunity to provide evidence relevant to the appeal.

(9) In addition to the requirements of paragraph (8), for appeals brought concerning ORS 339.430(3) the Superintendent may reverse or modify a decision of a voluntary organization if the decision is inconsistent with or failed to consider all the criteria established by the rules of the voluntary organization and approved by the board under ORS 339.430(3).

(10) Where the voluntary organization has been found to have made a decision in error, the Superintendent shall issue an order to the voluntary organization directing it to provide relief as set forth in the order. Within such time as required by the Superintendent following the date of the order, the voluntary organization shall inform the Superintendent regarding its compliance with the order. The Superintendent may order appropriate sanctions for noncompliance, except in the case of a timely appeal from the order.

(11) Final orders issued under this rule may be appealed according to the provisions of ORS 183.482.

(12) This rule is retroactive to September 1, 2005.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: ODE 1-2006, f. & cert. ef. 1-20-06

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**Rule Caption:** Adoption of the Attorney General's model rules and procedure.
**Adm. Order No.:** ODE 2-2006(Temp)
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06 thru 8-1-06
**Notice Publication Date:**
**Rules Amended:** 581-001-0005
**Subject:** The proposed amendments will incorporate the most recent version of the Attorney General's Model Rules of Procedure and will update reference to the most recent version of the federal law, the Individuals with Disabilities Education Act.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600, ext. 2223 or e-mail paula.merritt@state.or.us.
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-001-0005**
**Model Rules of Procedure**

Pursuant to the provisions of ORS 183.341, the State Board of Education adopts the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2006, except for special education due process hearings authorized under ORS 343.165, which shall be heard in accordance with rules of the State Board of Education implementing the federal law, Individuals with Disabilities Education Act, in effect as of December 3, 2004.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Education.]
Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.341
Hist.: 1EB 2, f. 12-22-58; 1EB 125, f. 11-4-71, ef. 11-15-71; 1EB 160, f. 11-2-73, ef. 11-25-73; Renumbered from 581-061-0035, 4-1-76; 1EB 222, f. 3-22-76, ef. 4-1-76; 1EB 14-1978, f. & ef. 4-3-78; 1EB 7-1980, f. & ef. 4-17-80; 1EB 20-1981(Temp), f. 12-29-81, ef. 12-31-81; 1EB 11-1982, f. & ef. 3-24-82; 1EB 2-1984, f. 2-17-84, ef. 5-8-84; 1EB 22-1986, f. & ef. 7-14-86; EB 2-1995, f. & cert. ef. 1-24-95; ODE 2-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

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**Rule Caption:** Criteria for the selection and adoption of instructional materials.
**Adm. Order No.:** ODE 3-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 581-011-0119
**Subject:** ORS 337.035 requires the State Board of Education to adopt criteria for the selection and adoption of instructional materials. Instructional materials for English/Language Arts and English as a Second Language are to be adopted in 2006. A committee of teachers from around the state met in October to review the English/Language Arts and English as a Second Language criteria from the last adoption cycle and develop new criteria for the upcoming adoption cycle.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600 X2350 or email randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600 X2223 or email paula.merritt@state.or.us
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-011-0119**
**Criteria for Adoption of Instructional Materials 1999–2006**

(1) The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for English/Language Arts in the following categories:

(a) Category 1, English/Language Arts — Grades K–5/6;

(b) Category 2, English/Language Arts — Grades 6–8; and

(c) Category 3, English/Language Arts — Grades 9–12.

(2) The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for English as a Second Language in the following categories:

(a) Category 1, English as a Second Language — Grades K–5/6;

(b) Category 2, English as a Second Language — Grades 6–8; and

(c) Category 3, English as a Second Language — Grades 9–12.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 337.035
Stats. Implemented: ORS 337.035
Hist.: 1EB 1-1986, f. 1-7-86, ef. 1-8-86; EB 1-1993, f. & cert. ef. 1-13-93; ODE 9-1999, f. & cert. ef. 2-12-99; ODE 3-2006, f. & cert. ef. 2-14-06

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**Rule Caption:** Will correct the statutory reference regarding appeals of interscholastic activity organization decisions.
**Adm. Order No.:** ODE 4-2006(Temp)
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06 thru 8-1-06
**Notice Publication Date:**
**Rules Amended:** 581-021-0044
**Subject:** The proposed amendments will incorporate the most recent version of the Attorney General's Model Rules of Procedure and will update reference to the most recent version of the federal law, the Individuals with Disabilities Education Act.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600, ext. 2223 or e-mail paula.merritt@state.or.us.
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-021-0044**
**Delegation of Authority**

The State Board of Education delegates the authority to hear and enter final orders in complaints filed under ORS 339.430 to the Superintendent of Public Instruction or the Superintendent's designee.

Stat. Auth.: ORS 339.430
Stats. Implemented: ORS 339.430
Hist.: ODE 7-2000(Temp), f. & cert. ef. 2-17-00 thru 8-15-00; ODE 20-2000, f. & cert. ef. 5-23-00; ODE 4-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

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**Rule Caption:** Clarifies requirements for the Certificate of Initial Mastery (CIM) required by 2003 Legislative Assembly.
**Adm. Order No.:** ODE 5-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 581-022-1110, 581-022-1120, 581-022-1210
**Subject:** The amendments clarify requirements for the Certificate of Initial Mastery (CAM) as required by the 2003 Legislative Assembly and will allow school districts to make decisions that are appropriate to statutory requirements.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, x 2350 or email randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600 X2223 or email paula.merritt@state.or.us
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-022-1110**
**Certificate of Initial Mastery Requirements**

(1) Each district school board shall award a Certificate of Initial Mastery (CIM) to students who:

(a) Achieve all grade 10 performance standards in the academic content standard areas of English, mathematics, science, and the social sciences, and additional local district CIM requirements, if any, as defined by district school board policy; and

(b) Demonstrate proficiency in the areas of second language, the arts, and physical education based on performance standards as defined in district school board policy.

(2) School districts shall ensure that students have the opportunity to demonstrate the ability to learn, think, retrieve information, use technology and work effectively as individuals, and as individuals in groups.

(3) Requirements for the CIM will be implemented according to the following schedule for implementation of the state performance standards for student achievement on the state assessment system in English, mathematics, science and social science, and local district performance standards in the arts, second language and physical education:

(a) 1998-1999 — English, mathematics;

(b) 1999-2000 — English, mathematics, science;

(c) 2000-2001 — English, mathematics, science;

(d) 2001-2002 — English, mathematics, science, the arts;

(e) 2002-2003 — English, mathematics, science, the arts, second language;

(f) 2003-2004 — English, mathematics, science, the arts, second language, social science, physical education.

(4) School districts shall administer all state assessments that are offered in English, mathematics, and science at grades 3, 4, 5, 6, 7, 8 and high school. School districts may administer state assessments in social sciences.

(5) School districts shall offer additional services or alternative public education options to students who do not meet the standards or who exceed all of the standards at any benchmark level. If after one year, the student, for whom such services or options were made available, has not yet met all standards, the school district, with the consent of the parents, shall make an appropriate placement as described in ORS 329.485(5).

(6) School districts shall award an alternative certificate specifying benchmarks and standards achieved to those students who, having received appropriate additional services and for whom alternative learning options were made available, do not meet the standards required for the CIM.

(7) School districts that have been granted timeline waivers under OAR 581-022-1920 must document both on awarded CIM certificates and student's records, the requirements that have been waived.

(8) Each school district board is authorized to grant individual students a waiver in accordance with ORS 329.487. Students receiving such a waiver may receive a CIM if all non-waived requirements are met. Districts must document both on awarded CIM certificates and in the students' records the requirements that have been waived.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.075, 329.465 & 329.485
Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 15-2001(Temp), f. & cert. ef. 7-13-01 thru 1-2-02; ODE 29-2001, f. & cert. ef. 12-20-01; ODE 17-2002, f. & cert. ef. 6-10-02; ODE 5-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05, Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

**581-022-1120**
**Certificate of Advance Mastery Requirements**

(1) By September 1, 2006, school districts shall:

(a) Develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7-12 with adult guidance that is reviewed and updated periodically (at least annually) and supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(b) Make available to students the career learning frameworks (i.e. arts and communications, business and management, health services, human resources, industrial and engineering, and natural resource systems) as tools to guide students in the development of their education plans and learning experiences.

(c) Develop opportunities for community and business partnerships that support the student requirements in section (3)(a)–(f) of this rule.

(d) Develop career-related learning experience opportunities for students that may include school based, work-based, or community-based experiences that connect to the student's education plan.

(e) Assist students in connecting post high school opportunities with their career goals identified in the education plan, including: four-year colleges and universities, community colleges, workforce, apprenticeships, the military, private career schools and others.

(f) Prior to the 2008-2009 school year, school districts shall demonstrate continued progress toward implementation of the Certificate of Advanced Mastery including section (1)(a)–(e) of this rule.

(2) Upon adoption of the performance standard for extended application (3)(c) and career-related learning standards (3)(d) by the State Board of Education, school districts shall determine if students meet the performance standard by using assessment tools based upon criteria approved by the State Board of Education.

(3) Beginning September 1, 2008, each school district board shall award a Certificate of Advanced Mastery (CAM) to students who:

(a) Develop an education plan in which the student:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Set goals to prepare for transitions to next steps identified in (3)(a)(B);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsections (A), (B) and (C) of section (3)(a) of this rule that includes but is not limited to:

(i) Appropriate coursework and learning experiences;

(ii) Identified career-related learning experiences; and

(iii) Identified extended application opportunities.

(b) Develop an education profile in which the student:

(A) Monitors progress and achievement toward standards:

(i) CIM academic standards;

(ii) Career-related learning standards;

(iii) Extended application standard; and

(iv) Other standards where appropriate (e.g. PASS, industry standards).

(B) Documents other personal accomplishments determined by the student or school district.

(C) Reviews progress and achievement in subsection (A) and (B) of section (3)(b) of this rule at least annually.

(c) Demonstrate proficiency in extended application through a collection of evidence based on performance standards as adopted by the State Board of Education;

(d) Demonstrate proficiency in career-related learning standards in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development based on performance standards as adopted by the State Board of Education.

(e) Participate in career-related learning experiences in which the student:

(A) Identifies career-related learning experiences in the education plan related to personal and career interests and goals;

(B) Identifies expectations for learning and the academic and career-related learning standards the student is preparing to meet;

(C) Reflects on the learning experience to determine if expectations in section (3)(e)(B) have been met; and

(D) Meets any additional local district requirements.

(f) Achieve specific Certificate of Initial Mastery (CIM) performance standards in English, mathematics, and science as follows:

(A) Meet the CIM knowledge and skill test in reading;

(B) Meet the CIM work sample requirements in speaking;

(C) Meet the CIM work sample requirements in writing; and

(D) Meet the CIM work sample requirements or the CIM knowledge and skills test in mathematics, and science.

Stat. Auth.: ORS 329.475

Stats. Implemented: ORS 329.007, 329.035, 329.075, 329.447, 329.475, 329.485 & 329.855

Hist.: ODE 2-1999, f. & cert. ef. 1-12-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 6-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05, Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

**581-022-1210**

**District Curriculum**

(1) Each school district shall provide a planned K–12 instructional program.

(2) The planned K–12 instructional program shall include the following:

(a) Common Curriculum Goals and academic content standards to include:

(A) English;

(B) Mathematics;

(C) Science;

(D) Social Science (including history, geography, economics and civics);

(E) The Arts;

(F) Second Languages;

(G) Health Education; and

(H) Physical Education.

(b) Additional Common Curriculum Goals for:

(A) Health Education;

(B) Physical Education; and

(C) Technology.

(c) Essential Learning Skills, as contained in the Common Curriculum Goals and academic content standards; and

(d) Career-related learning standards, as contained in the Common Curriculum Goals and academic content standards.

(3) The school district shall also provide instruction in other areas identified in chapter 581, division 022 of the Oregon Administrative Rules, including:

(a) Infectious diseases, including AIDS/HIV and Hepatitis B;

(b) Prevention education in drugs and alcohol; and

(c) Emergency plans and safety programs.

(4) The school district is also accountable to provide instruction in compliance with requirements set forth in ORS chapter 336, Conduct of Schools Generally.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.045

Hist.: EB 6-1997, f. & cert. ef. 6-9-97; ODE 7-2005(Temp), f. & cert. ef. 3-15-05 thru 9-1-05; Administrative correction 9-21-05; ODE 5-2006, f. & cert. ef. 2-14-06

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**Rule Caption:** HB 3179 changed the process for Athlete Agents beginning on January 1, 2006.
**Adm. Order No.:** ODE 6-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 581-022-1735
**Subject:** HB 3179 changed the process for Athlete Agents beginning on January 1, 2006.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600 X2350 or email randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600 X2223 or email paula.merritt@state.or.us
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-022-1735**

**Athlete Agents Permits**

(1) Definitions:

(a) "Agent Contract" means an agreement is which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract.

(b) "Athlete Agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. Athlete agent includes an individual who represents to the public that the individual is an athlete agent.

(c) "Athlete Agent" does not include a spouse, parent, sibling, grandparent or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(d) "Athlete director" means an individual responsible for administering the overall athletic program of an educational institution or if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or athletic program for females, as appropriate

(e) "Contact" means communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract.

(f) "Endorsement Contract" means an agreement under which a student is employed or receives consideration to use on behalf of the other party, any value that the student athlete may have because of publicity, reputation, fame or following obtained because of athletic ability or performance.

(g) "Educational Institution" means any elementary school, secondary school, college, university or other educational institution.

(h) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any other legal or commercial entity.

(j) "Professional Sports Services Contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team with a sports organization or as a professional athlete.

(k) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Resignation" means registration as an athlete agent pursuant to ORS 702.005 to 702.063 and 702.991.

(m) "State" means a state of the United States, the District of Columbia, Puerto Rico, The United States, Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(n) means an individual who engages in, is eligible to engage in or may be eligible, in the future, to engage in any intercollegiate sport.

(A) "Student Athlete" does not include an individual who:

(i) is permanently ineligible to participate in a particular intercollegiate sport,

(ii) is not a student athlete for the purposes of that sport.

(2) Civil Action:

(a) By acting as an athlete agent in Oregon, nonresident individual appoints the Department of Education as the individuals agent for service of process in any civil action in Oregon related to the individual's acting as an athlete agent in Oregon.

(b) The department may issue subpoenas for any material that is relevant to the administration of ORS 702.005 to 702.063 and 702.991.

(3) Certificate of Registration, application, and revocation process: except as otherwise provided in subsection (a) of this section, an individual may not act as an athlete agent in Oregon without holding a certificate of registration issued under this section or section six (6).

(a) Before being issued a certificate of registration, an individual may act as an athlete agent in Oregon for all purposes except signing an agency contract if

(A) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(B) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in Oregon.

(b) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

(c) Except as otherwise provided in subsection (d) of this rule, the Department of Education (department) shall issue a certificate of registration to an individual who complies with ORS 702.017(1) and (2) or whose application has been accepted under ORS 702.017(3).

(d) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(A) Been convicted of a crime that if committed in Oregon, would be a crime involving moral turpitude or a felony;

(B) Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(C) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(D) Engaged in prohibited conduct;

(E) Had a registration of licensure as an athlete agent suspended, revoked or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(F) Engage in conduct the consequence of which was that a sanction, suspension or declaration or ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or

(G) Engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty or integrity.

(e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(f) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (e) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal for the other state as an application for renewal in Oregon if the application to the state if it:

(A) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application for renewal is current;

(B) Contains information substantially similar to or more comprehensive that are required in an application for renewal submitted in Oregon; and

(C) Was signed by the applicant under penalty of perjury.

(g) A certificate of registration or renewal of a registration is valid for two years.

(h) The department may suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

(4) Contents of Application Form:

(a) An applicant for registration shall submit an application for registration to the Department of Education in a form prescribed by the department and if requested by the department, shall allow the department to take fingerprints for a criminal record check conducted pursuant to ORS 702.022.

(b) The application must be in the name of an individual and except as otherwise provided in subsection (c) of this section, signed or otherwise authenticated by the applicant under penalty of perjury. The application must state or contain:

(A) The name of the applicant and the address of the applicant's principal place of business;

(B) The name of the applicant's business or employer, if applicable;

(C) Any business or occupation engaged in by the applicant for the five years preceding the date of submission of the application;

(D) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent;

(E) The names and addresses of three individuals not related to the applicants who are willing to serve as references;

(F) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application;

(G) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if the business is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or more;

(H) Whether the applicant or any person named pursuant to paragraph (G) of this subsection has been convicted of a crime that, if committed in Oregon, would be a crime involving moral turpitude or a felony and identify the crime;

(I) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (G) of this subsection has made a false, misleading, deceptive or fraudulent representation;

(J) Whether there has been any denial of an application for suspension or revocation of a refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (G) of this subsection as an athlete agent in any state;

(K) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (G) of this subsection arising out of occupational or professional conduct; and

(L) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (G) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

(c) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (b) of this section. The department shall accept the application and the certificate from the other state as an application for registration in Oregon if the application to the other state if it:

(A) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application is current;

(B) Contains information substantially similar to or more comprehensive than that required in an application submitted in Oregon; and

(C) Was signed by the applicant under penalty of perjury.

(6) The Department of Education may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

(7) Fees:

(a) An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(A) $250 for an initial application for registration;

(B) $150 for an application for registration based upon a certificate of registration or licensure issued by another state;

(C) $150 for an application for renewal of registration; or

(D) $150 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(8) Prohibited acts:

(a) An athlete agent may not intentionally:

(A) Initiate contact with a student athlete unless registered under ORS 702.005 to 702.063 and 702.991;

(B) Refuse or fail to retain or permit inspection of the records required to be retained by section (12) of this rule;

(C) Fail to register when required by ORS 702.012;

(D) Provide materially false or misleading information in an application for registration or renewal of registration;

(E) Predate or postdate an agency contract; or

(F) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

(b) An athlete agent may not furnish anything of value to the student athlete before the student athlete enters into an agency contract.

(c) An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(d) An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, give any materially false or misleading information or make a materially false promise or representation.

(9) Agency Contracts:

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(A) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(B) The name of any person not listed in the application for registration or renewal of registration that will be compensated because the student athlete signed the agency contract;

(C) A description of any expenses that the student athlete agrees to reimburse;

(D) A description of the services to be provided to the student athlete;

(E) The duration of the contract; and

(F) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldfaced type in capital letters stating:

**WARNING TO THE STUDENT ATHLETE: IF YOU SIGN THIS CONTRACT: YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT. IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICEVER OCCURS FIRST. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY**.

(d) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

(f) The amendments to ORS 702.047 by section 12 of this 2005 Act apply to agency contracts entered into on or after the effective date of this 2005 Act.

(10) Time constraints on agency contracts:

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.

(11) Student rights:

(a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) The right of a student to cancel a contract under this section may not be waived.

(c) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(12) Recordkeeping requirements:

(a) An athlete agent shall retain the following records for a period of five years:

(A) The name and address of each individual represented by the athlete agent;

(B) Any agency contract entered into by the athlete agent; and

(C) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(b) Records required by subsection (a) of this section to be retained are open to inspection by the Department of Education during normal business hours of the athlete agent.

(13) Educational damages and actions:

(a) An educational institution shall have a cause of action against an athlete agent or a former student athlete for damages caused by a violation of ORS 702.005 to 702.063 and 702.991. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(b) For the purposes of this section, damages of an educational institution include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was inured by a violation of ORS 702.005 to 702.063 and 702.991 or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A cause of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.

(d) Any liability of the athlete agent or the former student athlete under this section is several and not joint.

(e) ORS 702.005 to 702.063 and 702.991 do not restrict rights, remedies or defenses of any person under law or equity.

(14) Civil Penalties:

(a) The Department of Education may assess a civil penalty against an athlete agent not to exceed $25,000 for a violation of ORS 702.005 to 702.063.

(b) Civil penalties under subsection (a) of this section shall be imposed in the manner provided in ORS 183.745.

(c) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(15) Penalties:

(a) An athlete agent who violates ORS 702.032 is guilty of a Class C felony.

(b) Violation of the athlete agent's 72-hour notice requirement provided under section (10)(a) of this rule is a Class C felony.

(c) It is a Class A misdemeanor for any person to conduct business as an athlete agent in the State of Oregon unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or section (6) of this rule.

(d) It is a Class A misdemeanor for any person to represent to another person by verbal claim, advertisement, letterhead, business care or any other mans that the person is an athlete agent unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or section (6) of this 2005 Act.

(16) In applying and construing ORS 702.005 to 702.991, the courts and the Department of Education shall give consideration to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Athlete Agents Act.

(17) Fingerprint request and destruction:

(a) The Department of Education may request and the Department of State Police shall furnish to the Department of Education, information on an individual that the Department of State Police possesses in the central bureau of criminal identification, including but not limited to manual or computerized information required for purposes of issuing a certificate of registration to an athlete agent under ORS 702.012 and 702.017 or a temporary certificate of registration to an athlete agent under section (6) of this rule.

(b) After furnishing the information obtained under subsection (a) of this section, the Department of State Police shall conduct a nationwide criminal records check of the individual through the Federal Bureau of Investigation, including records of fingerprints, and report the results to the Department of Education.

(c) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of Education shall not send the cards to the federal bureau, but shall continue to process the information through other available resources.

(d) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the Department of State Police shall return the fingerprint cards to the Department of Education. The Department of Education shall destroy the fingerprint cards and shall not keep any facsimiles or other material from which a fingerprint can be reproduced.

(e) For purposes of receiving the information described in this section, the Department of Education is considered to be a designated agency as defined in ORS 181.010.

Stat. Auth.: Ch. 1079, OL 1999

Stats. Implemented: Ch. 1079, OL 1999

Hist.: ODE 28-1999(Temp), f. & cert. ef. 11-5-99 thru 5-20-00; ODE 14-2000, f. & cert. ef. 5-3-00; ODE 6-2006, f. & cert. ef. 2-14-06

**Rule Caption:** Suspends rules establishing reporting requirements for ESDs as new legislation is implemented.
**Adm. Order No.:** ODE 7-2006(Temp)
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06 thru 8-1-06
**Notice Publication Date:**
**Rules Suspended:** 581-024-0226, 581-024-0228
**Subject:** The proposed suspensions permit ESDs to wait to complete and submit reports that will be significantly altered as new legislation is implemented.

If you have questions regarding this rule, please contact Randy Harnisch at (503) 378-3600, Ext. 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Paula Merritt at (503) 378-3600, ext. 2223 or e-mail paula.merritt@state.or.us.
**Rules Coordinator:** Paula Merritt—(503) 378-3600, ext. 2223

**581-024-0226**
**Assessment and Evaluation of Services**

(1) Each district board shall file by October 31 of each year with the Superintendent of Public Instruction an annual report to include a completed "Self-Appraisal Report" and a "Service and Performance Summary" as identified on Department forms.

(2) To adequately complete the report, the district shall have on file information regarding the process and implementation of an assessment procedure, including:

(a) A description of the services provided with appropriate documentation of the quantitative data gathered;

(b) A numerical accounting of district personnel by job description and service area; and

(c) A statement of operational cost for each service provided.

(3) In addition, the district shall have completed an evaluation of the assessment data in relation to the service goals, and shall have on file:

(a) Information obtained in the assessment activity;

(b) A summary of the reports from components regarding services provided by the district; and

(c) A list of deficiencies with plans for correction.

Stat. Auth.: ORS 334.217
Stats. Implemented: ORS 334.217
Hist.: 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; Suspended by ODE 7-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

**581-024-0228**
**Review School District Operations**

(1) Pursuant to ORS 334.125(9) each district board shall adopt a policy a policy and procedure describing how the district shall work cooperatively with components to periodically review their operations.

(2) The results of the review and report shall be summarized and reported to the Board as part of the district's annual report which is to be submitted by October 31 of each year.

(3) Unless specifically waived by the Board, the operations to be reviewed shall be accomplished as follows:

(a) 1998, Insurance and student records;

(b) 1999-2002, Professional staff development activities relating to the implementation of the Oregon Educational Act for the 21st Century, including but not limited to:

(A) Alignment of curriculum and instruction with the Oregon Content Standards;

(B) The improvement of content area proficiency;

(C) The improvement of assessment proficiency, including the use of official scoring guides and analysis of assessment data; and

(D) The expansion of alternative learning options for students.

(c) 2003-2004, Cooperative purchasing of educational supplies, materials, equipment;

(d) 2005-2009, Accounting, payroll and printing; pupil transportation; legal services, investments and auditing; insurance and student records management. The order of review may be determined by the ESD and the component districts.

(4) Other similar operations are subject to review as agreed upon by the district and components. Nothing in the above requirement prevents an Education Service District and its components from reviewing any or all operations including those listed in section (3)(a), (b), and (c) of this rule at any time.

(5) Future review of operations and similar services will be as established by the Board.

Stat. Auth.: ORS 334.125(9)
Stats. Implemented: ORS 334.125
Hist.: EB 16-1994, f. & cert. ef. 11-14-94; ODE 8-1999, f. & cert. ef. 1-15-99; Suspended by ODE 7-2006(Temp), f. & cert. ef. 2-14-06 thru 8-1-06

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## Oregon Housing and Community Services
## Chapter 813

**Rule Caption:** Provides an overview of the Department, related entities and clarification of the general procedural rules.
**Adm. Order No.:** OHCS 2-2006
**Filed with Sec. of State:** 1-31-2006
**Certified to be Effective:** 1-31-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 813-001-0002, 813-001-0007, 813-001-0011
**Rules Repealed:** 813-001-0000, 813-001-0002(T), 813-001-0003(T), 813-001-0005, 813-001-0007(T), 813-001-0008, 813-001-0011(T), 813-001-0066, 813-001-0068, 813-001-0069, 813-001-0080, 813-001-0090
**Rules Ren. & Amend:** 813-001-0001 to 813-001-0003
**Subject:** 813-001-0002 sets forth the purpose of Division 813-001. Amendments to 813-001-0003 define the agencies or committees, established by statute, that have an advisory capacity to the Department. 813-001-0011 adds waiver language already provided for by statute. 813-001-0007 establishes the threshold for loans requiring State Housing Council review arising under ORS 456.515 to 456.726. HB 2054 removed from statute the $150,000 threshold for single-family loan review and allows the department, with State Housing Council approval, to enact administrative rules establishing the single family review threshold. 813-001-0007 establishes the single-family loan review threshold as the purchase price, which when reduced by costs of purchase other than the Department loan, is equal to or greater than $190,000. 813-001-0000; 813-001-0005; 813-001-0066; 813-001-0068; 813-001-0069; 813-001-0080 and 813-001-0090 are administrative corrections intended to remove unnecessary language from the rules which is provided for by statute.
**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

**813-001-0002**
**General Purpose**

OAR chapter 813, division 001, is promulgated to provide an overview of the Housing and Community Services Department and related entities and to describe general procedural rules with respect to the review and approval or disapproval by the State Housing Council of certain housing grants, loans and other funding awards proposed to it by the Director of the Department.

Stat. Auth.: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Stats. Implemented: ORS 90.630, 90.771 - 90.775, 90.800 - 90.840, 183, 315.271, 317.097, 446.525 - 446.543, 456.515 - 456.725, 458.210 - 458.365, 458.405 - 458.460, 458.505 - 458.740, 566.310 - 566.350 & 757.612 - 757.617
Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 2-2006, f. & cert. ef. 1-31-06

**813-001-0003**
**Organization Description**

(1) The Housing and Community Services Department is a state housing finance department, and also serves as the central source of housing data and program information in the state. The Department, established pursuant to ORS 456.555, operates under the direction and control of a Director appointed by the Governor. The primary duties and powers of the Director are described in ORS 456.555(3), (4), (5) and (7). The primary housing-related powers and duties of the Department, including its bonding authority, are more specifically set out in ORS 456.515 through 456.725 and 90.630. The Department also administers other housing and community services programs. These Department powers and duties are primarily set out in ORS 458.005 through 458.740.

(2) The State Housing Council is established under ORS 456.567. The Council consists of seven members appointed by the Governor subject to confirmation by the Senate. The Council advises the Department regarding its biennial budget and, with the advice of the Director, develops policies to aid in stimulating and increasing the supply of housing for lower-income Oregonians. The Council, with the advice of the Director, approves or disapproves rules and standards for Department housing programs. It also approves or disapproves certain housing loans, grants and other housing

funding awards proposed by the Director. Council powers and duties are primarily set out in ORS 456.555(6)(a), 456.567(6) and 456.571.

(3) The Low Income Energy Assistance Advisory Committee is established under ORS 458.515. Members are appointed by the Director based on a demonstrated interest in and knowledge of low income energy assistance programs. The Committee is required to meet at least twice a year to advise and assist the Department regarding low income program rules, policies and programs provided for under ORS 458.510.

(4) The Hunger Relief Task Force is established under ORS 458.532. It consists of 24 members appointed in a manner consistent with Subsection (1) ORS 458.532. The Task Force is required to meet at least once a month. Its duties and powers are enumerated in ORS 458.545 and, among other things, include serving as the designated state unit on hunger and as an advocate for hungry persons.

(5) The Community Development Incentive Advisory Board is established pursuant to ORS 458.710. It consists of 15 members appointed in a manner consistent with Subsection (1) of ORS 458.710. The duties and powers of the Board are enumerated in ORS 458.715 and, among other things, include developing community development program guidelines, reviewing applications for funding from the Community Development Incentive Project Fund, making funding recommendations to the Director, and reviewing proposals for cooperative agreements or joint projects between the Department and other agencies.

(6) The Oregon Commission on Voluntary Action and Service is established pursuant to ORS 458.555. It consists of 15–25 members appointed in a manner consistent with ORS 458.555 and in accordance with membership requirements enumerated in ORS 458.558 and 458.563. The duties and powers of the Commission are enumerated in ORS 458.568 and 458.570 and, among other things, includes the development of programs and oversite of administration of programs granted to Oregon by the Corporation for National and Community Service under the National and Community Service Trust Act of 1993; development of a statewide plan to meet or exceed the Oregon benchmark on volunteerism; engaging citizens in service, strengthening communities, and creating statewide access for all Oregon citizens to a variety of volunteer opportunities; promoting the value of service learning as an educational strategy in the kindergarten through higher educational systems; and promoting recognition of volunteerism and service.

(7) The Community Action Directors of Oregon means an organization described in ORS 458.505. Pursuant to ORS 456.555, the Community Action Directors of Oregon advises the Department and the State Housing Council on community service programs as determined by the Director and as set forth in ORS 458.505. Pursuant to ORS 458.505, the Community Action Directors of Oregon delivers antipoverty programs in Oregon, including the Community Services Block Grant, Low Income Energy Assistance Program, and State Department of Energy Weatherization Program.

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

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

Hist.: 1HD 7-1984, f. & ef. 9-4-84; HSG 11-1987, f. & ef. 4-16-87; HSG 3-1989(Temp), f. & ef. 6-8-89; HSG 4-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; Renumbered from 813-001-0001, OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; Renumbered from 813-001-0001, OHCS 2-2006, f. & cert. ef. 1-31-06

**813-001-0007**

**Procedural Rules for State Housing Council Review and Determination with Respect to Certain Housing Loan, Grant and Other Funding Award Proposals by the Director**

(1) The Director or the Director's Department designees shall submit proposed loan, grant or other funding award proposals arising under ORS 456.515 to 456.725 programs to the State Housing Council for review and approval if the proposal is for:

(a) A proposed single-family loan on property with a purchase price which, when reduced by costs of purchase other than the Department loan, is equal to or greater than $190,000;

(b) A housing loan other than a single-family homeownership loan, if the loan amount exceeds $100,000; or

(c) A housing grant or other housing funding award, if the grant or other funding award amount exceeds $100,000.

(2) The Council shall review each loan, grant or other funding award proposal submitted by the Director under this section and approve or disapprove the loan, grant or other funding award proposal. An approval by the Council of any loan, grant or other funding award may be partial or in full and may contain any conditions not consistent with law that the Council may prescribe.

(3) Formal Council review of loan, grant or other funding award proposals under this section shall be conducted in a public meeting, whether in person or by telephone or other electronic means. The Council may go into executive session, as appropriate, in the course of its review. A Council public meeting notice, when required by ORS 192.640, shall include notice of the loan, grant or other funding award proposal review, the names of the applicants, and the subject of the loan, grant or funding award proposal. The Council also shall provide notice of any loan, grant or other funding award proposal review to the loan, grant or other funding award applicant not less than five days before the review hearing.

(4) The public may contact the Department for available information with respect to prospective Council review of loan, grant or other funding award proposals by telephoning 503.986-2000 or addressing written correspondence to: Oregon Housing and Community Services Department, 725 Summer Street NE, Suite B, Salem OR 97301.

(5) Procedural rules addressing other programs administered by the Department are included, where applicable, in other divisions of this chapter. Additional procedural rules with respect to the review and approval of housing grants, loans and other funding awards also may be included, where applicable, in other divisions of the chapter.

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

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

Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 2-2006, f. & cert. ef. 1-31-06

**813-001-0011**

**Waiver**

The Director may waive or modify any requirements of OAR 813, division 001, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 91.886, 183 & 456.555

Stats. Implemented: ORS 90.800 - 90.840, 91.886, 456.515, 456.725 & 458.005 - 458.740

Hist.: OHCS 2-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 2-2006, f. & cert. ef. 1-31-06

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**Rule Caption:** Provides clarification of common terms and procedures in respect to the statutory duties of the Department.
**Adm. Order No.:** OHCS 3-2006
**Filed with Sec. of State:** 1-31-2006
**Certified to be Effective:** 1-31-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 813-005-0001, 813-005-0016
**Rules Amended:** 813-005-0005
**Rules Repealed:** 813-005-0001(T), 813-005-0005(T), 813-005-0010, 813-005-0015, 813-005-0016(T), 813-005-0020, 813-005-0025, 813-005-0030
**Subject:** 813-005-0001 describes the purpose for the rules. 813-005-0005 clarifies the common definitions found within programs of the Department and clarifies the programs that fall by statute under the purview of Oregon Housing and Community Services. 813-005-0010, 813-005-0015, 813-005-0020, 813-005-0025 and 813-005-0030 are administrative corrections intended to remove unnecessary language from Department rules. 813-005-0016 adds waiver language already provided for within statute.
**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

**813-005-0001**

**General Purpose**

OAR chapter 813, division 005, is promulgated to accomplish the general purpose of describing common terms and procedures with respect to the administration of the Housing and Community Services Department of its statutory duties.

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

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

Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06

**813-005-0005**
**Definitions**

(1) All Terms used in OAR chapter 813 have the meanings given them in the Act, in this section or otherwise in OAR chapter 813 unless the context indicates to the contrary. Undefined terms are intended to be read consistently with their normal usage unless the context indicates otherwise:

(2) Pursuant to ORS 456.555(5)(b) the Housing and Community Services Department by administrative rule, must identify and distinguish between housing programs and community services programs. Any program administered by the Department that is not listed in this subsection or otherwise defined in statute or in this chapter as a housing program is a "community service program." Accordingly, the following programs administered by the department are housing programs:

(a) Multi-Unit Housing Program (OAR 813-010);
(b) Rental Housing Program (OAR 813-012);
(c) Oregon Rural Rehabilitation Program (OAR 813-015);
(d) Single-Family Mortgage Program (OAR 813-020);
(e) Elderly Housing Program (OAR 813-030);
(f) Pass-Through Revenue Bond Financing (OAR 813-035);
(g) Pre-Development Program (OAR 813-038);
(h) Farmworker Housing Development Account (OAR 813-039);
(i) Seed Money Advance Program (OAR 813-040);
(j) Farmworker Houisng Tax Credit Program (OAR 813-041);
(k) Housing Development Program (OAR 813-042);
(l) Housing Loan Guarantee (OAR 813-043);
(m) Homeownership Assistance (OAR 813-044);
(n) Housing Development Account Program (813-045);
(o) Emergency Housing Program (OAR 813-046);
(p) Housing Revitalization Program (OAR 813-048);
(q) Disabled Housing Program (OAR 813-060);
(r) Home Improvement Loan Program (OAR 813-070);
(s) Mortgage Credit Certificate Program (OAR 813-080);
(t) Low-Income Housing Tax Credit (OAR 813-090);
(u) Oregon Lender's Tax Credit: Low-Income Housing Project Certification (OAR 813-110);
(v) Home Investment Partnerships (OAR 813-120);
(w) HELP Program (OAR 813-130);
(x) Incentive Fund (OAR 813-140);
(y) Subsidized Development Visitability Program (OAR 813-310);
(z) General Guarantee Program (OAR 813-350).

(3) Pursuant to ORS 456.555(9), the Housing and Community Services Department is to establish from time to time, by Administrative Rule, the threshold property purchase price at which a single-family home ownership loan on property must be submitted by the Department to the State Housing Council for approval or disapproval. Presently, the threshold property purchase price for single-family home ownership that obligates the Department to obtain State Housing Council review and approval of a proposed single-family loan is that purchase price which, when reduced by costs of purchase other than the Department loan, is equal to or greater than $190,000.

(4) "Acquisition Loan" means a Loan for the purpose of financing the purchase of an existing Project.

(5) "Act" means ORS 456.515 through 456.725 and, given the context, also may include ORS 458.005 through 458.740, 90.800 through 90.840, and 91.886.

(6) "Approved Lender" means any person authorized to engage in the business of making loans of the general character of Program Loans, who meets the qualifications for an Approved Lender set forth in the applicable Program rules and who contracts with the Department to make Program Loans.

(7) "Approved Servicer" means any person authorized to engage in the business of servicing loans of the general character of Program Loans, who meets the qualifications for an Approved Servicer set forth in the applicable Program rules and who contracts with the Department to service Program Loans.

(8) "Bond" means any bond, note or other evidence of indebtedness issued to obtain funds to provide financing for a Program of the Department as provided in the Act or as further defined by statute.

(9) "Borrower" means an Eligible Borrower who has received a Program Loan.

(10) "Break-Even Occupancy" means the point in time when a Project's monthly rental income meets its monthly operating expenses and debt service.

(11) "Commitment" means the written conditional obligation of the Department to make, purchase, service or sell a Program Loan.

(12) "Community Service Programs" are defined in subsection (2) of this section.

(13) "Contingency Escrow Account" means an account not to exceed 3% of the initial principal amount of the Program Loan, established by the Sponsor in the form of a savings account, time certificate of deposit, or irrevocable letter of credit assigned to the Department.

(14) "Cooperative" is a consumer housing entity formed according to the provisions of ORS Chapter 62, as amended.

(15) "Department" means the Housing and Community Services Department of the State of Oregon established pursuant to ORS 456.555 originally enacted by Enrolled House Bill 3377, Chapter 739, Oregon Laws 1991.

(16) "Director" means the chief administrative officer of the Housing and Community Services Department established pursuant to ORS 456.555(3).

(17) "Elderly Household" means a household residing in the State of Oregon whose head is over the age of 58.

(18) "Eligible Borrower" means a person who satisfies the criteria to receive a Program Loan as set forth in the applicable Program rules, statute-sor Department orders.

(19) "Escrow Payments" means the monthly payments made by the Sponsor or Borrower and placed in an escrow reserve account for the payment of property taxes, insurance premiums and reserve for replacements and other identified costs as required by the Department in accordance with the Program Loan.

(20) "Housing Council" or "State Housing Council" means that seven-member body established by ORS 456.567 which, with the advice of the Director, develops policies and approves or disapproves Department rules with respect to housing programs.

(21) "Housing Programs" are defined in subsection (2) of this section.

(22) "Lending Department" means a commercial bank, savings and loan association, savings bank, mortgage banker Federal Housing Administration, Farmers Home Administration or other department which provides permanent or construction mortgage loans.

(23) "Loan Agreement" means a written agreement, typically executed at Loan Closing, between the Department and a Sponsor establishing the terms of any Department Loan.

(24) "Loan Closing" means the disbursement by the Department of the Program Loan proceeds after recording of the Loan Documents.

(25) "Loan Documents" means the written agreements by and between the Sponsor and the Department or in favor of the Department, typically executed at Loan Closing, and generally including, but not necessarily limited to the Promissory Note, the Loan Agreement, the Trust Deed and the Regulatory Agreement.

(26) "Mobile Home Park" means a Project consisting of individual lots and mobile homes located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, and which complies with all ordinances, plans and codes in the area.

(27) "Operating Agreement and Declaration of Restrictive Covenants and Equitable Servitudes" or "Operating Agreement" means a written agreement typically executed at Loan Closing between the Department and the Sponsor of a Project under the Department's Pass-Through Revenue Bond Program and regulating the use of revenues and operation of the Project, particularly with respect to tenant income and unit rent compliance by the Sponsor.

(28) "Person" means any natural or legal person.

(29) "Procedural Guide" means a manual of written procedures adopted by the Department to carry out a Program.

(30) "Program" means a statutorily authorized plan or order of business conducted by the Department.

(31) "Program Loan" means a loan made pursuant to a Program of the Department.

(32) "Qualified Insurer" means the Federal Housing Administration, the Veterans' Administration, or any other person who is authorized to insure or guarantee payment of loans and who is approved by the Department.

(33) "Regulatory Agreement and Declaration of Restrictive Covenants and Equitable Servitudes" or "Regulatory Agreement" means a written agreement typically executed at Loan Closing between the Department and a Sponsor regulating the use of revenues and operation of the Project for which a Department Loan is issued, particularly pertinent with respect to compliance by the Sponsor with maintaining the status of any involved bond issue.

(34) "Rent-Up Reserve Account" means an account set up by the Sponsor and under the control of the Department to assure sufficient funds

to pay operating expenses and debt service of the Project before Break-Even Occupancy.

(35) "Replacement Cost Reserve Account" means an account established to aid in extraordinary maintenance, repair and replacement of capital items of a Project.

(36) "Seed Money Advance" means an advance given to a Qualified Housing Sponsor to pay Preconstruction Costs.

(37) "Single-Family Residence" means a housing unit intended and used for occupancy by one household and the property on which it is located. This shall be real property located in the State of Oregon. A Single-Family Residence may include a single-family residence, condominium unit, a dwelling in a Planned Unit Development (PUD), or a mobile or manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and is of a kind customarily used at a fixed location.

(38) "Sponsor" means any Person meeting the legal, financial, credit and other qualifications to be the borrower on a Department Loan and to own and operate a Project as set forth in the applicable Program rules, statutes and Department orders.

(39) "Targeted Area" means an area in the state designated by the Department in compliance with the requirements of Section 143(j) of the Internal Revenue Code of 1986, as amended, and approved by the United States Departments of Treasury and Housing and Urban Development.

(40) "Trustee" means the State Treasurer or, with the approval of the Department, a private financial institution in Oregon acting pursuant to an indenture of trust or other appropriate instrument.

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

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

Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 7-1984, f. & ef. 9-4-84; HSG 1-1987(Temp), f. & ef. 2-5-87; HSG 5-1987, f. & ef. 3-10-87; Renumbered from 813-001-0006; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 5-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06

**813-005-0016**
**Waiver**

The Director may waive or modify any requiremens of OAR 813, division 005, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 91.886, 183 & 456.555

Stats. Implemented: ORS 90.800 - 90.840, 91.886, 456.515, 456.725 & 458.005 - 458.740

Hist.: OHCS 1-2005(Temp), f. & cert. ef. 8-4-05 thru 1-31-06; OHCS 3-2006, f. & cert. ef. 1-31-06

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**Rule Caption:** Provides clarification and adjusts the aggregate loan limits for the Manufactured Dwelling Park Purchase Program.
**Adm. Order No.:** OHCS 4-2006(Temp)
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 2-10-06 thru 8-8-06
**Notice Publication Date:**
**Rules Adopted:** 813-009-0030
**Rules Amended:** 813-009-0001, 813-009-0005, 813-009-0010, 813-009-0015, 813-009-0020
**Subject:** 813-009-0001 sets forth the purpose for the rules. Clarification is provided to the entities eligible to participate within the Manufactured Dwelling Park Purchase Program. 813-009-0005 clarifies the common definitions and terms found within the rules. Amendments to 813-009-0010 updates the application procedure and requirements for entities to participate in the program. The rule also sets the aggregate loan amount at $100,000. Amendments to 813-009-0015 updates the review process for applications received for participation in the program. 813-009-0020 defines the loan assistance available and the requirements of applicants prior to formal approval. The amendments also clarify the rights and remedies available under law regarding revocation of the loan funds. 813-009-0030 adds waiver language already provided for by statute.
**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

**813-009-0001**
**Purpose and Objective**

OAR chapter 813, division 009, is promulgated to accomplish the general purpose of ORS 90.800 through 90.840 and 456.579 to 456.581, which authorize the Housing and Community Services Department to provide certain assistance to qualified tenants' associations, tenants' association supported nonprofit organizations, and Facility Purchase Associations in purchasing their Manufactured Dwelling Park. The Manufactured Dwelling Park Purchase Program, established by these rules, is designed to assist Manufactured Dwelling Park residents in gaining control, through joint ownership of their Park, over rising rents and thereby avoid a declining quality of living.

Stat. Auth.: ORS 90.800 - 90.840, 90.630,183,446, 456.515 - 456.723, 458.210 - 458.650

Stats. Implemented: ORS 456.579 - 456.581

Hist.: HSG 15-1990, f. & cert. ef. 12-4-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

**813-009-0005**
**Definitions**

The meanings of words and terms used in OAR chaper 813, division 009, are consistent with definitions in the Act, in OAR 813-009-0005 and below. As used in chapter 813, division 009, unless the context indicates otherwise:

(1) "Act" means ORS 456.515 through 456.725, and, where applicable, ORS 90.800 through 90.840.

(2) "Facility Purchase Association" means a group of three or more tenants who reside in a Manufactured Dwelling Park and have organized for the purpose of the eventual purchase of the Park.

(3) "Initial Costs" means costs incurred in the purchase of the Park by the residents Such costs may include, but are not limited to:

(a) Legal fees;

(b) Appraisal fees;

(c) Engineering fees;

(d) Professional fees associated with Park evaluation and management; and

(e) Other costs or fees approved by the Department.

(4) "Manufactured Dwelling Park" or "Park" means a facility for the location and use of manufactured housing, as the term "manufactured housing" is used in ORS 456.615, whether the facility is characterized as a "Mobile Home Park" or a "Manufactured Dwelling Park.

(5) "Manufactured Dwelling Park Purchase Program" or "Program" means the process by which the Department makes discretionary loans from the Park Purchase Account pursuant to the Act and these rules.

(6) "Park Purchase Account" means the Mobile Home Parks Purchase Account established under ORS 456.579 for the purpose of providing technical assistance related to, and loans to pay Initial Costs for, purchasing Manufactured Dwelling Parks.

(7) "Qualified Facility Purchase Association" means a Facility Purchase Association that:

(a) Is established pursuant to ORS 90.815;

(b) Includes more than 50 percent of the tenants residing in the Park; and

(c) Demonstrates, to the satisfaction of the Department, that the Park purchase by the association is econmically feasible.

Stat. Auth.: ORS 90.800 - 90.840, 90.630,183,446, 456.515 - 456.723, 458.210 - 458.650

Stats. Implemented: ORS 456.579 - 456.581

Hist.: HSG 15-1990, f. & cert. ef. 12-4-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

**813-009-0010**
**Application Procedure and Requirements**

(1) A Qualified Facility Purchase Association, a tenants' association, or a tenants' association supported nonprofit organization, may submit to the Department an application for a loan for Initial Costs for purchasing the Manufactured Dwelling Park in which its members reside.

(2) The Department may loan funds from the Park Purchase Account to such qualifying entities to cover Initial Costs in the purchase of a Manufactured Dwelling Park subject to factors including, but not limited to:

(a) Loan limitations established from time to time by the Department;

(b) Feasibility considerations made by the Department with respect to the proposed purchase;

(c) Competing requests for Park Purchase Account funds; and

(d) A maximum aggregate loan limit of $100,000 to any such entity. Furthermore, the Department may from time to time elect to restrict or reduce the availability of Park Purchase Account funds for Program loans in order to conserve such funds in any manner that it seems prudent.

(3) All applications for assistance from the Park Purchase Account will be in writing, delivered to the Department, and will contain at a minimum the following information:

(a) A copy of the relevant articles of incorporation for the applicant;

(b) The name, address, and telephone number of all officers of the applicant;

(c) Documentation satisfactory to the Department that any applicant of the Qualified Facility Purchase Association represents at least fifty percent of all facility residents; and

(d) A detailed projection, satisfactory to the Department, of anticipated expenditures related to the proposed purchase of the facility.

Stat. Auth.: ORS 90.800 - 90.840, 90.630,183,446, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.579 - 456.581
Hist.: HSG 15-1990, f. & cert. ef. 12-4-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

**813-009-0015**
**Application Review**

(1) The Department will reasonably act to acknowledge receipt of the application and to request any additional information concerning the application within 30 calendar days of its receipt of the application.

(2) The Department will reasonably act to advise the applicant in writing of the action taken by the Department with respect to the application within 60 calendar days of the Department's receipt of the application and any additional information requested by the Department.

(3) In reviewing an application for a loan, the Department may consider factors including, but not limited to the following:

(a) Factors related to the availability of Park Purchase Account funds and the timing or amount of any loan as referenced in OAR 813-009-0010;

(b) The accuracy and responsiveness of the application;

(c) The validity and organizational integrity of the applying entity;

(d) Whether or not the applying entity is a Qualified Facility Purchase Association and, if so, the percentage of residents in the Park that it represents.

(e) The availability of other sources of funds or assistance for the purchase of the Park and associated costs. Preference in the evaluation of applications may be given by the Department to Qualified Facility Purchase Associations and, among such associations, to those with the higher level of resident representation.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.579 - 456.581
Hist.: HSG 15-1990, f. & cert. ef. 12-4-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

**813-009-0020**
**Type of Loan Assistance**

(1) The Department will confirm in writing to an applicant the amount of assistance, if any, to be provided from the Park Purchase Account. Any assistance will be in the form of a loan made pursuant to a controlling written instrument.

(2) The Department will establish the terms of the loan, including (without limitation) its duration, interest rate and repayment schedule at or prior to its issuance. Without the written approval of the Director, the following loan limitations will apply:

(a) The initial duration of the loan shall not exceed three years;

(b) The initial interest rate on the loan shall not exceedfour percent per annum; and

(c) The loan installment payment due dates shall not be less thanevery three months.

(3) Successful applicants will submit vouchers, billings or paid receipts for Initial Costs to the Department, in form and content satisfactory to the Department, for the Department's approval, prior to loan funds disbursement. Approval will be at the sole discretion of the Department. Upon approval by the Department, proceeds of the loan will be disbursed to vendors and/or to the successful applicant as determined by the Department.

(4) In addition to any other rights or remedies available under law, the Department may revoke any approval of the use of Park Purchase Account Funds, terminate all or part of any loan, accelerate all or part of the balance due on any loan and require immediate repayment of any or all of the funds advanced pursuant to a loan if any of the terms or conditions of the loan are not timely and completely satisfied.

Stat. Auth.: ORS 90.800 - 90.840, 90.630,183,446, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.579 - 456.581
Hist.: HSG 15-1990, f. & cert. ef. 12-4-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & 12-23-91; OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

**813-009-0030**
**Waiver**

The Director, with the concurrence of the Council, may waive or modify any requirements of OAR 813, division 009, unless such waiver or modification would violate applicable state or federal law.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.579 - 456.581
Hist.: OHCS 4-2006(Temp), f. & cert. ef. 2-10-06 thru 8-8-06

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## Oregon Liquor Control Commission
## Chapter 845

**Rule Caption:** Applicant and Licensee Defined — amend rule for clarity.
**Adm. Order No.:** OLCC 1-2006
**Filed with Sec. of State:** 1-19-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 10-1-05
**Rules Amended:** 845-006-0301
**Subject:** This rule describes precisely who the Commission considers to be an applicant or licensee, depending upon the type of ownership structure chosen by the applicant or licensee. New rule language specifically addresses licensee responsibility in licensing and violation proceedings.
**Rules Coordinator:** Katie Hilton—(503) 872-5004

**845-006-0301**
**"Applicant" and "Licensee" Defined**

(1) A license issued by the Commission shall include as licensees under a single license the individuals or legal entities who own or have an interest in the business as defined in OAR 845-005-0311(3). If any such licensee is a corporation or other legal entity, the following persons shall also be included as licensees under the license:

(a) Each principal officer as defined in OAR 845-006-0475(1)(d);

(b) Each director;

(c) Each person or entity who owns or controls 10% or more of the entity's stock or who holds 10% or more of the total membership interest in the entity or whose investment interest is 10% or more of the total investment interests in the entity;

(d) Each manager of a limited liability company and each general partner of a limited partnership.

(2) As used in ORS 471.313, "applicant" includes all of the entities and individuals (as applicable) listed in subsection (1) of this rule. As used in ORS 471.315, "licensee" includes all of the entities and individuals (as applicable) listed in subsection (1) of this rule.

(3) In any proceeding brought under the authority of ORS 471.313 or subject to the penalty provisions of ORS 471.315, each licensee as defined in subsection (1) shall be individually responsible for any violation or other resolution of the proceeding and shall be jointly and severally liable for any sanction.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.313 & 471.315
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2006, f. 1-19-06, cert. ef. 2-1-06

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**Rule Caption:** Alcohol Management in Public Venues — amend container size for distilled spirits drinks.
**Adm. Order No.:** OLCC 2-2006
**Filed with Sec. of State:** 1-19-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 10-1-05
**Rules Amended:** 845-006-0430
**Subject:** This rule provides standards for licensees who operate large public venues. In response to a petition, the Commission has amended the rule to change the size of container in which a distilled spirits drink may be served at large public events and arenas. New rule language will allow distilled spirits drinks to be served in a container no larger than 12 ounces. There may not be more than one ounce of distilled spirits per distilled spirits drink.
**Rules Coordinator:** Katie Hilton—(503) 872-5004

**845-006-0430**
**Alcohol Management in Public Venues**

(1) Purpose. The Commission is charged with regulating the sale and service of alcoholic beverages in a way which protects the safety and welfare of the citizens, and helps ensure that alcohol is used legally. The purpose of this rule is to set minimum standards to help licensees manage large public events, ensuring that minors and visibly intoxicated persons do not get or consume alcohol. The Commission may place additional requirements on individual events to help ensure legal, well-managed events.

(2) Definitions.

(a) "Attendance" means reasonably projected attendance.

(b) "Confined area" means an area within the event to which alcohol sales and consumption are restricted and where minors are prohibited. Alcohol Monitors are required if 2000 or more people are allowed in the confined area at any one time.

(c) "Alcohol Monitor" means a licensee's employee or agent who monitors the sale and consumption of alcoholic beverages, supplementing alcohol servers and security staff.

(d) "Walk around" means an event where people are allowed to walk around the entire event or some defined part of the event while consuming alcohol, and minors are allowed. Alcohol Monitors are required if there will be a daily attendance at the event of 2000 or more.

(3) This rule applies to:

(a) All annually licensed premises that do not have a Commission-approved operating plan and have any event with a daily attendance of 2000 or more. Annual licensees with a Commission-approved operating plan are exempt from this rule no matter what size events are held at the premises;

(b) All off premises events held by a regular or temporary licensee with a daily attendance of 2000 or more. If such licensee holds an event at another regular licensed premises that has a Commission-approved operating plan, the event holder must comply with the operating plan that is approved for the subject premises;

(c) To determine if this rule applies to an event, the licensee counts the total daily attendance (It does not matter how many people may consume alcohol or how many people are allowed in a confined area; what matters is the total daily attendance.) To determine if an event needs Alcohol Monitors, see Section (2), Definitions, and Section (5), Assignment of Alcohol Monitors.

(4) Responsibilities and Requirements for Alcohol Monitors:

(a) Alcohol Monitors are responsible for ensuring that unlawful sales, service and consumption of alcoholic beverages do not occur on the licensed premises. Alcohol Monitors duties include observing people, monitoring their alcohol consumption, looking for minors who are consuming alcoholic beverages, and preventing visibly intoxicated persons and minors from consuming alcoholic beverages;

(b) Alcohol Monitors must wear clothing or other designation, such as a button, which readily identifies them to the public as Alcohol Monitors;

(c) Alcohol Monitors must have completed Alcohol Server Education and hold a valid service permit. For annual licensees, this requirement applies to volunteer Alcohol Monitors and to compensated Alcohol Monitors;

(d) Despite Section (4)(c), Alcohol Monitors do not need to hold a service permit if they are uncompensated volunteers for a Temporary Sales licensee and are directly supervised on premises by an individual who has completed Server Education successfully within the last five years.

(5) Assignment of Alcohol Monitors. When determining the required number of Alcohol Monitors, licensees must use the total daily attendance if all or part of the event is a walk around event. See Section (2)(d) for a definition of walk around event. However, if alcohol sales and consumption will be limited to a confined area, the licensee uses the number of people allowed in the confined area at any one time to determine how many Alcohol Monitors are required. See Section (2)(b) for a definition of confined area. Alcohol Monitors must be on duty at all times of alcohol service as follows:

(a) For 2000 to 7500 people, at least three Alcohol Monitors;

(b) For each additional one to 2,500 people, at least one more Alcohol Monitor. For example, 7,501 to 10,000 people require at least four Alcohol Monitors; 10,001 to 12,500 people require at least five Alcohol Monitors; and

(c) One additional Alcohol Monitor for each point of sale that is not readily visible to the minimum number of Alcohol Monitors required in Section (5)(a) and (b). Point of sale means each stand, booth or other concession area where alcoholic beverages are sold and served.

(6) Approved Containers for On-Premises Consumption.

(a) Container sizes. Alcoholic beverages for consumption on the premises must be served as follows:

(A) Malt beverages:

(i) In a container no larger than 16 ounces;

(ii) For tastings, no more than 3 ounces of product.

(B) Wine:

(i) By the glass, a standard pour of no more than 6 ounces of product in a container no larger than 24 ounces;

(ii) For tastings, no more than 1 1/2 ounces of product in a container no larger than 24 ounces;

(iii) A bottle of wine no larger than 750 ml sold for more than one person and for on-premises consumption only, with containers no larger than 24 ounces.

(C) Distilled Spirits:

(i) Up to 1 ounce of distilled spirits without mixer in a container no larger than 4 ounces;

(ii) Up to 1 ounce of distilled spirits with mixer served in a container no larger than 12 ounces.

(D) Cider:

(i) In a container no larger than 16 ounces;

(ii) For tastings, not more than 3 ounces of product;

(iii) A bottle of cider no larger than 750 ml sold for more than one person and for on-premises consumption only.

(b) Container color or type. Containers used to serve alcoholic beverages must be of a visibly and distinctively different color or type when compared to containers used to serve nonalcoholic beverages.

(7) Limits on Alcohol Sales.

(a) Each purchaser of alcoholic beverages may buy no more than two drinks at any one time, or one bottle of wine or cider for consumption on the premises that is no larger than 750 ml at any one time.

(b) Alcoholic beverages must be sold and served consistent with Section (6).

(c) If it is reasonably projected that 30 percent or more of the people at the event will be between 15 and 20 years of age, the licensee must limit the sale of alcoholic beverages to a confined area where minors are prohibited unless the licensee gets a variance under Section (9).

(d) Walk around events must have sufficient lighting to ensure that Alcohol Monitors, alcohol servers, security staff, OLCC staff, and law enforcement staff can observe and monitor for over consumption, minors consuming or in possession, and other liquor law violations.

(8) Transportation. The Commission encourages messages before and at events reminding people of the risks of drinking and driving, and encourages alternatives such as designated drivers and, when possible, offering alternate transportation.

(9) Request for Variance. The Commission may grant a variance to part or all of this rule if the request is consistent with the intent of the rule. Any licensee or applicant who requests a variance from any of the criterion stated above must submit the request along with a detailed security plan at least 30 days prior to the event. The Commission will discuss requests for variances with the recommending authority when appropriate. When the Commission grants a variance, the Commission may add other requirements to ensure that the event operates in a way consistent with the intent of the rule. For example, if the Commission were to allow the sale of bottles of wine larger than 750 ml, the Commission might require that the licensee increase the number of Alcohol Monitors to help ensure that the larger bottles did not result in over consumption or in alcohol getting to minors. Other examples of when the Commission will consider granting a variance include events where minors are not permitted to attend and family events (events where minors are accompanied by adults).

(10) Sanction for Violation.

(a) A licensee who violates this rule with respect to the proper training, assignment and use of Alcohol Monitors or by failing to comply with Section (6) related to containers commits a Category IV violation under the Commissions sanction schedule (OAR 845-006-0500).

(b) If a licensee holds a walk around event and violations related to the sale or service of alcoholic beverages to minors or visibly intoxicated persons occur, or a violation of Section (7)(d) occurs, the next time this event or similar event is held alcohol must be limited to a confined area unless the licensee get a variance under Section (9).

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.030, 471.040, 471.115, 471.360, 471.410, 471.412, 471.430 & 471.730(1)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 3-2004, f. 3-17-04, cert. ef. 4-1-04; OLCC 2-2006, f. 1-19-06, cert. ef. 2-1-06

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## Oregon Patient Safety Commission
## Chapter 325

**Rule Caption:** Establishes the biennial budget for the Oregon Patient Safety Commission.
**Adm. Order No.:** PSC 1-2006
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 325-005-0015

**Subject:** This rule establishes the Patient Safety Commission's biennial budget. It replaces temporary rule 325-005-0010.
**Rules Coordinator:** James C. Dameron—(503) 224-9226

**325-005-0015**
**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 183.453(1), 183.453(2)
Hist.: PSC 1-2006, f. & cert. ef. 2-6-06

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**Rule Caption:** Establishes Hospital Reporting Program for hospitals.
**Adm. Order No.:** PSC 2-2006
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06
**Notice Publication Date:** 12-1-05
**Rules Adopted:** 325-010-0001, 325-010-0005, 325-010-0010, 325-010-0015, 325-010-0020, 325-010-0025, 325-010-0030, 325-010-0035, 325-010-0040, 325-010-0045, 325-010-0050, 325-010-0055, 325-010-0060
**Subject:** These rules, taken together, establish the Oregon Patient Safety Reporting Program for Oregon Hospitals. They also establish a hospital fee structure to partially fund the work of the Patient Safety Commission.
**Rules Coordinator:** James C. Dameron—(503) 224-9226

**325-010-0001**
**Definitions**

As used in OAR 325-010-0001 to 325-010-0060:

(1) "Commission" means the Oregon Patient Safety Commission.

(2) "Event Report" means the form designated by the Commission to be used by Hospital Participants for the reporting of Reportable Hospital Serious Adverse Events.

(3) "Hospital Participant" means a hospital that has volunteered to participate in the Oregon Patient Safety Reporting Program. A hospital pharmacy is considered to be part of the hospital.

(4) "Oregon Patient Safety Reporting Program" means the Patient Safety Reporting Program, as defined in Oregon Laws 2003, Chapter 686, Section 4, and operated by the Commission.

(5) "Participant" means an entity that reports Patient Safety Data to a Patient Safety Reporting Program, and any agent, employee, consultant, representative, volunteer or medical staff member of the entity.

(6) "Patient Safety Activities" include but are not limited to:

(a) The collection and analysis of Patient Safety Data by a Participant;

(b) The collection and analysis of Patient Safety Data by the Oregon Patient Safety Commission established in Oregon Laws 2003, Chapter 686 and ORS 442.820;

(c) The utilization of Patient Safety Data by Participants;

(d) The utilization of Patient Safety Data by the Oregon Patient Safety Commission to improve the quality of care with respect to patient safety and to provide assistance to health care providers to minimize patient risk; and

(e) Oral and written communication regarding Patient Safety Data among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program.

(7) "Patient Safety Data" means oral communication or written reports, data, records, memoranda, analyses, deliberative work, statements, root cause analyses or action plans that are collected or developed to improve patient safety or health care quality that:

(a) Are prepared by a Participant for the purpose of reporting Patient Safety Data voluntarily to a Patient Safety Reporting Program, or that are communicated among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program; or

(b) Are created by or at the direction of the Patient Safety Reporting Program, including communication, reports, notes or records created in the course of an investigation undertaken at the direction of the Oregon Patient Safety Commission.

(8) "Reportable Serious Adverse Event" for the purposes of OAR 325-010-0001 to 325-010-0060 means any unanticipated, usually preventable consequence of patient care that results in patient death or serious physical injury, including the events described in Appendix A. Appendix A is incorporated by reference.

[ED. NOTE: Appendix referenced are available from the agency.]
Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0005**
**Enrollment in the Oregon Patient Safety Reporting Program**

(1) Participation in the Oregon Patient Safety Reporting Program is voluntary. Hospital Participants are entitled to the benefits and subject to the obligations set forth in these administrative rules.

(2) Interested hospitals may apply for participation in the Oregon Patient Safety Reporting Program by completing the Commission's registration form and submitting the applicable annual fee. The registration form must include the name of a designated contact person.

(3) In agreeing to participate a hospital must affirm that it is willing to fully share requested Patient Safety Data with the Commission. This statement must be co-signed by the hospital's Chief Executive Officer, Chairperson of the Board of Directors, and the Director of Quality Management, or their equivalents.

(4) Upon enrolling in the Oregon Patient Safety Reporting Program, a Hospital Participant must have adopted policies and procedures describing patient safety activities, including how it triages adverse events; how it investigates adverse events, including root cause analysis protocols; and how it provides notice of adverse events to a patient and/or family member. The Hospital Participant must provide copies to the Commission upon request.

(5) Within 30 calendar days of receipt and acceptance of the registration form and fee the Commission will issue a certificate establishing a Hospital Participant's enrollment in the Oregon Patient Safety Reporting Program. The Hospital Participant should conspicuously post the certificate in an area where patients are admitted.

(6) The Commission will issue a press release on a regular basis which will provide a list of Hospital Participants to the public.

Stat. Auth: ORS 686, OL 2003 Sec. 4,6,9, ORS 182.456 – 182.472
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0010**
**Annual Hospital Participant Fee**

(1) A Hospital Participant must pay an annual fee, as follows:

(a) $1,000 for a hospital with 3,000 or fewer patient discharges per year.

(b) $3,500 for a hospital with 3,001 to 10,000 patient discharges per year.

(c) $8,500 for a hospital with more than 10,000 patient discharges per year.

(2) Initial fees will be assessed at the time of enrollment in the Oregon Patient Safety Reporting Program and will expire on December 31 following the date of issue. Annual Hospital Participant fees will be due by December 31 for the next year's enrollment. A delinquent renewal fee of up to 25% of the renewal fee may be assessed against a Hospital Participant submitting fees postmarked after December 31st.

(3) No participation fees will be refunded due to withdrawal or termination from the Oregon Patient Safety Reporting Program.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0015**
**Termination of Participation**

(1) The Commission's reporting program relies on voluntary reporting. However, the Commission is responsible for ensuring that those who choose to participate also comply with the standards established by the Commission.

(2) Participation requirements include the reporting of all Reportable Serious Adverse Events; fully completing Event Reports; creating and implementing acceptable action plans; and providing written disclosure to patients or families following a Reportable Serious Adverse Event.

(3) If the Commission believes a Hospital Participant is not meeting its participation requirements, the Commission must provide the Hospital Participant with a written notice explaining why. The Hospital Participant will have 30 calendar days to respond and come into compliance.

(4) The Commission may deny, suspend or revoke a Hospital Participant's status when the Commission finds that there has been a substantial failure to comply with the provisions of participation.

(5) Upon written notification by the Commission of revocation, suspension, or denial of a Hospital Participant enrollment in the Oregon Patient Safety Reporting Program, a Hospital Participant may request a hearing. Hearings will be held in accordance with ORS 183.310 to 183.470.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0020**
**Re-Issue of Suspended or Revoked Participation Certificate**

The Commission may re-issue a participation certificate that has been suspended or revoked if the Commission determines that the Hospital applying for re-enrollment meets the provisions of participation.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0025**
**Reporting Serious Adverse Events**

(1) The Commission will provide an Event Report form to be used by Hospital Participants for reporting Reportable Serious Adverse Events. The Event Report will include: a summary description of the event; an overview of the Hospital Participant's complete, thorough and credible root cause analysis for that event; information about plans to implement improvements to reduce risk. The meaning of terms "complete," "thorough," and "credible" are explained in OAR 325-010-0035.

(2) Hospital Participants must use the Event Report form when reporting Serious Adverse Events to the Commission.

(3) Hospital Participants must submit a completed Event Report to the Commission within 45 calendar days of discovery of a Reportable Serious Adverse Event.

(4) If a Hospital Participant believes the Commission should immediately issue an alert to all Oregon hospitals based on a specific Reportable Serious Adverse Event, the Hospital Participant should provide an initial report to the Commission within 3 business days of discovery of the event, or sooner. The Hospital Participant and Commission will work together to identify information to include in the alert.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0030**
**Hospital Reporting of Less Serious Adverse Events or Close Calls**

(1) In addition to Reportable Serious Adverse Events, Participating Hospitals are also encouraged to report less serious adverse events or close calls. Participating Hospitals should do so when they believe other organizations will benefit from the information.

(2) To report such events, Hospital Participants should use the appropriate sections of the Event Report form. Hospital Participants will not be required to complete detailed root cause analysis for these less serious events or close calls.

(3) Hospital Participants are not required by the Commission to provide written disclosure of less serious adverse events or close calls to patients or their personal representatives.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0035**
**Commission Review of Reports**

(1) When the Commission receives an Event Report from a Hospital Participant, the Commission will determine whether that Event Report is complete, thorough, credible and acceptable. The definitions for the terms thorough, credible and acceptable can be found in the Joint Commission on Accreditation of Health Care Organization's Sentinel Event Policy and Procedures, June 2005, and are adopted by reference. In general:

(a) A report is complete if it contains all the information requested in the Event Report, or explains, to the Commission's satisfaction, why that information is not available or not necessary to provide;

(b) A report is thorough if the root cause analysis includes an analysis of all relevant systems issues and shows evidence of an inquiry into all appropriate areas;

(c) A report is credible if it shows evidence that the investigation of the Reportable Hospital Serious Adverse Event included participation by leadership within the organization and was internally consistent; and

(d) A report is acceptable if all the above standards are met and the action plans clearly describe meaningful improvement strategies designed to minimize risk.

(2) If the Commission believes that an Event Report received from a Hospital Participant is incomplete or unacceptable in some manner, it will inform the Hospital Participant's contact person within 10 business days of receipt of the Event Report.

(3) On an annual basis, the Commission will query Hospital Participants regarding the status of action plans identified in their Event Reports.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0040**
**Public Health Officer Certification**

(1) At least annually, the Commission will request that the Public Health Officer certify the completeness, credibility, and thoroughness of each Hospital Participant's reporting during the applicable period.

(2) The Commission will request that the Public Health Officer develop independent and objective standards to evaluate the overall integrity of the Patient Safety Reporting Program. On an annual basis the Commission will request that the Public Health Officer use those standards to certify the Oregon Patient Safety Reporting Program.

(3) The Commission will provide information to the Public Health Officer to assist the Public Health Officer in completing the certification processes listed in (1) and (2) of this rule, consistent with OAR 325-010-0055.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0045**
**Patient Notification Of Reportable Serious Adverse Events**

(1) After a Reportable Serious Adverse Event occurs, a Hospital Participant must provide written notification to each affected patient, or, if necessary, to the patient's personal representative. Notification must be timely and should be consistent with the Hospital Participant's internal communication and disclosure policies.

(2) As provided in Oregon Laws 2003, Chapter 686, Section 4(4), notice provided under this subsection may not be construed as an admission of liability in a civil action.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0050**
**Extensions And Waivers**

(1) The Commission may grant an extension of any time requirement stipulated in these rules if the Hospital Participant provides justification that the delay is due to factors beyond its control or that the delay will not adversely affect the purposes of the Commission. A Hospital Participant requesting a waiver must submit a written request to the Commission prior to the deadline for the required action. Facsimile requests are acceptable.

(2) The Commission may grant a waiver of any other provision of these rules if the Hospital Participant provides justification that granting the waiver will not adversely affect the purposes of the Commission.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0055**
**Protection Of Patient Safety Data**

(1) The Commission is subject to all the confidentiality provisions set forth in Oregon Laws 2003, Chapter 686, Sections 1, 4 to 6, 8 to 10, 12, and in ORS 442.820 to 442.835.

(2) The Commission will maintain the confidentiality of all Patient Safety Data that identifies or could be reasonably used to identify a Hospital Participant or an individual who is receiving or has received health care from the Hospital Participant.

(3) Before it takes receipt of any confidential Patient Safety Data, the Commission will have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of such data.

(4) Pursuant to ORS 442.820(4), meetings or portions of meetings where the Oregon Patient Safety Commission Board of Directors, or subcommittees or advisory committees consider information that identifies a

participant or patient are not subject to the Oregon Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

**325-010-0060**
**Commission's Use Of Patient Safety Data**

(1) The Commission will create a standing committee on best practices in patient safety. This committee will advise the Commission on effective methods for making use of and sharing information gathered from the Commission's review of Event Reports.

(2) At least quarterly, the Commission will provide Hospital Participants with patient safety quality improvement information derived from Patient Safety Data.

(3) During the second quarter of each year, the Commission will publish a report to the public summarizing Patient Safety Data for the preceding calendar year. This report will use aggregate, de-identified data from the program and will describe statewide adverse event patterns and best practices to avoid the occurrence or minimize the effects of adverse events.

(4) The Commission will maintain an easily accessible and well-publicized website to share patient safety information directly with consumers.

(5) The Commission, within its resource limitations, will provide technical assistance to Hospital Participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(6) The Commission will work with representatives of organizations participating in the Oregon Patient Safety Reporting Program and with other interested parties to develop recommendations for continued improvements in the collection and utilization of Patient Safety Data.

Stat. Auth: ORS 686, 182.456 – 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 – 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06

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## Oregon Public Employees Retirement System
## Chapter 459

**Rule Caption:** Amend and repeal PERS earnings crediting rules to comply with recent court decisions.
**Adm. Order No.:** PERS 1-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 459-007-0001, 459-007-0003, 459-007-0005, 459-007-0090
**Rules Repealed:** 459-007-0001(T), 459-007-0003(T), 459-007-0005(T), 459-007-0090(T), 459-007-0095, 459-013-0300
**Subject:** The Oregon Supreme Court determined two elements of the 2003 PERS Reform Legislation to be invalid. One was the crediting limitation on Tier One member regular accounts. The other was the legislation's COLA Freeze method to recover overpayments.

Previously, the agency had adopted administrative rules that incorporated those elements. After the decision was announced, PERS staff identified the following rule provisions that need to be modified to remove those elements and conform to the current state of the law after Strunk. These modifications were adopted as temporary rules at the PERS Board's October 21, 2005 meeting and this permanent rulemaking action make these changes as permanent.

OAR 459-007-0001, Definitions: The only change in this rule is the verb tense used in reference to the Deficit and Rate Guarantee reserves as they will now be ongoing accounts, not just reflections of prior deficits.

Note that in this and the other rule modifications, an effective date is specified. These dates correspond to when the prior, now invalid, version of the rules became effective. These modifications will, by operation of these dates, supersede the non-conforming versions. The modifications to this rule are effective back to July 1, 2003, which is the first date that the invalid statutory provisions became effective.

459-007-0003, Determination of Tier One Year-to-Date Calculation: This rule reflected the limitations on Tier One member regular account earnings crediting that were voided in Strunk. The rule modifications clarify that Tier One member regular accounts, for purposes of mid-year crediting, will receive no less than a pro-rate of the assumed interest rate. The rule also notes that such accounts cannot be credited with more than that rate until the conditions of ORS 238.255 are met. HB 2001 (2003 regular session) adopted limitations that prevent the PERS Board from crediting more than the assumed interest rate to Tier One member regular accounts. Those limitations were not challenged in the Strunk case, so the rule modifications continue to conform to them. The effective date of these rule modifications is also July 1, 2003.

459-007-0005, Annual Earnings Crediting: The substantive modifications are to sections (8) and (10) of the rule to reflect the assumed rate guarantee for Tier One member regular accounts. The other modifications correct terminology and references that were not consistent. The effective date of these rule modifications is April 15, 2004, which corresponds to when the PERS Board first adopted this rule.

459-007-0090, Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments: This rule reflected an interim provision that credited lump sum installment retirements from August 2003 to April 1, 2004 with a special rate. The Strunk decision held that provision invalid, so this modification removes reference to the April trigger date. The effective date of these rule modifications is April 1, 2004 because retirements prior to that date were, by operation of law, subject to the old earnings crediting rules.

459-007-0095, Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments (Repeal): This rule was adopted to reflect that interim provision referenced above. That restriction was invalidated in Strunk, so staff this rule is being repealed.

459-013-0300, HB 2003 Retirement Allowance Recalculations (Repeal): The Strunk court also found that the COLA Freeze method specified in the legislation was not a permissible way to recover overpaid amounts. This rule was adopted to support that COLA Freeze process, so it is now being repealed.
**Rules Coordinator:** David K. Martin—(503) 603-7713

**459-007-0001**
**Definitions**

The words and phrases used in this division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms for purposes of this division are defined as follows unless context requires otherwise:

(1) "Annual rate" means the rates determined by the Board for crediting earnings to Tier One regular accounts, Tier Two regular accounts and member variable accounts, effective as of December 31 of each year.

(2) "Assumed rate" means the actuarial assumed rate of return on investments as adopted by the Board for the most recent actuarial valuation.

(3) "Average annualized rate" means the monthly rate provided by the Oregon State Treasury representing the rate credited to cash accounts.

(4) The "Benefits-in-Force Reserve" or "BIF Reserve" means the reserve established under ORS 238.670(2).

(5) "Capital Preservation Reserve" means the reserve established under ORS 238.670(3).

(6) "Contingency Reserve" means the reserve established under ORS 238.670(1).

(7) The "date of distribution" is the date inscribed on the check, warrant, or electronic transfer issued to or on behalf of the member, the member's beneficiary, or an alternate payee.

(8) "Date of payment" means the date a payment is received by PERS.

(9) "Earnings" means all income to the Fund from investments and other sources, but does not include member or employer contributions.

(10) "Tier One Member Deficit Reserve" and "Deficit Reserve" mean the deficit reserves established in ORS 238.255(1) that are used to fund crediting of the assumed rate to Tier One regular accounts and that are used to reflect losses attributable to Tier One regular accounts.

(11) "Tier One Member Rate Guarantee Reserve" and "Rate Guarantee Reserve" mean the reserve referenced in ORS 238.255(1) that enables the Board to credit earnings at or above the assumed rate under the conditions specified in ORS 238.255.

(12) "Year-to-date calculation" means the factor used to credit a pro-rata distribution of year-to-date earnings, allowing for reserves and expenses, to Tier One regular accounts, Tier Two regular accounts, or member variable accounts. These factors are calculated by staff on a monthly basis

using the market value of investments in the Fund as supplied by the Oregon State Treasury. Year-to-date calculations for Tier One member regular accounts will be determined in accordance with OAR 459-007-0003.

(13) The provisions of this rule shall be applied retroactively to July 1, 2003.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238
Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(1); PERS 6-1998, f. & cert. ef. 5-22-98, Renumbered from 459-007-0010; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

**459-007-0003**
**Determination of Tier One Year-to-Date Calculation**

(1) Any year-to-date calculation ("factor") used to credit earnings to Tier One member regular accounts shall be a pro-rate of the assumed interest rate and cannot be greater unless and until the conditions in ORS 238.255 have been met.

(2) The provisions of this rule shall be applied retroactively to July 1, 2003.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238
Hist.: PERS 24-2003, f. & cert. ef. 12-15-03; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

**459-007-0005**
**Annual Earnings Crediting**

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

(5) **Administrative expenses.**

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

(b) Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) **Contingency Reserve.**

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular accounts, Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.** All remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two member regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One regular accounts.** All remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One member regular accounts at the assumed rate in any year in which the conditions set out in ORS 238.255 have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One regular accounts and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Deficit Reserve has a zero balance, remaining earnings attributable to Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One Member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

(16) The provisions of this rule shall be applied retroactively to April 15, 2004.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238
Hist.: PERS 8-2004, f. & cert. ef. 4-15-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

**459-007-0090**
**Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments**

Notwithstanding 459-007-0070, if a Tier One member retires and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) **Regular account.** Earnings shall be credited to the member's regular account as follows:

(a) **Prior year earnings.** If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) **Variable account.** If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) **Prior year earnings.** If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) **Initial installment.** Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) **Annual earnings — initial year.** Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) **Annual earnings — subsequent years.** Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) **Final installment.** The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

(7) The provisions of this rule shall be applied retroactively to April 1, 2004.

Stat. Auth.: ORS 238.305(3)(c) & 238.650
Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315
Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(10); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04; PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06; PERS 1-2006, f. & cert. ef. 2-1-06

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**Rule Caption:** Amend recovery of overpayments administrative rule.
**Adm. Order No.:** PERS 2-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 459-005-0610
**Subject:** These proposed modifications incorporate changes to the statute that were adopted by the 2003 Oregon Legislature and to better reflect the agency's practices in seeking recovery of overpayments. In summary, the major changes are:

• Remove definitions of words that were deleted from the statute or not otherwise needed and incorporating consistent use of the term "payee" as defined in this rule.

• Clarify the distinction between the notice required by statute to commence recovery and the invoice that details the overpayment.

• Articulate the methods staff uses to calculate and collect overpayments, including reducing the payee's obligation by any lump-sum payment owed to them.

• Incorporate the new statutory standard for collecting interest, fees, and costs in addition to the overpayment amount.

**Rules Coordinator:** David K. Martin—(503) 603-7713

**459-005-0610**
**Recovery of Overpayments**

(1) Authority and Purpose. In accordance with ORS 238.715, this rule sets forth the criteria and process for the recovery of overpayments and erroneous payments made by PERS. It is the policy of the Board to implement wherever possible, and if cost effective, a full recovery of all overpayments and erroneous payments. Staff shall attempt recovery of overpayments and erroneous payments in the most efficient method available and in the least amount of time possible.

(2) For the purposes of this rule:

(a) "Overpayment" refers to an amount that is in excess of the amount a payee is entitled to under ORS Chapters 238 and 238A;

(b) "Improperly made payment" or "erroneous payment" means any payment that has been made from the Public Employees Retirement Fund in error, including a payment to a payee that is not entitled to receive the payment;

(c) "Good cause" means a cause beyond the reasonable control of the person. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent person of normal sensitivity, exercising ordinary common sense;

(d) "Monthly payment" means any gross pension, annuity, service or disability retirement allowance, death benefit, or other benefit under ORS Chapters 238 or 238A that is paid monthly to or on behalf of a payee;

(e) "Lump-sum payment" means any one-time distribution or payment made under ORS Chapters 238 or 238A, or any other law directing PERS to make a payment, including a retroactive adjustment, that is not scheduled to be paid to or on behalf of a payee on a regular monthly basis;

(f) "Payee" means:

(A) A member, a trust established by the member, the member's estate;

(B) A member's beneficiary, a trust established by the member's beneficiary, the estate of the member's beneficiary;

(C) An alternate payee, as defined in OAR 459-045-0001(6), a trust established by an alternate payee, or the estate of an alternate payee;

(D) The beneficiary of an alternate payee, a trust established by the beneficiary of an alternate payee, or the estate of the beneficiary of an alternate payee; or

(E) Any other recipient of a benefit payment by PERS.

(3) In addition to the notice of an overpayment or erroneous payment to a payee required by ORS 238.715(4), PERS shall also send an explanation of the overpayment or erroneous payment; whether the Board asserts a right to assess interest, penalties and costs of collection; and a description of the manner in which the payee may appeal the determinations reflected in the explanation, if applicable.

(4) In determining the amounts owed by a payee and setting a repayment schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed by any lump-sum payment then owed by PERS to that payee. If the payee should subsequently become entitled to any lump sum payment, it shall be applied against the amounts then owed by that payee. PERS, in its discretion, may revise the repayment schedule or continue on the established schedule until the remaining amounts owed are fully repaid.

(5) The following list includes possible methods for PERS to recover an overpayment under an agreement with the payee. These methods are listed in order of preference. Unless otherwise ordered by the Board, PERS Staff is granted the discretion to select the method deemed most likely to effect a full recovery:

(a) A repayment of all amounts owed in a single payment;

(b) A deduction of a percentage or fixed dollar amount, to be agreed upon between the payee and PERS, from future monthly payments for a period not to exceed two years that will fully repay the amounts owed;

(c) A fixed monthly dollar amount to be agreed upon between the payee and PERS that will fully repay the amounts owed;

(d) A deduction of a percentage or fixed dollar amount from future monthly payments, to be agreed upon between the payee and PERS, for a specified period greater than two years that will fully repay the amounts owed if PERS deems that a longer repayment period is warranted by the payee's personal financial circumstances.

(6) If the payee does not agree to one of the recovery methods under section (5) of this rule, PERS shall use one of the following methods to effect a full recovery of any overpayment or erroneous payment:

(a) Deducting not more than 10 percent from current and future monthly payments to a payee until the full amounts owed are recovered;

(b) Making an actuarially determined reduction, not to exceed 10 percent, to current and future payments from PERS calculated to repay the full

amount of the overpayment or erroneous payment during the period in which monthly payments will be made to the payee;

(c) Seeking recovery of the overpayment or erroneous payment by using any remedy available to the Board under applicable law; or

(d) Engaging the services of outside collection agencies.

(7) If a recovery method has to be selected under section (6) and the overpayment is caused solely by the actions of PERS or a participating public employer, the actuarial reduction method described in (6)(b) will be the preferred method to recover that overpayment unless otherwise ordered by the Board.

(8) The base or original benefit payment used to calculate cost-of-living adjustments, ad hoc increases, or other benefit increases shall not be altered by an actuarial reduction provided for in subsection (6)(b) of this rule.

(9) In the event that PERS determines that an overpayment or erroneous payment was not caused by PERS or by the actions of a participating public employer, PERS may include within the amounts owed by the payee:

(a) All costs incurred by PERS in recovering the overpayment or erroneous payment, including attorney fees, and fees assessed by an outside collection agency; and

(b) Interest in an amount equal to one percent per month on the balance of the overpayment or erroneous payment until that payment is fully recovered.

(10) The Board authorizes the Director, or the Director's designee, to waive:

(a) The interest and costs of collection associated with the recovery of an overpayment or erroneous payment for good cause shown; and

(b) The recovery of any overpayment or erroneous payment if the total amount of overpayments or erroneous payments is less than $50.

(11) Recovery of an overpayment or erroneous payment shall not be effected if PERS has not initiated recovery of those payments within six years after the date the overpayment or erroneous payment was made. PERS initiates recovery on the date it mails the notification required by ORS 238.715(4).

(12) The recovery of an overpayment or an erroneous payment shall take precedence over other deductions or reductions as set forth in OAR 459-005-0600.

Stat. Auth.: ORS 238.715(9) & 238.650
Stats. Implemented: ORS 238.715
Hist.: PERS 14-1998, f. & cert. ef. 12-17-98; PERS 2-2006, f. & cert. ef. 2-1-06

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## Oregon State Library
## Chapter 543

**Rule Caption:** Ready to Read Grant Program.
**Adm. Order No.:** OSL 1-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 543-040-0020
**Rules Repealed:** 543-040-0033
**Subject:** This rule provides a framework for awarding grants to public libraries to establish, develop or improve public library services to children.

This amendment corrects the title of the publication that is used to determine populations served and removes the maintenance of support requirement for eligibility as required by HB 2916.
**Rules Coordinator:** James B. Scheppke—(503) 378-4367

**543-040-0020**
**Population Determination**

(1) The State Librarian shall use the population estimates for cities and counties included in the publication, Population Estimates for Oregon, published by the Population Research Center, Portland State University, as amended by the latest supplements to this publication.

(2) To determine the population of special districts, school districts or other districts whose boundaries are within a single county but are not identical to those of a county or of cities, the State Librarian shall estimate the population of the district based on the number of registered voters in the district, as of June 1. Using the ratio of registered voters in the county to the official population of the county, the State Librarian shall apply this same ratio to the district in order to estimate the district population.

(3) In accordance with ORS 357.780(2)(c), a public library may be assigned population beyond its governing authority's jurisdiction in cases where the library has a valid contract with a unit of local government to provide services to this population. The contract, which must be on file at the State Library, must grant the library the sole responsibility to serve the population in question, and the population must be specified in the contract in a clear and precise manner, in order for additional population to be assigned for grant purposes. Public libraries established as non-profit corporations under Oregon law may be assigned population and may receive grants only in this manner.

(4) In cases other than those described in section (3) of this rule, where the same population is served by two or more public libraries, the State Librarian shall determine which public library is the primary service provider to the population in question, and shall assign the population to the primary service provider. In making this determination the State Librarian shall consider the location of library facilities and any available statistics on patterns of library use by the population in question.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 357.015(2) & 357.760
Stats. Implemented: ORS 357.780(1)(2)
Hist.: OSL 1-1980, f. & ef. 9-29-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 2-1991, f. 11-26-91, cert. ef. 12-1-91; OSL 1-1993, f. & cert. ef. 11-10-93; OSL 1-2006, f. & cert. ef. 2-14-06

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**Rule Caption:** Repeal Definitions of Oregon Link Interlibrary Loan Net Lender Reimbursement Program.
**Adm. Order No.:** OSL 2-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Repealed:** 543-050-0010
**Subject:** This rule provides definitions for a program of the State Library that is no longer operational.
**Rules Coordinator:** James B. Scheppke—(503) 378-4367

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**Rule Caption:** Oregon Statewide Database Licensing Program.
**Adm. Order No.:** OSL 3-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 543-060-0000, 543-060-0010, 543-060-0020, 543-060-0030
**Subject:** This rule provides the framework for the Statewide Database Licensing Program in public, school, academic, and tribal libraries in Oregon.

This amendment provides for the addition of tribal libraries to the program as required by HB 2674.
**Rules Coordinator:** James B. Scheppke—(503) 378-4367

**543-060-0000**
**Scope**

OAR chapter 543, division 60, applies only to statewide licensing of electronic databases in public, school, academic, and tribal libraries.

Stat. Auth.:
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 3-2006, f. & cert. ef. 2-14-06

**543-060-0010**
**Definitions**

The following definitions apply to the terms used in this division:

(1) "Public library" has the meaning given to public library in ORS 357.400(3), and shall be established in accordance with ORS 357.410.

(2) "Academic library" means any library of a not-for-profit institution of postsecondary education in Oregon, whether publicly or privately funded.

(3) "School library" means any library in a common school district or union high school district.

(4) "Tribal library" means a library operated by any of the nine federally-recognized tribes in Oregon.

(5) "Resource sharing systems" means all public, academic, or school libraries participating in a resource sharing system.

(6) "Fiscal Year" means the period of one year commencing on July 1 and closing on June 30th.

(7) "Interlibrary Loan" means one item of library material, or one copy from library materials, that is made available from a library's holdings to another library upon request.

(8) "Statewide database licensing" means the cooperative contract negotiation and purchase to make collections of electronically stored data, records or full text available to public, school, academic, and tribal libraries in Oregon.

Stat. Auth.:
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 3-2006, f. & cert. ef. 2-14-06

**543-060-0020**
**Authorized Activities**

Oregon State Library is authorized to negotiate and contract with commercial database providers on behalf of public, school, academic, and tribal libraries to provide access to full text periodicals databases and a newspaper database that includes the Oregonian. The statewide database subsidy program is established under the provisions of this division to assist eligible public, academic, school and tribal libraries to participate in the statewide full text periodicals database program. The Oregon State Library is authorized to collect and administer funds from public and academic libraries in payment for such databases. A statewide database subsidy is established under the provisions of this division to assist eligible school, public, academic, and tribal libraries to participate in the statewide newspaper database program.

Stat. Auth.:
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 3-2006, f. & cert. ef. 2-14-06

**543-060-0030**
**Statewide Database Licensing Process**

(1) Eligibility: Any public, school, academic, tribal library or resource sharing system as defined above is eligible to participate in the program if the following criteria are met:

(a) The library or resource sharing system provides interlibrary loans without charge to requesting in-state public, academic, school, and tribal libraries and resource sharing systems.

(b) The public, academic library or resource sharing system is a signatory to and abides by the "Interlibrary Loan Code for Oregon Libraries."

(c) The library or resource sharing system certifies the above criteria are met and agrees to participate in the Statewide Database Licensing Program.

(2) The Statewide Database Licensing Advisory Committee shall be appointed by the Library Services and Technology Act (LSTA) Advisory Council.

(a) Role: The Statewide Database Licensing Advisory Committee shall advise the LSTA Advisory Council and the Oregon State Library staff in request for proposal development and database product evaluation, and provide ongoing database product assessment and customer feedback. The Statewide Database Licensing Advisory Committee shall also advise the LSTA Advisory Council on the appropriate percentage allocation of periodicals database costs to public, academic and school libraries.

(b) Membership of the Statewide Database Licensing Advisory Committee: One representative from the LSTA Advisory Council; three public library representatives, one each from libraries serving populations over 100,000, between 25,000-100,000, and 25,000 or less; three academic library representatives, one each from a community college, Oregon University System, and private academic institution; one representative from a resource sharing system; one tribal library representative, and, two school library representatives. Orbis Cascade Alliance and the Organization for Educational Technology and Curriculum (OETC) will each have one representative serving in a non-voting, ex officio capacity. In making appointments the LSTA Advisory Council will seek representatives with experience in database licensing and the use of databases.

(c) Terms of appointment: Terms shall be for three years, except initial terms shall be staggered. The LSTA Advisory Council representative shall serve a two year term.

(d) Meetings: The Statewide Database Licensing Advisory Committee shall meet at least twice each calendar year, and may meet more often as needed.

(3) Request for proposal process: The Oregon State Library shall be the fiscal agent for the program and shall use Federal funds under the Library Services and Technology Act to subsidize the program. Oregon State Library shall work with the Department of Administrative Services to procure periodical and newspaper full text databases.

(4) Database subsidy process:

(a) The Oregon State Library administers the database subsidy process.

(b) Participating public and academic libraries and resource sharing systems shall be billed annually, in July, for periodicals database charges for the upcoming service year. Invoices to participants represent the difference in the subsidized annual costs paid by the State Library and the cost to the participants.

(5) Formula for periodicals database subsidy to public, academic libraries or resource sharing systems: Once a determination has been made of the percentage allocation of periodicals database cost among school, public and academic libraries, the costs will be further allocated to participants in the following manner:

(a) The public library or resource sharing system cost is based on the population served during the previous year, as determined by the State Library.

(b) The academic library cost is based on the student enrollment during the previous academic year, as determined by official sources, such as the Integrated Postsecondary Education Data System (IPEDS), and the Oregon Community College Unified Reporting System (OCCURS). Community college FTE will be adjusted for terms to arrive at an average annual full time enrollment.

(c) Individual library periodicals database costs per year of $225 or less are subsidized in full by the State Library. Periodicals database costs per year of more than $225 are subsidized at 50% of the total annual periodicals database costs. Participants will be billed for the 50% unsubsidized portion of total annual periodicals database costs.

(6) Formula for periodicals database costs to school libraries: The annual database contract costs to school libraries will be supported with LSTA funds as determined by the State Library Board of Trustees, with a recommendation from the LSTA Advisory Council.

(7) Formula for periodicals database costs to tribal libraries: The annual database contract costs to tribal libraries will be supported with LSTA funds as determined by the State Library Board of Trustees, with a recommendation from the LSTA Advisory Council.

(8) Formula for newspaper database subsidy: All eligible public, school, academic, and tribal libraries, or resource sharing systems accessing the full text newspaper database are subsidized in full by the State Library.

(9) Statewide database expenditure plan: An annual budget for the Statewide Database Licensing Program shall be recommended by the Library Services and Technology Act Advisory Council to the State Library Board of Trustees and shall be adopted by the State Library Board of Trustees.

Stat. Auth.: ORS 357.209
Stats. Implemented: ORS 357.206
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 1-2004, f. 8-17-04 cert. ef. 9-1-04; OSL 3-2006, f. & cert. ef. 2-14-06

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**Rule Caption:** State Documents Depository Program.
**Adm. Order No.:** OSL 4-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 12-1-05
**Rules Amended:** 543-070-0000
**Subject:** This rule establishes the framework for the state publication depository program. This amendment accomplishes four things:

1. Reduces the number of print copies required from state agencies;
2. Eliminates the "core depository" category;
3. Establishes the framework for state agencies to deposit electronic documents as required by HB2118; and
4. Establishes reasonable parameters for what constitutes an electronic document.

**Rules Coordinator:** James B. Scheppke—(503) 378-4367

**543-070-0000**
**Public Documents Depository Libraries**

(1) The following libraries are designated as depository libraries and are hereby entitled to receive copies of all public documents deposited with the State Library for distribution under the public documents depository program:

(a) Eastern Oregon University Library;
(b) Oregon Institute of Technology Library (Klamath Falls);
(c) Multnomah County Library;
(d) Oregon State Library (2);

(e) Oregon State University Library;
(f) Portland State University Library;
(g) Southern Oregon University Library;
(h) University of Oregon Library;
(i) Western Oregon University Library.

(2) Libraries designated as depository libraries shall agree to the following terms for participation in the public documents depository program:

(a) To make all tangible materials received under the program accessible to the public without charge.

(b) To provide free public access to their patrons to all electronic documents identified by the depository program.

(c) To include records for all depository items, tangible and otherwise, in their public catalogs for at least five years; records for superseded publications may be replaced with the records for the replacement publications.

(d) To retain all tangible materials and to maintain catalog links to electronic publications received under the program for a minimum of five years; superseded publications may be replaced with the new version.

(e) As the official archive for Oregon public documents, the State Library will retain all tangible materials permanently and will maintain a permanent, accessible archive for electronic publications.

(3) In the interest of public access to state documents, the State Library will make bibliographic records for electronic publications available to any Oregon library.

(4) An issuing agency must provide to the State Library electronic versions of any public document produced by the issuing agency if the public document:

(a) Is required by law as a public report;

(b) Is required by law to be sent to the Governor, President of the Senate, or Speaker of the House;

(c) Is intended to educate the public about the work of the issuing agency;

(d) Describe the issuing agency's programs, overall activities, or policies;

(e) Is an annual report of the issuing agency's activities; or

(f) Reports the results of a formal study or investigation conducted by or on behalf of the issuing agency.

(5) An issuing agency need not provide the Library with copies, including electronic versions, of the following types of documents:

(a) Those public documents specifically exempted by statute;

(b) The text of speeches, press releases, or written testimony, including testimony to Legislative committees;

(c) Documents produced under contract that includes a limited duration distribution clause;

(d) Documents that describe only the internal operations of the issuing agency, the internal policies of the issuing agency, or both;

(e) Documents produced for rulemaking, such as those described in ORS 183.335 or 183.355;

(f) Documents created for and filed with a court in a matter pending before the court, including motions and briefs; and

(g) Materials of a dynamic or ephemeral nature offered as part of an online service or website.

(6) Questions regarding the need to deposit specific documents not clearly addressed by this policy will be resolved by a joint decision of the State Library, the State Archives and the issuing agency.

(7) Terms defined in ORS 357.004 have the same meaning when used in this rule.

Stat. Auth.: ORS 357.090
Stats. Implemented: ORS 357.005(2)(j) & 357.090
Hist.: OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; OSL 4-2006, f. & cert. ef. 2-14-06

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## Oregon State Lottery
## Chapter 177

**Rule Caption:** Clarifies that Calculation of Video Lottery Retailer Compensation is on a Business Week Basis.
**Adm. Order No.:** LOTT 1-2006
**Filed with Sec. of State:** 1-25-2006
**Certified to be Effective:** 1-25-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 177-040-0026
**Rules Repealed:** 177-040-0026(T)
**Subject:** The amendment clarifies the terms of the current retailer contract between the Lottery Commission and its video lottery retailers by setting forth the calculation method for paying compensation to video lottery retailers for the sale of video lottery game shares when net receipts exceed a tier threshold during a business week. The amendment specifies that when net receipts exceed the threshold of a tier applicable to a retailer, the video lottery compensation rate remains unchanged for the remainder of the business week and is lowered at the start of the next business week. The Lottery intends that this rule amendment be applied to retailer compensation for video lottery games beginning June 27, 2004.
**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

**177-040-0026**
**Retailer Compensation — Video Lottery Games**

(1) **General:** The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. **"Net receipts"** means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. The compensation rates for the sale of video lottery game shares for retailers that offer only video poker games is set forth in OAR 177-040-0027. The compensation rates for the sale of video lottery game shares for retailers that offer both video poker games and video line games is set forth in OAR 177-040-0028.

(2) **Compensation When Net Receipts Exceed Tier Threshold:** During the course of a business year, when a Video Lottery retailer's weekly net receipts exceed the threshold of a tier applicable to the retailer under OAR 177-040-0027 or 177-040-0028, the Video Lottery compensation rate shall remain unchanged for the remainder of the business week in which the threshold is exceeded. The compensation rate for that tier, as set forth in OAR 177-040-0027 and 177-040-0028, shall apply at the start of the next business week. For example, if a retailer has chosen option (a) under OAR 177-040-0028(2)(a) and on a Wednesday the net receipts reach $175,001, the retailer is compensated at 29% of the net receipts for the remainder of the business week. At 5:00 a.m. on the following Sunday which is the start of the next business week, the compensation rate is reduced to 24% of net receipts.

(3) **Retroactive Application:** Section (2) of this rule shall apply to retailer compensation for video lottery games beginning June 27, 2004.

Stat. Auth.: ORS 461, OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.300
Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 5-27-04; LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05; LOTT 4-2005(Temp), f. & cert. ef. 5-10-05 thru 7-30-05; LOTT 6-2005(Temp), f. 7-27-05, cert. ef. 7-31-05 thru 8-1-05; Administrative correction 8-17-05; LOTT 14-2005(Temp), f. & cert. ef. 11-23-05 thru 5-1-06; LOTT 1-2006, f. & cert. ef. 1-25-06

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## Oregon Student Assistance Commission
## Chapter 575

**Rule Caption:** Extends the definition of "resident of Oregon" to privately funded scholarship programs.
**Adm. Order No.:** OSAC 1-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:**
**Rules Amended:** 575-060-0005
**Subject:** The Oregon Administrative Rule extends the definition of "resident of Oregon" to include students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon, regardless of the state of residency, and specify appropriate documentation of a student's tribal membership. This rule change has already been adopted for the Oregon Opportunity Grant and other OSAC-administered programs, as appropriate. This rule change extends to privately funded scholarships the expanded definition of "resident of Oregon."
**Rules Coordinator:** Peggy D. Cooksey—(541) 687-7443

**575-060-0005**
**Definitions**

For the purposes of Privately Funded Award Programs which the Commission administers, the following definitions shall be used unless specified otherwise by a donor:

(1) "Academic Year." A period of time, normally beginning in August or September, in which a student would normally be expected to complete at least three-quarters of full-time instruction or the equivalent.

(2) "Commission." The Oregon State Scholarship Commission.

(3) "Cost of Education." The sum of tuition and fees, room and board, books and supplies, transportation personal expenses, and other allowable costs identified by the U.S. Department of Education.

(4) "Dependent/Independent Student." The definitions of dependent/independent student shall be the definition used for the student aid programs under Title IV of the Higher Education Act of 1965 as amended.

(5) "Generally Accredited Institution." An institution accredited by the Northwest Association of Secondary and Higher Schools.

(6) "Resident of Oregon." Residency is established by virtue of the student (in the case of independent students) or the student's parents (in the case of dependent students) having been in continuous residency in this state for the 12 months preceding enrollment. Residency is immediate in the case of a dependent whose parents have moved to this state for a reason other than the student's enrollment. The residency period may be reduced to the preceding six months in the case of an independent student who moved to this state for a purpose other than education:

(a) A dependent resident student whose Oregon domiciled parent(s) move out-of-state shall retain resident classification as long as such student is continuously enrolled at an Oregon high school or postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(b) An independent resident student shall retain resident classification as long as the student is continuously enrolled at an Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(c) A dependent student whose parent(s) are serving on active duty in the United States Armed Forces outside the State of Oregon shall have residency status determined by the parents' declared "home of record." An independent student who is serving on active duty in the United States Armed Forces outside the State of Oregon shall have residency status determined by the student's declared "home of record";

(d) A student from a state other than Oregon, or from the Trust Territories, who is receiving or is eligible to receive financial assistance through the government of that state or the Trust Territories, shall not be considered a resident of Oregon.

(e) Residence Classification of Members of Oregon Tribes:

(A) Students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a federally recognized Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon shall be deemed eligible for programs administered by the Oregon Student Assistance Commission that are limited to Oregon residents, regardless of their state of residence.

(B) For purposes of this rule, the federally recognized tribes of Oregon are those recommended by the Oregon University System in OAR 580-010-0037 for purposes of assessing resident tuition:

(i) Burns Paiute Tribe;
(ii) Confederated Tribes of Coos, Lower Umpqua and Siuslaw;
(iii) Confederated Tribes of Grand Ronde Community of Oregon;
(iv) Confederated Tribes of Siletz Indians of Oregon;
(v) Confederated Tribes of the Umatilla Indian Reservation;
(vi) Confederated Tribes of the Warm Springs Indian Reservation;
(vii) Coquille Indian Tribe;
(viii) Cow Creek Band of Umpqua Indians;
(ix) Klamath Tribes.

(C) For purposes of this rule, the federally recognized Native American tribes which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon are:

(i) CALIFORNIA:
(I) Benton Paiute Tribe;
(II) Big Bend Rancheria;
(III) Big Lagoon Rancheria;
(IV) Blue Lake Rancheria;
(V) Bridgeport Indian Colony;
(VI) Cedarville Rancheria;
(VII) Fort Bidwell Indian Tribe;
(VII) Hoopa Valley Tribe;
(IX) Karuk Tribe of California;
(X) Likely Rancheria;
(XI) Lookout Rancheria;
(XII) Lytton Rancheria;
(XIII) Melochundum Band of Tolowa Indians;
(XIV) Montgomery Creek Rancheria;
(XV) Pit River Tribe;
(XVI) Quartz Valley Indian Community;
(XVII) Redding Rancheria;
(XVIII) Roaring Creek Rancheria;
(XIX) Smith River Rancheria;
(XX) Susanville Rancheria;
(XXI) Tolowa-Tututni Tribe;
(XXII) Winnemucca Colony;
(XXIII) XL Ranch;
(XXIV) Yurok Tribe.
(ii) IDAHO:
(I) Nez Perce Tribe of Idaho;
(II) Shoshoni-Bannock Tribes.
(iii) NEVADA:
(I) Duck Valley Shoshone-Paiute Tribes;
(II) Fallon Paiute-Shoshone Tribe;
(III) Fort McDermitt Paiute-Shoshone Tribe;
(IV) Lovelock Paiute Tribe;
(V) Pyramid Lake Paiute Tribe;
(VI) Reno-Sparks Indian Colony;
(VII) Summit Lake Paiute Tribe;
(VIII) Walker River Paiute Tribe;
(IX) Winnemucca Indian Colony;
(X) Yerington Paiute Tribe.
(iv) OKLAHOMA: Modoc Tribe of Oklahoma.
(v) WASHINGTON:
(I) Chehalis Community Council;
(II) Colville Confederated Tribes;
(III) Quinault Indian Nation;
(IV) Shoalwater Bay Tribe;
(V) Yakama Indian Nation.

(D) A student seeking to be deemed eligible under the provisions of this rule shall submit, following procedures prescribed by the Oregon Student Assistance Commission, a photocopy of a tribal enrollment card or other acceptable documentation from a tribe which documents tribal membership.

(7) "Community Foundation" means an organization that is:

(a) A community trust or foundation within the meaning of Section 170 of the **Internal Revenue Code of 1986** and Section 1.170 A-9(e)(10) of the treasury regulations thereunder;

(b) Exempt from federal income tax under Section 501(c)(3) of the **Internal Revenue Code of 1986**; and

(c) Not a private foundation within the meaning of Section 509 of the Internal Revenue Code of 1986.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325 & 348, OL 1993
Stats. Implemented: ORS 348
Hist.: SSC 4-1985, f. & ef. 4-17-85; SSC 4-1994, f. & cert. ef. 1-25-94; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2006, f. & cert. ef. 2-8-06

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## Oregon University System
## Chapter 580

**Rule Caption:** To meet the legislative goal of maximizing contributions to technology development.
**Adm. Order No.:** OSSHE 1-2006(Temp)
**Filed with Sec. of State:** 2-9-2006
**Certified to be Effective:** 2-9-06 thru 8-8-06
**Notice Publication Date:**
**Rules Adopted:** 580-043-0060, 580-043-0065, 580-043-0070, 580-043-0075, 580-043-0080, 580-043-0085, 580-043-0090, 580-043-0095
**Subject:** Chapter 580, Division 043, authorizes each OUS institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the institution's research and development. These rules are needed for OUS to meet the legislative goal of maximizing contributions to technology development.
**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

**580-043-0060**
**Purpose; Definitions**

(1) Purpose chapter 580, division 043, authorizes each Institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an Institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the Institution's research and development. Within the scope of this purpose and subject to these administrative rules, an Institution may use moneys in its Fund to provide:

(a) Capital for university entrepreneurial programs;

(b) Opportunities for students to gain experience in applying research to commercial activities;

(c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; and

(d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state. Contributors to an Institution's Fund are eligible for Oregon income tax credits to the extent set forth in the 2005 Act and these rules.

(2) Definitions:

(a) 2005 Act: Oregon Laws 2005, chapter 592.

(b) Entity: any governmental body or agency, association, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.

(c) Person: A natural person or sole proprietorship.

(d) Venture Development Fund or Fund: A fund authorized by the 2005 Act.

(e) Venture Grant Program or Program: A grant program authorized by the 2005 Act.

(f) Institution: An institution of the Oregon University System.

(g) Department of Revenue: the Oregon Department of Revenue.

(h) General Fund: the general fund of the State of Oregon.

(i) Remain in Oregon: maintaining the Entity headquarters in Oregon; or employing a majority of employees (on a full-time equivalent, headcount, or payroll basis) in Oregon.

(j) State Board of Higher Education or Board: the Board created by ORS 351.010.

(k) Tax Credit Certificate: a certificate authorized by the 2005 Act and in a form designated by the Board that evidences a contribution to a Venture Development Fund.

(l) Donor: a person or entity that makes a contribution to a Fund authorized by the 2005 Act and these rules.

(m) Taxpayer: a person or entity that makes a contribution to a Fund authorized by the 2005 Act and these rules and that applies for a tax credit certificate authorized by the 2005 Act and these rules.

(n) Gross Royalty Income: income accruing to the Board on behalf of an Institution as a result of grants made under the Program, including royalty income from licensing and patent agreements, the sale, lease, or licensing of technologies, and cash actually realized from the sale of an equity interest in a corporation or company.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0065**
**Establishment of a Venture Development Fund by an Institution**

(1) An Institution may establish a Fund in accordance with the 2005 Act and these rules.

(2) Each Institution that establishes a Fund shall:

(a) Notify the Board and the Department of Revenue of the establishment of the Fund;

(b) Either directly or through its affiliated foundation solicit contributions to the Fund;

(c) Subject to the 2005 Act and these rules, issue tax credit certificates to contributors to the Fund;

(d) Establish a grant program that meets the requirements for a Venture Grant Program under these rules;

(e) Subject to available moneys from the Fund, provide qualified grant applicants with moneys to transform research and development concepts undertaken by the Institution into commercially viable products and services; and

(f) Report to the Department of Revenue the amounts of tax credit certificates issued by the Institution and maintain records of licensing and royalty revenue received by the Institution as the result of grants made from the Fund and records of amounts paid to the General Fund under the 2005 Act.

(3) An Institution may request that the State Treasurer establish a Fund within the State Treasury for the receipt, management, and disbursement of moneys contributed to the Fund. Interest earned by such moneys shall be credited to the Fund. The State Treasurer may assess a fee for the administration of the Fund as provided by law.

(4) The use of moneys donated under these rules may not be directed by a Donor. Rather, all moneys shall be available for the purposes set forth in the 2005 Act and these rules without regard to specific Donor instructions.

(5) At the election of an Institution, moneys in a Fund may be held in the form of an endowment. An Institution may discontinue endowment treatment at any time.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0070**
**Allocation of Authority to Institutions to Raise Funds and Issue Tax Credits**

(1) The Board will not allocate fund raising or tax credit certificate issuance authority to an Institution until the Institution has established a Venture Development Fund in accordance with the 2005 Act and these rules.

(2) Oregon State University, Portland State University, and University of Oregon: The Board allocates fund raising authority and commensurate authority to issue tax credit certificates among Oregon State University, Portland State University, and the University of Oregon as follows:

(a) Portland State University: $.88 million

(b) Oregon State University: $5.35 million

(c) University of Oregon: $3.27 million. Such authority shall be contingent on the establishment of a Fund in accordance with the 2005 Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(3) Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University: The Board by order or resolution shall allocate $500,000 in fund raising authority and commensurate authority to issue tax credit certificates among Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University. An allocation of authority shall be contingent on the establishment of a Fund in accordance with the 2005 Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(4) All Universities, collectively, may issue tax credit certificates evidencing no more than $10 million in contributions to Institution Venture Development Funds.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0075**
**Redistribution of Authority to Raise Funds and Issue Tax Credits**

No earlier than two years from the effective date of this rule, the Board, by order or resolution, may, to further the purposes of the Act, reallocate unused fund raising authority and commensurate authority to issue tax credit certificates from one Institution to another. An Institution may receive additional authority only if it has exhausted its existing authority or can demonstrate that it would likely do so. Reallocation of authority shall not require amendment of section 0030.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0080**
**Eligibility to Receive Grants**

(1) Subject to compliance with these rules, an Institution may make grants to itself for use by a constituent part of the Institution or to Entities but not to Persons. Each Institution shall establish criteria for the receipt of grants under the Program. Each prospective recipient shall submit an application to the Institution. Each grant shall be documented and implemented through an appropriate grant agreement and each grant agreement shall provide that the recipient, if other than a public agency, remain in Oregon for at least five years following the final disbursement of funds under the agreement or repay the grant plus compound interest at 8 percent per annum. Other criteria shall be as determined by the Institution except for the following:

(a) All grants must be used to facilitate the commercialization of an Institution's research and development;

(b) Priority should be given to applicants who can demonstrate with specificity that their efforts will result in technology with high commercial potential, that they are close to realizing economic development potential, and that proof-of-concept funding will assist them in transforming research and development concepts into commercially viable products or services.

(2) To at least some degree, a Program as a whole, but not each individual grant, must provide:

(a) Capital for university entrepreneurial programs;

(b) Opportunities for students to gain experience in applying research to commercial activities;

(c) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state; and

(d) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services.

(3) Each institution shall screen potential awards for conflicts of interest. No award shall be made if an identified conflict of interest cannot be eliminated or managed.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0085**
**Issuance of Tax Credit Certificates**

(1) Taxpayers making a contribution to an Institution's Fund and wishing to receive a tax credit certificate evidencing that contribution must submit the contribution, together with an application for tax credit certificate, in a form designated by the Institution, to the Institution.

(2) An Institution may begin accepting contributions and applications after it has established a Fund in accordance with the 2005 Act and these rules and received an allocation of fund raising and tax credit certificate issuance authority from the Board.

(3) An Institution shall consider applications for tax credit certificates in the chronological order in which the applications are received.

(4) An Institution shall act on an application for a tax credit certificate within 60 days of its receipt unless unanticipated or extraordinary circumstances reasonably prevent the Institution from acting within that timeframe, in which case the Institution shall act on the application as soon as reasonably possible thereafter.

(5) Subject to section 6 of this rule, an Institution shall approve an application for a tax credit certificate if the application is complete and the Institution has verified receipt of the contribution. Within 45 days of application approval, an Institution shall issue to the Taxpayer a tax credit certificate that specifies the amount of the contribution.

(6) An Institution shall deny an application for a tax credit certificate and may not issue a tax credit certificate to the Taxpayer if:

(a) The Taxpayer's contribution to the Fund, together with the amounts specified on all tax credit certificates previously issued by the Institution, exceeds the Institution's then-current tax credit certificate issuance authority allocated by the Board;

(b) The Taxpayer's application is incomplete; or

(c) The Institution cannot verify receipt of the Taxpayer's contribution.

(7) If an Institution denies a Taxpayer's application for a tax credit certificate, the Institution shall notify the Taxpayer in writing within 45 days of the denial.

(8) A Taxpayer who receives a notice of denial of an application for a tax credit certificate may request, in writing and within 90 days after the receipt of the notice of denial, a refund of its contribution to the extent the contribution was actually received. The Institution shall ensure that the refund is issued within 60 days after its receipt of the request for the refund.

(9) Eligibility for a tax credit (as distinguished from the receipt of a tax credit certificate from an Institution) shall be subject to Section 5 of the 2005 Act, the rules of the Department of Revenue, and other applicable law.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0090**
**Tax Credit Certificate and Grant Record-Keeping and Reporting**

(1) Each Institution shall retain copies of all tax credit certificates that it issues. Upon every issuance of a tax credit certificate by the Institution and promptly after Board adoption of an order or resolution establishing or modifying the Institution's allocation of tax credit certificate issuance authority, the Institution shall calculate and record in its records the amount, if any, of its fund raising and tax credit certificate issuance authority then remaining unused.

(2) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing its fund raising and issuance of tax credit certificates since its most recent prior report to the Board under this section and specifying its fund raising and tax credit certificate issuance authority and the amount of that authority remaining unused as of the date of the report. The report shall include the number of tax credit certificates issued and the amount of funds raised by the Institution since its most recent prior report to the Board under this section.

(3) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing the grants made by the Institution under its Program and how they serve the goals of the 2005 Act and these rules.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

**580-043-0095**
**Recoupment of Tax Credits**

An Institution that has established a Fund and has made grants under a Program shall monitor the use of such grants and identify sources of Gross Royalty Income received by the Institution as the result of the use of the grants. Gross Royalty Income results from the use of a grant when it is traceable to the grant. The Institution shall transfer 20 percent of such Gross Royalty Income to the General Fund until the amount transferred to the General Fund equals the amount of tax credits claimed due to contributions to the Fund. This does not preclude transfers from other sources. The Institution shall maintain records of all transfers to the General Fund.

Stat. Auth: OL 2005, Ch. 592, § 2.
Stats. Implemented: OL 2005, Ch. 592, §§ 1, 2.
Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06

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## Oregon Youth Authority
## Chapter 416

**Rule Caption:** This rule is repealed as relevant language has been moved to other divisions within OAR chapter 416.
**Adm. Order No.:** OYA 1-2006
**Filed with Sec. of State:** 2-7-2006
**Certified to be Effective:** 2-7-06
**Notice Publication Date:** 12-1-05
**Rules Repealed:** 416-310-0000, 416-310-0010, 416-310-0020, 416-310-0030
**Subject:** The relevant language in this rule was moved to chapter 416, division 300.
**Rules Coordinator:** Mike Riggan—(503) 378-3864

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**Rule Caption:** Rule repeal; relevant language moved to other rules in Chapter 416.
**Adm. Order No.:** OYA 2-2006
**Filed with Sec. of State:** 2-7-2006
**Certified to be Effective:** 2-7-06
**Notice Publication Date:** 11-1-05
**Rules Repealed:** 416-650-0000, 416-650-0010, 416-650-0020, 416-650-0030, 416-650-0040, 416-650-0050
**Subject:** This rule is repealed and all relevant language moved to other rules in OAR chapter 416.
**Rules Coordinator:** Mike Riggan—(503) 378-3864

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## Parks and Recreation Department
## Chapter 736

**Rule Caption:** Veteran's Fee Waivers.
**Adm. Order No.:** PRD 1-2006
**Filed with Sec. of State:** 2-14-2006
**Certified to be Effective:** 2-14-06
**Notice Publication Date:** 11-1-05
**Rules Amended:** 736-015-0035
**Rules Repealed:** 736-015-0035(T)
**Subject:** Permanently amends existing rule, waiving day-use and camping fees, for veterans with a service-connected disability and active duty military personnel on leave year round. This is an expansion of existing State Parks day use parking and camping waivers for

veterans with service-connected disabilities and active duty military personnel on leave, allowing them the free use of individual campsites no more than five consecutive days and no more than 10 days total in any calendar month.

The Oregon Parks and Recreation Commission initially heard the request to offer the expanded benefits to Veterans with service-connected disabilities and active duty military personnel on leave at its September 22, 2005 meeting, and granted approval for a temporary rule amendment, effective on November 11, 2005. This filing makes that amendment permanent.

**Rules Coordinator:** Pamela Berger—(503) 986-0719

**736-015-0035**

**Fee Waivers and Refunds**

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for veterans with a service connected disability or active duty military personnel on leave as provided in ORS 390.124. All other fees apply.

(d) The person making the reservation must pay the $6 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The overnight rental fee is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present. All other fees apply.

(c) The overnight rental fee is waived for veterans with a service connected disability or active duty military personnel on leave as provided in ORS 390.124. The waiver of individual campsite fees shall be limited to no more than five consecutive days per stay and no more than ten days total in a calendar month. All other fees apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers:

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for veterans with a service connected disability or active duty military personnel on leave as provided in ORS 390.124.

(c) Only department staff may issue a free 12-month day use parking permit to a foster family, as defined in OAR 736-015-0005, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The permit shall be valid for 12 months or until the expiration date of the Certificate of Approval to Provide Foster Care, whichever date is sooner.

(d) All other fees apply.

(5) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation/change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair created a late arrival or complete reservation cancellation;

(B) A medical emergency created a late arrival or complete reservation cancellation; or

(C) Acts of Nature that create dangerous travel conditions.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 390.121, 390.124
Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 5-2005(Temp), f. 10-14-05, cert. ef. 11-11-05 thru 4-30-06; PRD 1-2006, f. & cert. ef. 2-14-06

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

**Rule Caption:** Adjusts the dollar limit on joint and several liability of professional corporations due to inflation.
**Adm. Order No.:** CORP 1-2006
**Filed with Sec. of State:** 2-1-2006
**Certified to be Effective:** 2-1-06
**Notice Publication Date:** 10-1-05
**Rules Amended:** 160-010-0400
**Subject:** As directed by ORS Ch. 58.187, this rule adjusts the dollar limit on joint and several liability of professional corporations for the effects of inflation.
**Rules Coordinator:** Kristine Hume Bustos—(503) 986-2356

**160-010-0400**

**Professional Corporation Limit on Joint and Several Liability**

(1) The Secretary of State, assisted by the Office of Economic Analysis, Department of Administrative Services, has calculated the inflation factor affecting joint and several liability caps of Professional Corporations to be 1. 334019204, following the formula prescribed in ORS 58.187.

(2) Therefore, joint and several liability claims under ORS 58.185(5) & (8) made against a single shareholder shall not exceed $400,000.

(3) The total joint and several liability for a single claim made against one or more licensed Oregon shareholders under ORS 58.185 (5) and (8) shall not exceed $2,650,000.

(4) As required by ORS 58.187(1), the Corporation Division hereby adopts said figures.

Stat. Auth.: ORS 58.187
Stats. Implemented: ORS 58.187
Hist.: CORP 1-2000, f. & cert. ef. 2-1-00; CORP 1-2006, f. & cert. ef. 2-1-06

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**Rule Caption:** Conforms effective financing statement rules to HB 2979. Defines, authorize or otherwise authenticate.
**Adm. Order No.:** CORP 2-2006
**Filed with Sec. of State:** 2-6-2006
**Certified to be Effective:** 2-6-06
**Notice Publication Date:** 1-1-06
**Rules Amended:** 160-050-0200, 160-050-0210
**Subject:** House Bill 2979 amends ORS Chapter 80 to allow electronic filing of effective financing statements in the Central Filing System for Farm Products. Secured parties may now file these statements without signatures, so long as the filings have been authenti-

cated or otherwise authorized. House Bill 2979 also removes the requirement for real property description when specifying the farm products that are secure. House Bill 2979 conforms state law to the federal act authorizing this program. This administrative rule amendment conforms the rules to the new state law.

**Rules Coordinator:** Kristine Hume Bustos—(503) 986-2356

**160-050-0200**

**EFS Requirements**

(1) An EFS must be filed on a form prescribed and approved by the Secretary of State. The form shall be designated "EFS-1." The fee for filing a Form EFS-1 is $10 per filing. The filing fee is required to be submitted with the EFS.

(2) The information on the Form EFS-1 should meet the following requirements:

(a) Name and address of the debtor:

(A) The name and address of the debtor are required;

(B) The debtor name or names must be entered completely and precisely;

(C) The name of individuals must be entered in order of last name (surname), first name, and, if any, middle initial or name;

(D) Assumed business names and corporate names must appear beginning with first word or character that is not an article or punctuation mark;

(E) The address of the debtor is the mailing address of the debtor;

(F) If there are multiple debtors, the address of each debtor must be shown;

(b) Name, address and telephone number of the secured party:

(A) The name and address of the secured party are required;

(B) The same rules for the name of the debtor are applicable to the way the name of the secured party is submitted;

(C) The address of the secured party must be the address where information pertaining to the security interest may be obtained;

(D) The telephone number of the secured party is requested.

(c) Farm Product name or code:

(A) Each farm product that is produced in Oregon is assigned a four-digit numerical code. The codes are located on the back side of the Form EFS-1;

(B) The farm product code is required;

(C) Each filing party is responsible for listing the appropriate farm product code for a farm product on which the EFS or notice of security interest is being filed;

(D) The four-digit product code for each farm product subject to the security interest must be entered. A table of product codes appears on the back of the Form EFS-1;

(E) If the space provided on the Form EFS-1 for farm product codes is not adequate, Form EFS-5 should be used to submit additional codes.

(d) Crop year:

(A) The crop year, for crops grown in soil, is the calendar year in which it is harvested or to be harvested;

(B) For animals, the crop year is the calendar year in which they are born or acquired;

(C) For poultry or eggs, the crop year is the calendar year in which they are sold or to be sold;

(D) If an EFS does not show a crop year, it will be regarded as applicable to the crop or farm product in question for every year the EFS is effective;

(E) The crop year is a two-digit or four-digit code representing the actual year;

(F) The crop year is required to be shown on the Form EFS-1 unless every year of the farm product in question, for the duration of the EFS, is subject to the particular security interest.

(e) County Code:

(A) Each county in Oregon is assigned a two-digit numerical code. The county code represents the county in which the farm product is produced or is to be produced. The county codes are located on the back side of the Form EFS-1;

(B) The county code is required;

(C) Below is a list of the county codes for Oregon:

(i) Baker — 01;

(ii) Benton — 02;

(iii) Clackamas — 03;

(iv) Clatsop — 04;

(v) Columbia — 05;

(vi) Coos — 06;

(vii) Crook — 07;

(viii) Curry — 08;

(ix) Deschutes — 09;

(x) Douglas — 10;

(xi) Gilliam — 11;

(xii) Grant — 12;

(xiii) Harney — 13;

(xiv) Hood River — 14;

(xv) Jackson — 15;

(xvi) Jefferson — 16;

(xvii) Josephine — 17;

(xviii) Klamath — 18;

(xix) Lake — 19;

(xx) Lane — 20;

(xxi) Lincoln — 21;

(xxii) Linn — 22;

(xxiii) Malheur — 23;

(xxiv) Marion — 24;

(xxv) Morrow — 25;

(xxvi) Multnomah — 26;

(xxvii) Polk — 27;

(xxviii) Sherman — 28;

(xxix) Tillamook — 29;

(xxx) Umatilla — 30;

(xxxi) Union — 31;

(xxxii) Wallowa — 32;

(xxxiii) Wasco — 33;

(xxxiv) Washington — 34;

(xxxv) Wheeler — 35;

(xxxvi) Yamhill — 36.

(D) The county code(s) must be listed for each product code shown.

(f) Amount of farm product (where applicable):

(A) The amount of farm product may or may not be shown on every EFS and master list entry;

(B) The need to supply this additional information arises only where some of the product owned by debtor is subject to the security interest and some is not;

(C) If the EFS does not show an amount, this constitutes a representation that all of such product owned by debtor is subject to the security interest in question;

(D) The amount must be sufficient to enable a reader of the information to identify what product owned by the debtor is subject, as distinguished from what of the same product owned by the same debtor is not subject;

(E) Twenty characters have been allotted on the master list for providing information on the amount of farm product. The description of the amount should not be more than 20 characters.

(g) Brief Description of farm product:

(A) A brief description of the farm product may be shown on the EFS and master list entry;

(B) The need to supply this additional information arises only where some of the product owned by debtor is subject to the security interest and some is not;

(C) Seventy-five characters have been allotted on the master list for providing information on the description of the farm product. The farm product description should not be more than 75 characters:

(h) Signatures of the Secured Party.

(3) The EFS will be rejected if it does not contain the name and address of the debtor, name and address of the secured party, farm product code, county code, and the EFS filing fees.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0030; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 2-2006, f. & cert. ef. 2-6-06

**160-050-0210**

**Amendment, Continuation, Assignment and Lapse of EFS**

(1) An EFS may be amended, assigned, continued or lapsed by the secured party of record. An amendment, assignment, continuation or lapse must be filed on a form prescribed and approved by the Secretary of State. The form shall be designated "Form EFS-3."

(2) The document number assigned by the Secretary of State to the EFS to which the action pertains must be entered.

(3) Signature rules for Form EFS-3: A Secured Party must sign, authorize or otherwise authenticate the EFS.

**Lapse of the EFS:**

(4) For the purposes of uniformity, "termination" will be considered synonymous with "lapse" under ORS 80.115 and this chapter. The EFS-3 form may refer to a "termination," instead of a "lapse."

(5) The EFS remains effective for a period of five years from the date of filing. Its effectiveness may be extended by an additional five years by filing a continuation statement within six months before the expiration of the current five year period.

(6) If the secured party no longer has a security interest to register, the secured party should file a statement of termination or lapse.

(7) Upon the expiration of the effective period of an EFS, the EFS lapses.

**Filing fees:**

(8) If the Form EFS-3 is not accompanied by the filing fee, it will be rejected;

(9) The filing fees of Form EFS-3 transactions are set out in paragraphs (a) through (d) of this subsection as follows:

(a) Amendments: The filing fee for an amendment is $10 per filing.

(b) Assignment: The filing fee for an assignment is $10 per filing;

(c) Continuation: The filing fee for a continuation is $10 per filing;

(d) Termination: There is no filing fee for filing a termination/lapse statement.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: SD 33-1986(Temp), f. 12-5-86, ef. 12-24-86; SOS 1-1987, f. & ef. 1-2-87; SOS 7-1987(Temp), f. & ef. 5-13-87; SOS 11-1987, f. 7-9-87, ef. 8-1-87; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90, Renumbered from 164-050-0040; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 2-2006, f. & cert. ef. 2-6-06

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## Teacher Standards and Practices Commission
## Chapter 584

**Rule Caption:** Rule changes made regarding Highly Qualified Teachers, HOUSSE Standards, and NCLB to meet federal requirements.

**Adm. Order No.:** TSPC 2-2006(Temp)

**Filed with Sec. of State:** 2-3-2006

**Certified to be Effective:** 2-3-06 thru 8-2-06

**Notice Publication Date:**

**Rules Adopted:** 584-100-0038

**Rules Amended:** 584-100-0002, 584-100-0006, 584-100-0011, 584-100-0016, 584-100-0021, 584-100-0026, 584-100-0031, 584-100-0036, 584-100-0041, 584-100-0051, 584-100-0056, 584-100-0061, 584-100-0066, 584-100-0071, 584-100-0091, 584-100-0096, 584-100-0101, 584-100-0106

**Subject:** 584-100-0038 — *HOUSSE For Middle and High School Teachers*: Teachers may use a combination of coursework, professional development and experience to meet the federal definition of Highly Qualified Teacher (HQT) through Oregon's HOUSSE standard.

584-100-0002 — *Purpose*: These rules establish requirements and procedures under the federal NCLB act.

584-100-0006 — *Definitions*: Definitions apply only to Division 100.

584-100-0011 — *Highly Qualified Elementary Teacher New to the Profession*: Teachers new to the profession teaching multiple subjects in grades K-8 must meet certain criteria in order to meet the federal definition of HQT.

584-100-0016 — *Highly Qualified Elementary Teacher Not New to the Profession*: Teachers not new to the profession teaching multiple subjects in grades K-8must meet certain criteria in order to meet the federal definition of HQT.

584-100-0021 — *Highly Qualified Middle Level Teacher New to the Profession*: Teachers new to the profession teaching core academic subjects in grades seven and eight in a middle or junior high school must meet certain criteria in order to meet the federal definition of HQT.

584-100-0026 — *Highly Qualified Middle Level Teacher Not New to the Profession*: Teachers not new to the profession teaching core academic subjects in grades seven and eight in a middle or junior high school must meet the following criteria in order to meet the federal definition of HQT.

584-100-0031 — *Highly Qualified Secondary (grades 9–12) Teacher New to the Profession*: Teachers new to the profession teaching core academic subjects in grades nine through twelve in a high school must meet the following criteria in order to meet the federal definition of HQT.

584-100-0036 — Highly Qualified Secondary (grades 9–12) Teacher Not New to the Profession: Teachers not new to the profession teaching core academic subjects in grades nine through twelve in a high school must meet the following criteria in order to meet the federal definition of HQT.

584-100-0041 — *Approved NCLB Alternative Route Teaching License*: Upon filing a complete and correct application a qualified applicant shall be granted an Approved NCLB Alternative Route Teaching License.

584-100-0051 — *Highly Qualified Professional Technical Teacher*: All professional technical teachers who teach professional technical courses that contain core academic subjects must meet the federal definition for HQ secondary teachers.

584-100-0056 — *Highly Qualified Substitute Teacher*: Teachers substituting more than four continuous weeks in a core academic subject must meet the federal definition for HQ teachers.

584-100-0061 — *Special Education Teachers Generally*: Special Education teachers who are providing instruction in core academic subjects must meet the federal definition for HQ teachers.

584-100-0066 — *Highly Qualified Elementary Special Education Teacher(K–8)*: Special Education teachers who are new or not new to the profession and who produce direct instruction in core academic subjects in grades K–8 to students identified as special education students are HQ under specified conditions.

584-100-0071 — *Highly Qualified Middle-Level or Secondary Special Education Teacher*: Special Education teachers who are new or not new to the profession and who produce direct instruction in core academic subjects in grades 9–12 to students identified as special education students are HQ under specified conditions.

584-100-0091 — *Licensed and Registered Elementary Charter School Teacher*: Licensed and registered elementary charter school teachers teaching in pre-primary through grade eight self-contained classrooms must meet the HQ teacher definition for new or not new elementary teachers.

584-100-0096 — *Licensed and Registered Middle-Level or Secondary Charter School Teacher*: Licensed middle-level or secondary charter school teachers teaching in grades seven through twelve must meet the HQ teacher definition for new or not new middle-level or secondary teachers.

584-100-0101 — *Licenses considered "Full State Certification"*: List of Oregon Teaching Licenses that are considered to meet full state certification under the NCLB federal act.

584-100-0106 — *Licenses Not Considered to be "Full State Certification"*: List of Oregon Teaching Licenses that are not considered to meet full state certification under the NCLB federal act.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

**584-100-0002**
**Purpose**

(1) These rules establish requirements and procedures under the federal No Child Left Behind Act that mandates all teachers in core academic areas meet the law's definition of "highly qualified" by the end of the 2005-2006 school year.

(2) Additionally, after the first day of the 2002-2003 school year, all teachers hired in all programs supported with Title IA funds or hired with Title IIA funds to specifically reduce class size must be "highly qualified."

(3) Teachers new to Oregon licensure must first be evaluated under the existing Oregon administrative rules to become licensed, and then meet the requirements for "highly qualified teacher" appropriate for the license with which they qualify.

(4) The rules in division 100 apply only to No Child Left Behind core academic subjects.

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0006**
**Definitions**

These definitions apply only to division 100.

(1) "Advanced Credential or Advanced Certification" for teachers holding middle level or secondary authorization levels:

(a) A Continuing Teaching License; or

(b) A Standard Teaching License; or

(c) A certificate from the National Board for Professional Teaching Standards in the subject area.

(2) "Bachelor's Degree:"

(a) A degree obtained from a regionally accredited institution in the United States; or

(b) A degree from a foreign institution that is appropriately accredited as affirmed through the Oregon Office of Degree Authorization; or

(c) A higher degree in the arts or sciences or an advanced degree in the professions from a regionally-accredited institution may validate a non-regionally accredited bachelor's degree.

(3) "Complete School Year": Any related teaching assignment for 135 instructional days in a school year. Exceptions may be appealed to the Executive Director pursuant to OAR 584-052-0027.

(4) "Core Academic Subjects:"

(a) English (Language Arts);

(b) Reading or Language Arts (Reading or Language Arts)

(c) Mathematics (Basic or Advanced Mathematics);

(d) Science (Integrated Science, Biology, Chemistry, or Physics);

(e) Foreign Languages (Spanish, French, German, Russian, Japanese, or Latin);

(f) Civics and Government (Social Studies);

(g) Economics (Social Studies);

(h) Arts (Art, Music, or Drama);

(i) History (Social Studies);

(j) Geography (Social Studies).

(5) "Elementary Classroom:" Any combination of self-contained classrooms in grades preprimary through eight in any school identified as an elementary school pursuant to OAR 581-022-0102(25).

(6) "Elementary Teacher:" An educator teaching in a self-contained classroom grades preprimary through eight.

(7) "Middle-level Classroom:" Any classrooms in grades seven or eight organized departmentally by subject matter.

(8) "New to the Profession:" A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or regionally accredited private school less than three complete school years. (See definition of "Complete School Year" above)

(9) "Newly Hired Teacher:" A teacher hired after the first day of the 2002-2003 school year in a Title IA program or Title IA school-wide program. The teacher is not considered "newly hired" if the teacher is already employed in the district and transferred into a Title IA program or Title IA school-wide program.

(10) "Not New to the Profession:" A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or private school for a total of three or more complete school years. (See definition of "Complete School Year" above.)

(11) "Rigorous State Test:"

(a) The Multiple Subjects Assessment for Teachers (MSAT) test for elementary or middle level; the ORELA Multiple Subjects Examination; or

(b) The appropriate Praxis II or NTE Subject-matter test for middle-level and high school; or

(c) Satisfaction of the TSPC alternative assessment procedure; or

(d) Another state's subject-matter licensure exam designated as a "rigorous state test."

(12) "Secondary School or high school:"

(a) A combination of grades ten through twelve in districts providing a junior high school containing grade nine; or

(b) Any combination of grades nine through twelve organized as a separate unit; or

(c) Grades nine through twelve housed with grades preprimary through twelve.

(13) "Self-contained Classroom:" An assignment for teaching in grades preprimary through eight in which the teacher has full responsibility for the curriculum.

(14) "Subject-matter competency: "Subject matter competency may be demonstrated through any one of the following:

(a) Passing the appropriate "rigorous state test;" or

(b) Having a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(c) Having coursework equivalent to a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(d) Having a graduate degree in the subject matter area (does not apply to elementary endorsements or authorizations); or

(e) Satisfying the Highly Objective Uniform State Standard of Evaluation (HOUSSE) requirements set forth in these rules if have taught three complete years or more.

(15) "Undergraduate Major or Coursework Equivalent to a Major:" Thirty-six (36) quarter hours or twenty-four (24) semester hours of undergraduate or graduate coursework in core academic subject matter numbered 100 level or above, from a regionally accredited college or university. (See definition of "Bachelor's Degree" for undergraduate credits obtained from an unaccredited college or university.)

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0011**
**Highly Qualified Elementary Teacher New to the Profession**

Teachers new to the profession teaching multiple subjects in grades kindergarten through eight (8) in an Oregon elementary school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Initial, Preliminary Teaching License or an Approved NCLB Alternative Route Teaching License; and

(2) Be properly assigned to a self-contained classroom in grades preprimary through eight.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0016**
**Highly Qualified Elementary Teacher Not New to the Profession**

Teachers not new to the profession teaching multiple subjects in grades kindergarten through eight (8) in an Oregon elementary school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Standard, Initial, Continuing, Five-Year Elementary Teaching License, or Preliminary Teaching License; and

(2) Pass a multiple subject rigorous state test; or

(3) Meet one of the Elementary Highly Objective Uniform State Standard of Evaluation (HOUSSE) standards as follows:

(a) Complete an approved elementary teacher education program or the coursework equivalent to sixty-quarter hours distributed as follows:

(A) Eighteen quarter or twelve semester hours in language arts;

(B) Twelve quarter or eight semester hours in mathematics;

(C) Nine quarter or six semester hours in science;

(D) Nine quarter or six semester hours in U.S. history, cultural geography, and other social sciences;

(E) Three quarter or two semester hours in health education;

(F) Three quarter or two semester hours in physical education;

(G) Three quarter or two semester hours in music education;

(H) Three quarter or two semester hours in art education; or

(b) Complete the TSPC Alternative Assessment procedure; or

(c) Obtain a certificate as Early Childhood Generalist, Early Childhood Art, Early Childhood Music, or Early Childhood ESOL from the National Board for Professional Teaching Standards; or

(d) Hold a Standard Elementary License; and

(e) Be properly assigned to a self-contained classroom in grades preprimary through eight.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0021**
**Highly Qualified Middle Level Teacher New to the Profession**

Teachers new to the profession teaching core academic subjects in grades seven (7) and eight (8) in an Oregon middle or junior high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Initial, *Approved NCLB Alternative Route Teaching License or Preliminary Teaching License* in any one of the core academic areas and satisfy one of the following:

(a) Pass a rigorous state exam in the core academic subject matter area; or

(b) Hold an undergraduate major in the subject core academic matter area; or

(c) Hold a graduate degree in the core academic subject matter area; or

(d) Complete coursework equivalent to an undergraduate majoring the core academic subject; and

(e) Be properly assigned in the core academic subject matter area in grades seven (7) or eight (8).

(2) Teachers on an approved conditional assignment permit for any core academic subject are not considered highly qualified under any circumstances.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0026**
**Highly Qualified Middle Level Teacher Not New to the Profession**

Teachers not new to the profession teaching core academic subjects in grades seven (7) and eight (8) in an Oregon middle or junior high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Standard, Initial, Continuing, Five-Year Elementary, Five-Year Secondary, Preliminary Teaching License or an *Approved NCLB Alternative Route Teaching License* and satisfy one of the following:

(a) Pass the prescribed rigorous state exam in the core academic subject; or

(b) Hold an undergraduate major in the core academic subject area(s); or

(c) Hold a graduate degree in the core academic subject area(s); or

(d) Complete coursework equivalent to an undergraduate major in the core academic subject area; or

(e) Hold advanced certification or credentialing in the core academic subject area; or

(f) Meet the HOUSSE requirements as defined in OAR 584-100-0037; and

(g) Be properly assigned in the core academic subject area in grades seven (7) or eight (8).

(2) Teachers on an approved conditional assignment per.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-9-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0031**
**Highly Qualified Secondary (grades 9-12) Teacher New to the Profession**

(1) Teachers new to the profession teaching core academic subjects in grades nine (9) through twelve (12) in an Oregon high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(a) Hold a Basic, Initial, Preliminary Teaching License, or an Approved NCLB Alternative Route Teaching License in the core academic subjects taught; and

(b) Be properly assigned in the core academic subject area in grades nine through twelve.

(2) Teachers on an approved conditional assignment permit for any core academic subject are not considered highly qualified under any circumstances.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0036**
**Highly Qualified Secondary (grades 9-12) Teacher Not New to the Profession**

Teachers not new to the profession teaching core academic subjects in grades nine (9) through twelve (12) in an Oregon high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Standard, Initial, Continuing, Preliminary Teaching License or an Approved NCLB Alternative Route Teaching License in the core academic area(s) taught; or

(2) Meet the HOUSSE requirements for high school teachers as defined in OAR 584-100-0037; and

(3) Be properly assigned in the core academic subject area in grades nine (9) through twelve (12).

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-9-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0038**
**HOUSSE for Middle-Level and High School Teachers**

(1) Teachers may use a combination of coursework, professional development and experience to meet the federal definition of Highly Qualified Teacher (HQT) through Oregon's High Objective Uniform State Standard of Evaluation (HOUSSE).

(2) To qualify for the HOUSSE, a formula totaling one hundred (100) points must be met using a combination of coursework, experience and professional development must be earned. Experience cannot count for more than 50 points.

(3) Endorsements in Core Academic Subjects: (a) Teachers who teach the core academic subject more than 10 hours per week must apply for a conditional assignment permit (CAP) pursuant to OAR 584-060-0081 and must add the endorsement to teach the assignment for more than three years. Unless the teacher meets the federal definition for HQT in the core academic subject, the district may not report the teacher as being highly qualified while they hold the conditional assignment permit.

(b) If the educator meets the federal definition for HQT under any circumstances, then the district may report the teacher as HQT for purposes of that core academic subject even if the teacher does not immediately qualify to add the endorsement to the teaching license and even if the teacher is teaching under a conditional assignment permit (CAP).

(c) If the educator meets the federal definition for HQT and is teaching less than 10 hours per week in the core academic subject, the district may report the teacher as highly qualified and the teacher does not have to add the core academic endorsement to the license.

(4) Experience: Experience may not exceed more than fifty (50) points in the HOUSSE calculation. Generally, the educator will be given ten (10) points of credit for each academic year as defined by the district's contracted teacher year. Experience will be valued under the following conditions:

(a) One (1) instructional day is one (1) period or more teaching the core academic subject;

(b) The subject must be taught at grade 4 or above;

(c) One full instructional year shall equal 10 points; and

(d) Partial instructional years shall be calculated as the number of instructional days teaching the subject divided by the number of contracted days in one full instructional year times 10. (Example: 150 days taught/180 days in full instructional year = (5/6 x 10) = 8.3 points.)

(e) An educator must teach at least five complete school years in order to earn the full fifty (50) points.

(5) Academic Coursework in the Core Academic Subject: There is no limit to the number of points that may be obtained through academic coursework related to the core academic subject.

(a) Core academic coursework must be college transfer level or graduate credit and must have a course number of 100 or greater;

(b) Transcripts for core academic coursework must be from a regionally accredited college or university; and

(c) Core academic coursework will be valued as follows:

(A) One (1) quarter hour of credit equals three (3) points.

(B) One (1) semester hour of credit equals four and one-half (4.5) points.

(6) Professional Development: Professional Development directly related to the core academic credit may be counted toward the one hundred (100) points needed to meet the state's HOUSSE. Professional Development points will be valued under the following conditions.

(a) One (1) hour of core academic professional development is equal to 0.15 points; and

(b) School district personnel authorized to certify professional development must verify that the professional development is directly relevant to the core academic subject in which the teacher is seeking to meet the definition of being "*highly qualified*." "*Directly relevant*" means that upon scrutiny, the professional development is more content related than pedagogy related.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0041**
**Approved NCLB Alternative Route Teaching License**

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted an *Approved NCLB Alternative Route Teaching License*.

(2) The application must be filed jointly by the hiring district and the teacher seeking the license.

(3) Districts hiring a highly qualified teacher based on the *Approved NCLB Alternative Route Teaching License* must ensure that the license has been obtained by the teacher prior to assignment within the district.

(4) The Approved *NCLB Alternative Route Teaching License* shall be restricted to use within the district that has jointly applied for it with the teacher.

(5) The license is not transferable to another district. Should the teacher seek to obtain another *Approved NCLB Alternative Route Teaching License* with another district, the license is only valid for the remainder of the three years from the initial date of the license.

(6) The district must submit an approved plan with the licensee's application that describes how the teacher will receive high-quality professional development that is sustained, intensive and classroom-focused before and while teaching in the district. The plan must also include how the teacher will be making progress toward completing full state licensure requirements in the next three years.

(7) The license will expire exactly three-years from the date of issue and is not subject to the 120-day grace period.

(8) To be eligible for an *Approved NCLB Alternative Route License*, the applicant must:

(a) Hold a bachelor's degree;

(b) Demonstrate core academic subject matter competency by:

(A) Passing the TSPC approved rigorous state test required for the grade-level and subject-matter area; or

(B) Holding an undergraduate major or coursework equivalent in the core academic subject in the teaching area (does not apply to elementary authorizations); or

(C) Holding a graduate degree in the core academic subject in the teaching area (does not apply to elementary authorizations).

(9) Per federal law:

(a) Teachers on the *Approved NCLB Alternative Route Teaching License* are considered highly qualified for only three years; and

(b) The license is not renewable and is not eligible for any extension.

(10) Teachers who have taught on a Restricted Transitional License for one-year or less, upon application with a district may be eligible for the *Approved NCLB Alternative Route Teaching License* provided the requirements of section (8)(a) and (b) of this rule are met.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0051**
**Highly Qualified Professional Technical Teacher**

All professional technical teachers who teach professional technical courses that contain core academic subjects, for which students receive core academic credit, must meet the federal definitions for highly qualified secondary teachers for that particular core academic subject.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0056**
**Highly Qualified Substitute Teacher**

Teachers substituting more than four continuous weeks in a core academic subject must meet the federal definitions for highly qualified teacher.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0061**
**Special Education Teachers Generally**

(1) Special education teachers who are providing direct instruction in core academic subjects must meet the federal definition for "highly qualified teacher."

(2) Special educators who do not provide direct instruction to special education students in any core academic subject, or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using behavioral supports and interventions, and selecting appropriate accommodations, are not required to meet the federal definitions for highly qualified teachers.

(3) A special education teacher would have to meet the federal definitions for highly qualified teacher including, but not limited to, the following circumstances:

(a) Teaching life skills to students;

(b) Teaching elective credits in core academic areas;

(c) Providing direct instruction in a core academic subject in a resource room setting; and

(d) Providing direct instruction in a core academic subject in any setting.

(4) Direct instruction for the purposes of this rule is planning curriculum, delivering instruction and evaluating the performance of the student in any core academic area.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0066**
**Highly Qualified Elementary Special Education Teacher**

Special Education teachers who are new or not new to the profession and who are providing direct instruction in core academic subjects in grades kindergarten (k) through grades eight (8) to students identified as special education students are highly qualified under the following conditions. The teacher:

(1) Holds the appropriate Oregon special education license or endorsement and is appropriately assigned on that license; and

(2) Meets the federal definition of Highly Qualified Teacher for elementary teachers new or not new to the profession in either OAR 584-100-0011 or 584-100-0016; or

(3) Teaches only in kindergarten (k) through grade eight (8) in a self-contained special education classroom.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0071**
**Highly Qualified Middle-Level or Secondary Special Education Teacher**

Special Education teachers who are new or not new to the profession and who are providing direct instruction in core academic subjects in grades nine (9) through grades twelve (12) to students identified as special education students are highly qualified under the following conditions. The teacher:

(1) Holds the appropriate Oregon special education license or endorsement and is properly assigned in accordance with that license or endorsement; and

(2) Has met the federal definition for highly qualified elementary teacher new or not new to the profession and is teaching special education students who are performing at or below grade eight (8); or

(3) Has met the federal definition for highly qualified secondary teacher new or not new to the profession for each core academic subject the teacher is teaching to students who are performing above the eighth (8th) grade level.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0091**
**Licensed and Registered Elementary Charter School Teacher**

Licensed and registered elementary charter school teachers teaching in pre-primary through grade eight self-contained classrooms must meet the following criteria:

(1) Licensed teachers must meet the highly qualified teacher definition for new or not new to the profession for elementary teachers.

(2) Registered teachers must hold a bachelor's degree and demonstrate subject matter competency by passing the appropriate rigorous state test or meeting any one of the HOUSSE standards contained within OAR 584-100-0016.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0096**
**Licensed and Registered Middle-Level or Secondary Charter School Teacher**

(1) Licensed middle-level or secondary charter school teachers teaching in grades seven (7) through twelve (12) must meet the highly qualified teacher definition for new or not new to the profession for middle-level or secondary teachers.

(2) Registered middle-level or secondary charter school teachers teaching in departmentalized middle level grades seven or eight or in secondary grades nine through twelve must hold a bachelor's degree and must demonstrate subject matter competency by having one of the following:

(a) A passing score on the appropriate rigorous state test in the subject area; or

(b) An undergraduate major in the subject area; or

(c) A graduate degree in the subject area; or

(d) Coursework equivalent to an undergraduate major in the subject area.

(3) Charter school teachers are not eligible for HOUSSE evaluations.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0101**
**Licenses Considered "Full State Certification"**

The following Oregon Teaching Licenses are considered to meet full state certification under the No Child Left Behind federal act:

(1) Basic Teaching License; or
(2) Standard Teaching License; or
(3) Initial Teaching License; or
(4) Continuing Teaching License; or
(5) Five-Year Elementary Teaching License; or
(6) Five-Year Secondary Teaching License; or
(7) Approved *NCLB Alternative Route Teaching License*; or
(8) Preliminary Teaching License.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-100-0106**
**Licenses Not Considered to be "Full State Certification"**

The following Oregon Teaching Licenses are not considered to meet full state certification under the No Child Left Behind federal act:

(1) Personnel Service Licenses:
(a) School Counseling;
(b) School Psychologist;
(c) Supervisor.
(2) Limited Student Services License.
(3) Restricted or unrestricted Transitional Counselor License.
(4) Restricted or unrestricted School Psychologist License.
(5) Teaching Associate License.
(6) Substitute Teaching License.
(7) American Indian Languages License.
(8) Emergency Teaching License.
(9) Unrestricted Transitional Teaching License.
(10) Restricted Transitional Teaching License (See OAR 584-100-0041 for possible *Approved NCLB Alternative Route Teaching License eligibility*.)
(11) Limited Teaching License.
(12) Any Administrative License.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

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**Rule Caption:** Upon filing a correct application a certified CDS shall be granted a 3-year Initial School Counselor License.
**Adm. Order No.:** TSPC 3-2006(Temp)
**Filed with Sec. of State:** 2-3-2006
**Certified to be Effective:** 4-1-06 thru 9-27-06
**Notice Publication Date:**
**Rules Adopted:** 584-070-0013
**Subject:** 584-070-0013 — *Initial School Counselor License for Child Development Specialists* — After filing a complete and correct application a qualified ODE certified Child Development Specialist applicant shall be granted an Initial School Counselor License for three years.
**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

**584-070-0013**
**Initial School Counselor License for Child Development Specialists**

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified Oregon Department of Education certified Child Development Specialist applicant shall be granted an Initial School Counselor License. This license is issued for three years and is renewable under conditions specified in 584-070-0011.

(2) To be eligible for an Initial School Counselor License, an applicant must satisfy all of the following general preparation requirements:

(a) Teaching experience satisfied in one of the following ways:

(A) Two academic years of experience as a full-time licensed teacher in a public education setting or in a regionally accredited private school in any state or other U.S. jurisdiction; or

(B) Completion of five complete school years experience as an Oregon Department of Education certified Child Development Specialist as verified on a PEER form;

(b) Completion of a master's degree or higher in counseling, education, or related behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with any equally accredited bachelor's degree;

(c) A passing score as currently specified by the commission on a test of professional knowledge for school counselors;

(d) A passing score as currently specified by the commission on a test of basic verbal and computational skills; and

(e) A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(3) To be eligible for an Initial School Counselor License, an Oregon Department of Education certified Child Development Specialist applicant must satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(a) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(b) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to counseling licensure, from a regionally accredited college or university; or

(c) Three years experience in an Oregon public school as a certified Child Development Specialist.

(4) To be eligible for an Initial School Counselor License, an applicant must furnish fingerprints in the manner prescribed by the commission.

(5) See, OAR 584-070-0011(5) for renewal requirements.

(6)(a) School counselor licenses are issued for paired authorizations in accordance with OAR 584-060-0051 and 584-060-0071.

(b) Paired authorizations for the Initial School Counselor License are as follows:

(A) Early childhood and elementary: Early childhood and elementary authorization is valid up through grade four in any school and through grade eight in a school designated as a self-contained elementary school; or

(B) Elementary and middle-level: Elementary and middle level authorization is valid in grades three through eight in an elementary school and in grades five through nine in a school designated as a middle school or junior high school; or

(C) Middle-level and high school: Middle level and high school authorization is valid in grades five through nine of a school designated as a middle school or junior high school and in grades seven through twelve of a school designated as a high school.

(c) The Initial School Counselor License is authorized on the basis of professional education, experience, previous licensure, and specialized academic course work.

(7) On an Initial School Counselor License authorized for only two levels, the remaining authorization levels can be added prior to attainment of the Continuing School Counselor License. The remaining levels will be added upon acquisition of practical experience in one of two ways:

(a) A practicum of four (4) semester hours or six (6) quarter hours at either or both of the paired new levels, entailing a minimum of 200 clock hours, in an institution approved to prepare for those levels; or

(b) One academic year at either or both of the paired new levels as permitted in subsection 8 below.

(8) A counselor authorized for only two levels may counsel at remaining unauthorized for a period of not more than three years while pursuing authorization at all four levels. The commission shall be informed of this extension of responsibility, but no conditional assignment permit is required.

(9) The Initial School Counselor License is valid for regular counseling at the authorization levels indicated on the license. It is also valid for substitute counseling at any level and for substitute teaching at any level in any specialty.

(10) See OAR 584-048-0067 for Special Provisions for renewing an Initial School Counselor License.

(11) This rule will only be effective from April 1, 2006 through September 27, 2006.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 3-2006(Temp), f. 2-3-06, cert. ef. 4-1-06 thru 9-27-06

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**Rule Caption:** Amends School-based Personnel rule and adopts requirements for Expedited Service.
**Adm. Order No.:** TSPC 4-2006(Temp)
**Filed with Sec. of State:** 2-3-2006
**Certified to be Effective:** 2-3-06 thru 8-2-06
**Notice Publication Date:**
**Rules Adopted:** 584-036-0070
**Rules Amended:** 584-017-0070
**Subject:** 584-017-0070 — *School-based Personnel for the Program*: The unit selects qualified school based supervisors who have had two years' experience in early childhood, or elementary, or middle or high school immediately prior to supervision and/or instruction and who hold a valid license for current assignments.

584-036-0070 — *Expedited Service*: An employer and an applicant may jointly request an emergency license or other eligible license by expedited service by submitting a license application, which must include the C-1 and C-3 forms, accompanied by the regular application fee and an expedited service fee.
**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

**584-017-0070**
**School-Based Personnel for the Program**

The unit provides qualified school-based personnel for the program.

(1) The unit has policies for supervision of practica and student teaching experiences that state the responsibilities of the institutional supervisor and the school based supervisor and administrator.

(2) The unit selects qualified school based supervisors who have had two years' experience in early childhood, or elementary, or middle or high school immediately prior to supervision and/or instruction and who hold a valid license for current assignments.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 1-2006(Temp), f. & cert. ef. 1-3-06 thru 1-30-06; TSPC 4-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

**584-036-0070**
**Expedited Service**

(1) An employer and an applicant may jointly request an emergency license or other eligible license by expedited service by submitting a license application, which must include the C-1 and C-3 forms, accompanied by the regular application fee and an expedited service fee pursuant to OAR 584-036-0055.

(2) Qualified applicants will be authorized to perform all duties of the position upon receipt of the emergency licensed issued by the Commission. This emergency license and future licensure is conditional upon determination that all requirements for the non-emergency license have been met.

(3) The Commission may limit the number of applications from an employing district to a maximum of 100 in any two-day period.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.17
Hist.: TSPC 4-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06

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**Rule Caption:** Adopts rules regarding educators fees, criminal records check requirements and repeals 584-100-0037.
**Adm. Order No.:** TSPC 5-2006
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 2-10-06
**Notice Publication Date:** 12-1-05, 1-1-06
**Rules Amended:** 584-021-0170, 584-021-0177, 584-023-0025, 584-036-0055, 584-036-0062
**Rules Repealed:** 584-100-0037
**Subject:** 584-021-0170 — F*ees (School Nurses)*: Increases fees for issuance of a School Nurse License.

584-021-0177 — *Criminal Records Check Requirement (Nurses)*: Amends Criminal Record Check rule for school nurses to increase fingerprint fees and reduces the number of fingerprint cards required.

584-023-0025 — *Fees (Charter Schools)*: Increases fees for Charter School Registrations to include fingerprint fees and criminal history checks.

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

584-036-0062 — *Criminal Records Check Requirement*: Amends Criminal Record Check rule for licensed educators to increase fingerprint fees and reduces the number of fingerprint cards required.

584-100-0037 — *Highly Objective Uniform State Standard of Evaluation for Middle-Level and Secondary Teachers*: The administrative rules related to HQT and High Objective Uniform State Standards of Evaluation (HOUSSE) were found to need adjustment to meet federal requirements. This rule is being replaced with OAR 584-100-0038.
**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

**584-021-0170**
**Fees**

(1) All fees are assessed for evaluation of the application and are nonrefundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within ninety days following evaluation of the application except as provided in OAR 584-021-0160(2).

(3) The fee for evaluating an application for a school nurse license is $100.

(4) The fee for evaluating an application for renewal of a license is $100.

(5) The fee for each duplicate license is $20.

(6) The fee to evaluate an application for reinstatement of an expired license is $100 plus a late application fee of $25 for each month or portion of a month that the license has been expired to a maximum of $200 total.

(7) The fee for evaluating an application for reinstatement of a suspended license is $100.

(8) The fee for evaluating an application for reinstatement of a revoked license is $150 in addition to the $100 application fee.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.455 - 342.495
Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 6-1983, f. & ef. 10-18-83; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-94, cert. ef. 10-15-94; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06

**584-021-0177**
**Criminal Records Check Requirement**

(1) For the first Oregon license as a school nurse, or for reinstatement of a license that has been expired for more than three years, the applicant must submit one fingerprint card in a manner specified in the Commission's application packet for checking Oregon and Federal Bureau of Investigation criminal history.

(2) The fee to submit fingerprints for a criminal records check is $62.

(3) The Commission may issue a temporary license valid until receipt of fingerprint reports from the Oregon State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.223 & 342.455 - 342.495
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TS 2-1994, f. & cert. ef. 7-19-94; TS 2-1995(Temp), f. 8-16-95, cert. ef. 9-11-95; TS 4-1995, f. & cert. ef. 11-9-95; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06; TSPC 5-2006, f. & cert. ef. 2-10-06

**584-023-0025**
**Fees**

TSPC shall charge a fee of $75, or such other amount as may hereafter be allowed by law, for each original application and for each renewal application. This fee shall include the costs of fingerprints and criminal history checks.

Stat. Auth.: 342.175
Stats. Implemented: ORS 342.125, 338.135
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06; TSPC 5-2006, f. & cert. ef. 2-10-06

**584-036-0055**
**Fees**

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within 90 days from the date of the original application.

(3) The fee for evaluating an initial application for the following licenses is $100:

(a) Initial License;
(b) Basic License;
(c) Continuing License;
(d) Standard License;
(e) Restricted Transitional License;
(f) Limited License;
(g) American Indian Language License;
(h) Substitute License;
(i) Restricted Substitute License;
(j) Exceptional Administrator License;
(k) Three-Year Professional-Technical License;
(l) Five-Year Professional-Technical License;
(m) NCLB Alternative Route License;
(n) Emergency Teaching License;
(o) Five Year Teaching, Administrator or Personnel Service License.

(4) The fee for evaluating an application based on completion of an out-of-state educator preparation program or an out of state license is $120. These licenses include:

(a) Unrestricted Transitional License;
(b) Preliminary Teaching License.

(5) The fee for evaluating an application for renewal of any license is $100.

(6) The fee for each of the following circumstances is $20:

(a) A duplicate license for any reason;
(b) An approved extension to a provisional license; and
(c) Adding a district to an existing Restricted Substitute License.

(7) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is $100.

(a) No additional fee is required to add an endorsement in conjunction with an application for renewal or reinstatement of a license.

(8) The fee to evaluate an application for reinstatement of an expired license is $100 plus a late application fee of $25 for each month or portion of a month that the license has been expired to a maximum of $200 total.

(9) The fee for evaluating an application for reinstatement of a suspended license is $100.

(10) The fee for evaluating an application for reinstatement of a revoked license is $150 in addition to the $100 application fee for a total of $250.

(11) Forfeiture for a check which the applicant's bank will not honor is $25, unrelated to any evaluation fees. The total amount due shall be paid in cash or credit at the Commission's office or by a Money Order.

(12) There is no fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries.

(13) The fee for alternative assessment in lieu of the test of educational specialty is $100.

(14) The fee for expedited service for an emergency or other license is $99 plus the fee for the license as defined in this administrative rule.

(15) The fee for registration of a charter school teacher is $75 which includes the fee for required criminal records and fingerprinting costs.

(16) The fee for renewal of a charter school registration is $25.

(17) The fee for a criminal records check including fingerprinting is $62.

(18) The fee for a "highly qualified teacher" evaluation is $50.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06

**584-036-0062**
**Criminal Records Check Requirement**

(1) For the first Oregon license as an educator, or for reinstatement of a license that has been expired for more than three years, the applicant must submit one fingerprint card for checking Oregon and Federal Bureau of Investigation criminal history records.

(2) An applicant may only be fingerprinted through the process described in subsection (1) of this rule. A fingerprint check for employment in an Oregon school district does not qualify as a TSPC verified fingerprint and criminal background check.

(3) The Commission may issue a temporary or emergency license valid until receipt of fingerprint reports from the Oregon State Police and the Federal Bureau of Investigation.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120-342.200, 342.223, 342.400 & 342.985
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TS 2-1994, f. & cert. ef. 7-19-94; TS 2-1995(Temp), f. 8-16-95, cert. ef. 9-11-95; TS 4-1995, f. & cert. ef. 11-9-95; TSPC 5-2003(Temp), f. & cert. ef. 9-17-03 thru 1-15-04; TSPC 3-2004, f. & cert. ef. 5-14-04; TSPC 10-2005(Temp), f. & cert. ef. 11-15-05 thru 4-30-06; TSPC 5-2006, f. & cert. ef. 2-10-06

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**Rule Caption:** Rules to be repealed to reflect proposed changes in school counselor licenses and permanent waivers.
**Adm. Order No.:** TSPC 6-2006
**Filed with Sec. of State:** 2-10-2006
**Certified to be Effective:** 5-12-06
**Notice Publication Date:** 12-1-98
**Rules Repealed:** 584-017-0440, 584-017-0450, 584-060-0120
**Subject:** 584-017-0440 — *Objectives for Initial School Counselor License*: The counseling community has proposed new standards relating to the Initial School Counseling License. OAR 584-017-0441 will replace the current standards effective May 12, 2006.

584-017-0450 — *Objectives for Continuing School Counselor License*: The counseling community has proposed new standards relating to the Initial School Counseling License. OAR 584-017-0451 will replace the current standards effective May 12, 2006.

584-060-0120 — *Waivers of Rules on Assignment*: Permanent waiver from rules on assignment does not guarantee the quality of education in Oregon schools. It is in the state's and school districts' best interest to grant permissible extensions in certain circumstances.
**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

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## Veterinary Medical Examining Board
## Chapter 875

**Rule Caption:** These amendments are needed to update standards to conform with current practices.
**Adm. Order No.:** VMEB 1-2006
**Filed with Sec. of State:** 2-8-2006
**Certified to be Effective:** 2-8-06
**Notice Publication Date:** 7-1-05
**Rules Adopted:** 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, 875-011-0005, 875-011-0010
**Rules Amended:** 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, 875-030-0020, 875-030-0025, 875-030-0040
**Rules Repealed:** 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

**Subject:** These amendments are needed to update standards to conform with current practices.
**Rules Coordinator:** Lori V. Makinen—(971) 673-0224

**875-001-0000**
**Notice**

Prior to the adoption, amendment, or repeal of any permanent rule, the Veterinary Medical Examining Board shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360, at least 15 days prior to the effective date.

(2) By providing a copy of the notice to persons on the Veterinary Medical Examining Board's mailing list established pursuant to ORS 183.335(7).

(3) By providing a copy of the notice to the following persons, organizations, or publications:

(a) Media services;

(b) Oregon Veterinary Medical Association;

(c) Oregon Humane Society;

(d) Oregon State University Extension Service;

(e) Animal control agencies.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 183.310 - 183.360
Hist.: VE 4, f. & ef. 5-3-76; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-001-0005**
**Model Rules of Procedure**

The Veterinary Medical Examining Board adopts in its entirety the Attorney General's Model Rules of Procedure under the Administrative Procedures Act.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Veterinary Medical Examining Board.]
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 183
Hist.: VE 1, f. 7-29-60; VE 2, f. 6-23-72, ef. 7-15-72; VE 3, f. 9-25-74, ef. 10-25-74; Renumbered from 875-010-0005; VE 2-1978, f. & ef. 2-21-78; VE 1-1979, f. & ef. 8-28-79; VME 2-1980, f. & ef. 5-20-80; VME 1-1982, f. & ef. 8-30-82; VME 1-1987, f. & ef. 12-22-87; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 4-1992, f. & cert. ef. 12-10-92; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-001-0015**
**Hearing Requests, Answers, and Consequences of Failure to Answer**

(1) A hearing request shall be made in writing to the Board by the party or his/her representative and shall include an answer, which includes the following:

(a) An admission or denial of each factual matter alleged in the notice;

(b) A short and plain statement of each relevant affirmative defense the party may have.

(2) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(3) Failure to raise a particular defense in the answer will be considered a waiver of such defense; and

(4) Affirmative defenses alleged in the answer shall be presumed to be denied by the Board.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.020, 686.045 & 686.065
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-005-0000**
**Board Meetings**

The Board shall hold regular meetings at least once each year, at such time and place as the Board may designate. The Chair of the Board may call special meetings for the Board at any time through the year as such meetings are necessary.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.210
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-005-0005**
**Definitions**

(1) "Agency": Any animal control department, humane society, or any facility which contracts with a public agency or arranges to provide animal sheltering services and is certified by the Euthanasia Task Force and registered by the State Board of Pharmacy.

(2) "Board": The Oregon State Veterinary Medical Examining Board.

(3) "Board of Pharmacy": The Oregon State Board of Pharmacy.

(4) "Certified Euthanasia Technician or C.E.T.": A person who is recognized by an agency as a paid or volunteer staff member and is instructed and certified by the Euthanasia Task Force pursuant to ORS 475.190(4). Any person who was trained prior to October 15, 1983 in euthanasia methods, in the course provided by Multnomah County Animal Control and the Oregon Humane Society, and who has been subsequently certified by the Task Force.

(5) "Comprehensive": Pertaining to all animal species.

(6) "Client": An entity, person, group or corporation that has entered into an agreement with a veterinarian for the purpose of obtaining veterinary medical services.

(7) "Designated Agent": A C.E.T. who is responsible for the withdrawal and return of sodium pentobarbital from the drug storage cabinet.

(8) "Good Standing and Repute": As used in ORS 686.045(1), means:

(a) A university accredited by the American Veterinary Medical Association (AVMA); or

(b) A foreign school is a listed school by the AVMA and whose graduates are eligible to apply for a certificate through the Educational Commission for Foreign Veterinary Graduates (ECFVG) committee of the AVMA, or other programs approved by the Board.

(9) "Herd or Flock Animal": Animals managed as a group only for economic gain including but not limited to breeding, sale, show, food production, or racing.

(10) "Lethal Drug": Sodium pentobarbital or any other drug approved by the Task Force, the Board and the Board of Pharmacy, and used for the purpose of humanely euthanizing injured, sick, homeless or unwanted domestic pets and other animals.

(11) "Mobile Clinic": A vehicle, including but not limited to a camper, motor home, trailer, or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(12) Surgery Procedures:

(a) "Aseptic Surgery": Aseptic surgical technique exists when everything that comes in contact with the surgical field is sterile and precautions are taken to ensure sterility during the procedure.

(b) "Antiseptic Surgery": Antiseptic surgical technique exists when care is taken to avoid bacterial contamination.

(c) Any injection or implant of a small permanent device is considered surgery.

(13) "Supervision" means that each act shall be performed by any employee or volunteer in the practice only after receiving specific directions from a licensed veterinarian.

(a) "Direct" supervision under this provision means both the certified veterinary technician and the licensed veterinarian are on the premises at the same time;

(b) "Immediate" supervision under this provision means that the supervising veterinarian is in the immediate vicinity of where the work is being performed and is actively engaged in supervising this work throughout the entire period it is being performed;

(14) "Task Force": The Euthanasia Task Force appointed by the Board pursuant to ORS 686.510 consisting of no fewer than five members, and who are either certified euthanasia technicians or licensed veterinarians.

(15) "Veterinary Client Patient Relationship (VCPR)": Except where the patient is a wild animal or its owner is unknown; a veterinary client patient relationship shall exist when the following conditions exist: The veterinarian must have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has seen the animal within the last year and is personally acquainted with the care of the animal by virtue of a physical examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept.

(16) "Veterinary Medical Facility": Any premise, unit, structure or vehicle where any animal is received and/or confined and veterinary medicine is practiced, except when used for the practice of veterinary medicine pursuant to an exemption under ORS 686.040.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190, 609.405, 686.130, 686.255 & 686.510
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-005-0010**
**Licensee's Duty to Cooperate**

Every licensee of the Board shall cooperate with the Board and shall respond fully and truthfully to inquiries from and comply with any request from the Board, subject only to the exercise of any applicable right or privilege.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.020, 686.045 & 686.065
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0000**
**Qualifications for Licenses and Permits**

(1) Graduate from a veterinary college or veterinary department of a university or college of good standing and repute as defined in OAR 875-005-0005(8).

(2) Pass the NAVLE and Oregon Jurisprudence Exam as required by OAR 875-010-0015(3).

(3) Temporary and active licenses will not be issued to applicants who do not have at least one year experience, as set out in ORS 686.045(3) and 686.065(1)(b).

(4) The Board may refuse to issue a license or permit to an applicant for any of the following:

(a) Violations of veterinary practice laws and rules in other states, provinces or countries;

(b) Evidence of previous veterinary incompetence or negligence;

(c) Violations of other laws substantially related to the qualifications, functions or duties of veterinary medicine;

(d) The sale or use of illegal drugs or substance abuse; or

(e) Making a misrepresentation or omission on application or otherwise to the Board.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.045 & 686.065
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0006**
**Procedures for Obtaining License or Permit**

(1) Graduate from a veterinary college or veterinary department of a university or college as defined in OAR 875-005-0000(8).

(2) To apply for a veterinary license, the applicant must complete an application form available from the Board office. A completed application includes:

(a) An application form completed and signed by the applicant and notarized;

(b) A copy of a college diploma or a letter from the graduate's school verifying satisfactory graduation, or, if a graduate of an unaccredited foreign veterinary school certification of satisfactory completion of requirements of the Educational Commission for Foreign Veterinary Graduates (ECFVG), or verification of completion of other foreign graduate equivalency programs approved by the Board;

(c) A completed Oregon Jurisprudence Exam/Regional Disease Test;

(d) Verification of veterinary experience and certification of status of license(s) in other states if applicable;

(e) The license application and Oregon Jurisprudence Exam/Regional Disease Test fee of $75.00.

(3) To register for the NAVLE, the candidate shall submit registration and examination fees no later than the deadline established by the Board or its Executive Officer.

(4) The Oregon application fee of $50 for the NAVLE shall not be refundable. Applicants shall contact NBVME for refund of the NAVLE registration fee.

(5) The applicant may take the NAVLE in another state. For licensing in Oregon, NAVLE scores must be directly transferred to the Board through the Veterinary Information Verifying Agency (VIVA).

(6) An applicant may request a waiver of the Clinical Competency Test requirement if all the following conditions are met:

(a) The applicant has graduated from an accredited veterinary school or earned the ECFVG certificate or other equivalency program, as described in OAR 875-010-0000, prior to and including 1990;

(b) Has been engaged in active veterinary clinical practice for at least five contiguous years immediately preceding the date of application;

(c) Has held license(s) in good standing in other state(s) or U.S. territories since graduation; and

(d) Has met continuing education requirements at least equivalent to 10 hours per year during the five years immediately preceding the date of application.

(e) The Board may request other documentation of competent clinical practice.

(7) Neither NAVLE nor the National Board Exam (NBE) requirement shall be waived.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.075 & 686.255
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0016**
**Veterinary License Examinations**

(1) "North American Veterinary Licensing Examination (NAVLE)": The National Board of Veterinary Medical Examiners (NBVME) provides this examination to test a candidate's qualification for entry-level clinical practice and comprehensive veterinary knowledge. Effective November 2000, the NAVLE replaces the National Board Examination (NBE) and Clinical Competency Test (CCT). The NAVLE is required for licensing in Oregon, except as provided in OAR 875-010-0005(6). The Board may choose to certify candidates' eligibility or require applicants to apply in another state. Candidates for the NAVLE must be senior students at or graduates of AVMA accredited or approved schools or colleges of veterinary medicine, or other programs approved by the Board, or candidates enrolled in the Educational Commission for Foreign Veterinary Graduates (ECFVG) program. NAVLE will be administered in two testing windows in the fall (November-December) and spring (April). Candidates shall apply to the Board prior to test dates by a deadline determined by the Board or its Executive Officer.

(a) NBVME is the sole provider of the NAVLE. The NBVME will report the scores of NAVLE to the Board.

(b) The passing score for NAVLE shall be 425. If the National Board Examination (NBE) and/or Clinical Competency (CCT) was taken December 1992, or later, the candidate must receive a passing score according to the criterion-referenced scoring method implemented by the Professional Exam Service in December 1992.

(2) "Oregon Jurisprudence Exam/Regional Disease Test": This examination shall test the applicant's knowledge of ORS chapter 686, and OAR chapter 875, and regional diseases. This shall be an open book exam and shall be completed and submitted as part of the application for veterinary licensure. The passing score on the Oregon Jurisprudence Exam/Regional Disease Test shall be no less than 95 percent correct answers.

(3) All applicants for veterinary license must pass the NAVLE, the Oregon Jurisprudence Exam/Regional Disease Test and other tests or examinations required by the Board.

(4) Applications from individuals who have committed violations of veterinary practice laws and rules in other states, provinces or countries, or who have documented history of violations of other laws substantially related to the qualifications, functions or duties of veterinary medicine, sale or use of illegal drugs, or substance abuse may be denied.

(5) Making a material false statement or omission on application or otherwise to the Board may be grounds for denial of application.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.075
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0021**
**Recalculation, Review and Appeal of Examination Results**

(1) The NAVLE and the Oregon Jurisprudence Exam/Regional Disease Test may be taken more than once.

(2) Any applicant who does not pass the NAVLE or Oregon Jurisprudence Exam/Regional Disease Test may request a review of his or her examination results. A request shall be made in writing to the Board within 30 days following the notification of exam results, and the reason(s) for the review request. The applicant may inspect his or her Oregon Jurisprudence Exam/regional Disease Test answer sheet at the Board office in the presence of the Executive Officer or Board member. The applicant may request a review of the NAVLE examination results according to the review procedures of the NBVME.

(3) Any applicant may request a formal appeal before the Board if not satisfied with the review of the exam. An appeal shall be submitted in writing to the Board office no later than 21 days following notification of the results of the Oregon Jurisprudence Exam/Regional Disease Test review. The Board will consider only those appeals concerning significant errors that result in substantial disadvantage to the applicant and if the results of the appeal could result in the issuance of a license.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.075
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0026**
**Initial Licenses**

Upon approval of all required application materials, the applicant will be granted a license to practice veterinary medicine in Oregon. The licensee may activate the license at any time.

(1) The initial license fee shall be $100.

(2) If the applicant has satisfactorily completed one year's experience, an active veterinary license will be issued and will expire on the next following December 31. Licensee shall renew the license according to OAR 875-010-0065.

(3) If applicant has less than one year's experience, an Intern Permit will be issued. The Intern Permit will expire following the total number of

days necessary to complete one year's practice experience, under supervision of an Oregon licensed veterinarian, pursuant to ORS 686.085 and OAR 875-010-0050:

(a) Upon completion of the internship, Intern may apply for an active license, pursuant to OAR 875-010-0065. Late fees up to $150 will apply for each month the application is late if the Intern has continued to practice veterinary medicine in Oregon after expiration of the Intern Permit;

(b) The supervising veterinarian shall provide a signed statement that Intern has satisfactorily completed the internship and Intern shall submit this statement to complete the license renewal application.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.095 & 686.255
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0045**
**Preceptees and Student Interns**

(1) Any person wishing to work in Oregon as a veterinary preceptee or veterinary student intern may do so if he or she is engaged in a preceptee or student intern program administered by a veterinary college or university approved by the Board or the American Veterinary Medical Association.

(2) Supervision. All acts which a preceptee or student intern may perform must be under the direct supervision of a licensed veterinarian. "Direct supervision" means that each act shall be performed by the student intern or preceptee only after receiving specific directions from and in the presence of an Oregon licensed veterinarian.

(3) Student interns or preceptees may perform the following acts:

(a) Obtaining and Recording Information. Preceptees or Student Interns may obtain and record the following information:

(A) Complete admission records, including recording the statements made by the client concerning the patient's problems and history. The preceptees and student interns may also record his or her own observations of the patient. However, the preceptees or student interns cannot state or record his or her opinion concerning diagnosis of the patient;

(B) Maintain daily progress records, surgery logs, X-ray logs, Bureau of Narcotics and Dangerous Drug logs, and all other routine records as directed by the supervising veterinarian.

(b) Perform surgery, if determined by the supervising veterinarian to be competent and possess the necessary training and experience;

(c) Preparation of Patients, Instruments, Equipment, and Medicants for Surgery. Preceptees and Student Interns may:

(A) Prepare and sterilize surgical packs;

(B) Clip, surgically scrub, and disinfect the surgical site in preparation for surgery;

(C) Administer preanesthetic drugs as prescribed by the supervising veterinarian;

(D) Position the patient for anesthesia;

(E) Administer anesthesia as prescribed by the supervising veterinarian;

(F) Operate anesthetic machines, oxygen equipment, and monitoring equipment.

(d) Collection of Specimens and Performance of Laboratory Procedures. Preceptees and Student Interns may:

(A) Collect urine, feces, sputum, and all other excretions for laboratory analysis;

(B) Collect blood samples for laboratory;

(C) Collect skin scrapings;

(D) Perform routine laboratory procedures including urinalysis, fecal analyses, hematological, and serological examinations.

(e) Assisting the Veterinarian in Diagnostic Medical and Surgical Proceedings. Preceptees and Student Interns may assist supervising veterinarians in the following diagnostic, medical, and surgical proceedings:

(A) Take the patient's temperature, pulse and respiration;

(B) Medically bathe the patient;

(C) Administer topical, oral, hypodermic, and intravenous medication as directed by the supervising veterinarian;

(D) Operate diagnostic imaging equipment;

(E) Take electrocardiograms, electroencephalograms, and tracings;

(F) Perform dental prophylaxis, including operating ultrasonic dental instruments.

(f) Preceptees and Student Interns may perform other acts not specifically enumerated herein under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Oregon.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.040(13)
Hist.: VE 7-1978, f. & ef. 7-10-78; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0050**
**Supervision of Interns**

An Intern Permit is issued for the purpose of providing a supervised internship to veterinarians who have less than one (1) year experience following graduation from a veterinary school or college as defined in OAR 875-005-0005(8).

(1) "Supervision," as used in ORS 686.085, requires an Oregon licensed veterinarian to provide supervision of the Intern as follows:

(a) Direct supervision of the Intern for each and every procedure until such time as the supervising veterinarian reasonably concludes that the Intern has sufficient training and experience to competently conduct a particular procedure, or class of procedures, independently;

(b) The supervising veterinarian need not continue to directly supervise that procedure or class of procedures, upon the supervisor's determination that competency has been achieved by the Intern; however, the supervising veterinarian shall continue to reasonably monitor the results thereof;

(c) The supervising veterinarian shall continue to directly supervise all procedures for which the supervisor has not yet made a competency determination.

(2) However, in no event may the supervising veterinarian:

(a) Be absent from the veterinary clinic for more than 14 consecutive days, or more than 21 total days, in a six month period, exclusive of weekends;

(b) Conduct the supervision from a separate clinic.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.085
Hist.: VE 6-1978, f. & ef. 7-10-78; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0065**
**License Renewal Procedures**

(1) The annual renewal fee for all veterinary licenses shall be $100.

(2) A renewal application is timely if the completed application together with the correct renewal fee is postmarked by December 31st of the current license year. The licensee has the burden of proving that the application was mailed timely. If the renewal application is not timely, the applicant must pay delinquent fees:

(a) The delinquent fee shall be $50 for each month or part of a month after December 31st, up to a maximum of $150.

**EXAMPLE:** A license renewal application postmarked February 1 will be assessed a $100 delinquent fee in addition to the renewal fee for a total of $150 and one postmarked March 15 will be assessed $150 in delinquent fees.

(b) In the event a licensee's renewal application is not received by January 31, a certified letter, return receipt requested, will be sent by April 1, advising the licensee of his or her delinquency and that practicing veterinary medicine in Oregon without a current license is a violation of ORS 686.020. It is the licensee's responsibility to provide the Board with a current address;

(c) If the delinquency in license renewal exceeds three months the Board may require the applicant to appear before the Board and/or may attach other conditions to the renewal, e.g. community service, additional continuing education, etc.;

(d) If the delinquency in license renewal exceeds 21 months, the Board may assess an extended delinquency renewal fee, and/or require requalification by examination.

(3) Board staff will review renewal applications. If the application is complete with the following requirements, staff will mail out an annual license receipt, which expires on December 31 of the next calendar year:

(a) The renewal application is completed;

(b) The renewal fee is enclosed;

(c) Any delinquent fees are enclosed;

(d) Continuing Education requirements must have been met; and

(e) The licensee is not in violation of the provisions of ORS 686.120 and 686.130.

(4) A veterinarian who submits a completed renewal application postmarked no later than December 31, and has complied with all requirements under section (3) of this rule, may continue to practice veterinary medicine in Oregon pending notification of renewal or notification that the application is incomplete. A veterinarian who submits a renewal application postmarked after December 31, or who knows the application is incomplete, or has not fulfilled the continuing education requirement, will be subject to delinquent fees and may not lawfully continue to practice veterinary medicine in Oregon until notified that the license has been renewed.

(5) If the veterinarian's license lapses, a 21-month grace period begins. The veterinarian may renew the license within the 21-month period by paying the maximum delinquent fee and the current annual license fee,

and by providing documentation of veterinary activities, including completed Continuing Education, during the interim. After 21 months, the license may be revoked and the veterinarian may have to requalify for licensure by taking an examination.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.110 & 686.255
Hist.: VME 3-1986(Temp), f. & ef. 10-23-86; VME 1-1987, f. & ef. 12-22-87; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 3-1991, f. & cert. ef. 12-9-91; VME 1-1992, f. & cert. ef. 10-9-92; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0090**
**Continuing Education Requirements**

(1) All active licensees, including veterinarians and certified veterinary technicians, must comply with the educational requirements provided in this rule in order to renew their licenses. An active licensee is one who practices in Oregon for 30 calendar days or more in each year.

(2) "Inactive" licensees need not comply with the educational requirements, and may renew their licenses in an "inactive" status. An "inactive" licensee is one who practices in Oregon for less than 30 calendar days in each year.

(3) Active licensees wishing to obtain a renewal of their license must complete the minimum required number of hours of veterinary or technician continuing education programs, as appropriate, every two years. The continuing education requirements for technicians is effective beginning in January 2006. Licensees shall report to the Board with license renewals for every odd-numbered year. Veterinarians are required to complete 30 hours and technicians are required to complete 15 hours. The required hours may be satisfied with any combination of the following continuing education activities:

(a) Attendance at scientific workshops or seminars approved by the Board.

(b) A maximum of four hours reading approved scientific journals. One subscription to an approved journal is equal to one hour of credit.

(c) A maximum of six hours of workshops or seminars on non-scientific subjects relating to the practice of veterinary medicine such as communication skills, practice management, stress management, or chemical impairment.

(d) A maximum of 15 hours of audio or video recordings, electronic, computer or interactive materials or programs on scientific or non-scientific subjects, as set forth in subsection (3)(c) above, and prepared or sponsored by any of the organizations defined in subsection (4) below. The sponsor must supply written certification of course completion.

(4) Workshops, seminars, and prepared materials on scientific and non-scientific subjects relating to veterinary medicine sponsored by the following organizations are approved:

(a) American Veterinary Medical Association (AVMA) and Canadian Veterinary Medical Association (CVMA);

(b) Specialty and allied groups of the American Veterinary Medical Association and Canadian Veterinary Medical Association;

(c) Regional meetings such as the Inter-Mountain Veterinary Medical Association, Central Veterinary Conference, and Western Veterinary Conference;

(d) Any state or province veterinary medical association;

(e) Any local or regional veterinary medical association;

(f) The American Animal Hospital Association;

(g) American and Canadian Veterinary Schools accredited by the American Veterinary Medical Association;

(h) All state veterinary academies;

(i) Animal Medical Center, New York;

(j) Angel Memorial Medical Center;

(k) Other programs receiving prior approval by the Board;

(l) The Board may approve other sponsors for lectures or prepared materials upon written request by the attending veterinarian or the sponsor.

(5) The following scientific journals are approved by the Board to satisfy all or a portion of the two hours of non-lecture educational activities:

(a) Journal of the American Veterinary Medical Association;

(b) Journal of the Canadian Veterinary Medical Association;

(c) The Journal of Veterinary Research;

(d) Veterinary Medicine;

(e) Small Animal Clinician;

(f) Modern Veterinary Practice;

(g) Publications of the AVMA/CVMA Approved Constituent Specialty Groups;

(h) Compendium of Continuing Education;

(i) Journal of American Animal Hospital Association;

(j) Other publications approved in advance by the Board.

(6) Study in a graduate resident program at an AVMA-approved veterinary school will satisfy the continuing education requirements for the year in which the veterinarian is enrolled in such program.

(7) Reporting continuing education credits:

(a) At the time of making application for license renewal for every odd-numbered year, the veterinarian shall certify on the application form that thirty hours of continuing education as set forth in this rule has been satisfied. Proof of participation in such continuing education programs must be kept by the licensee for a period of at least two years, and the licensee must permit the Board, any of its agents or designees to inspect these records. Any such failure to keep these records or produce them to the Board, its agents or designees shall constitute grounds for non-renewal of the license, or, if the license has been issued for that year, for revocation of the license;

(b) Proof of compliance with the continuing education requirement of this rule may be supplied through registration forms at lectures, certificates issued by the sponsors of lectures, subscriptions to journals, and other documentation approved by the Board.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.410 - 686.420
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-010-0095**
**Fee Waivers for Licenses or Permits**

The Board may waive a category of fees if, in its judgment, such waiver is necessary to ensure that the fees charged do not exceed the cost of administering the Board's regulatory program pursuant to ORS 656.255(c).

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.020, 686.045 & 686.065
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-011-0005**
**Gross Ignorance, Incompetence, or Inefficiency in the Profession**

Under ORS 686.130(14), any veterinarian may have his or her license revoked or suspended by the Board for gross ignorance, incompetence, or inefficiency in the profession, among other causes. "Gross ignorance, incompetence, or inefficiency" in the profession within the meaning of this provision shall be defined to include:

(1) Failure to comply with current standards on isolation of patients with serious infectious, contagious diseases.

(2) Keeping animals with known serious infectious, contagious diseases in the same area with animals who do not have serious infectious, contagious diseases when current standards require isolation.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.130
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-011-0010**
**Unprofessional or Dishonorable Conduct**

The Board interprets "unprofessional or dishonorable conduct" to include, but is not limited, to the following:

(1) Gross negligence in the practice of veterinary medicine.

(2) A pattern, practice or continuous course of negligence, ignorance, incompetence or inefficiency in the practice of veterinary medicine. The incidents may be dissimilar.

(3) Performing surgery, taking a radiograph or attempting a treatment without first obtaining the client's permission, except in emergency circumstances. Permission may be reasonably implied under some circumstances.

(4) Failure without good cause to perform a specific surgery or treatment in a timely manner, after agreeing to perform the surgery or treatment.

(5) Failure to properly prepare an animal for surgery or treatment.

(6) Failure to use sterile instruments and equipment when performing surgery, when the circumstances require the use of sterile instruments and equipment.

(7) Failure to use generally accepted diagnostic procedures and treatments, without good cause.

(8) Failure to obtain the client's written permission before using unorthodox or non-standard methods of diagnosis or treatment. Acupuncture, chiropractic or herbal medicine is not considered unorthodox or non-standard.

(9) Failure to advise a client of home care or follow-up treatment required after a particular diagnosis or treatment.

(10) Handling animals in an inhumane manner or, except when the veterinarian reasonably believes it to be necessary, handling animals with great force.

(11) Charging for services not rendered.

(12) Failure to maintain records which show, at a minimum, the name of the client, identification of the patient, its condition upon presentation, the tentative diagnosis, treatment performed, drug administered, amount of drug, any prescription, and the date of treatment. For companion animals, identification of the patient should include species, breed, name, age, sex, color, and distinctive markings, where practical.

(13) Failure to provide to a client in a timely manner, upon request, an accurate copy or synopsis of the patient's medical records including a copy of radiographs, if requested. A reasonable copying fee may be charged.

(14) Failure to provide records or radiographs in a timely manner to another veterinarian retained by the client, upon request of the client or client's veterinarian.

(15) Failure to mark or label a container of prescription or legend drugs with the date, name of drug, dosage frequency, identification of animal (if appropriate), and withdrawal time (if appropriate). Excludes legend drugs dispensed or ordered in original, unopened manufacturer's packaging for herd use.

(16) Failure to comply with federal law concerning packaging and labeling of prescription or legend drugs.

(17) Violation of any state or federal law relating to controlled substances, as defined in ORS 475.005(6), which the veterinarian obtained under the authority of the veterinary license.

(18) Failure to respond in writing to a written request from the Board within the time indicated in the request letter, without good cause; or failure to appear in person before the Board upon written request, without good cause.

(19) Failure to comply with any rule or Order of the Board.

(20) Making false or misleading representations to the Board or its representative or altering or providing altered medical records.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.130
Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06

**875-015-0020**
**Minimum Requirements for All Veterinary Medical Facilities**

Each veterinary medical facility shall comply with the following:

(1) Air Quality: Adequate heating and cooling must be provided for the comfort and well-being of the animals, and the facility must have sufficient ventilation in all areas to prevent mildew and condensation, and to exhaust toxic and/or nauseous fumes and/or odors.

(2) Lighting: Sufficient lighting must be provided in all areas sufficient for the safety of personnel and the intended use of this area.

(3) Water: Potable water must be provided.

(4) Waste Disposal: Waste disposal equipment shall be so operated as to minimize insect or other vermin infestation, and to prevent odor and disease hazards or other nuisance conditions. The veterinary medical facility shall have sanitary and aesthetic disposal of dead animals and other wastes which complies with all applicable federal, state, county and municipal laws, rules, ordinances and regulations.

(5) Storage: All supplies, including food and bedding, shall be stored in a manner that adequately protects such supplies against infestation, contamination or deterioration. Adequate refrigeration shall be provided for all supplies that are of a perishable nature, including foods, drugs and biologicals.

(6) Examination Area: Examination and surgery tables shall have impervious surfaces.

(7) Laboratory: May be either in the veterinary medical facility or through consultative services, adequate to render diagnostic information. An in-house laboratory shall meet the following minimum standards:

(a) The laboratory shall be clean and orderly with provision for ample storage;

(b) Adequate refrigeration shall be provided;

(c) Any tests performed shall be properly conducted by currently recognized methods to assure reasonable accuracy and reliability of results.

(d) Laboratory equipment must provide results of diagnostic quality. Protocols must be in place and followed regularly to assure the quality and reproducibility of the diagnostic information produced.

(8) Radiology: Equipment for diagnostic radiography must be available either on or off the veterinary medical facility. Such equipment must be on the premises if orthopedic or open thoracic procedures are performed. The equipment must meet federal and state protective requirements and be capable of producing, reading and labeling good quality diagnostic radiographs, including imaging diagnosis and findings. Equipment for providing diagnostic oral radiography must be available to the veterinary medical facility whenever surgical dental services are offered.

(9) Animal Housing Areas: Each veterinary medical facility confining animals must have individual cages, pens, exercise areas or stalls to confine said animals in a comfortable, sanitary and safe manner. Animals that are hospitalized for treatment of contagious diseases must be isolated physically and procedurally so as to prevent the spread of disease.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.130
Hist.: VME 5-1992, f. & cert. ef. 12-10-92; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-015-0030**
**Minimum Veterinary Practice Standards**

Each veterinary medical facility shall comply with the following:

(1) Medical Records: A legible individual records shall be maintained for each animal. However, the medical records for a litter may be recorded either on the dam's record or on a litter record until the individual animals are permanently placed or reach the age of three months. Records for herd or flock animals may be maintained on a group or client basis. All records shall be readily retrievable and must be kept for a minimum of three (3) years following the last treatment or examination. However, three (3) years may not be adequate for liability purposes. Records shall include, but are not limited to, the following information:

(a) Name or initials of the veterinarian responsible for entries;

(b) Name, address and telephone number of the owner and/or client;

(c) Name, number of other identification of the animal and/or herd or flock;

(d) Species, breed, age, sex, and color or distinctive markings, where applicable, each individual animal;

(e) Vaccination history, if known, shall be part of the medical record;

(f) Beginning and ending dates of custody of the animal;

(g) Pertinent history and presenting complaint;

(h) A physical exam shall be performed to establish or maintain a VCPR and each time an animal is presented with a new health problem, unless the animal's temperament precludes examination or physical exam is declined by the owner. For each physical exam the following conditions shall be evaluated and findings documented when applicable by species, even if such condition is normal:

(A) Temperature;

(B) Current weight;

(C) Body condition;

(D) Eyes, ears, nose and throat;

(E) Oral cavity;

(F) Respiratory system including auscultation of the thorax;

(G) Palpation of the abdomen;

(H) Lymph nodes;

(I) Musculoskeletal system;

(J) Neurological system;

(K) Genito/urinary system;

(L) All data obtained by instrumentation;

(M) Diagnostic assessment;

(N) If relevant, a prognosis of the animal's condition;

(O) Diagnosis or tentative diagnosis at the beginning of custody of animal;

(P) Treatments and intended treatment plan, medications, immunizations administered, dosages, frequency and route of administration;

(Q) All prescription or legend drugs dispensed, ordered or prescribed shall be recorded including: dosage, frequency, quantity and directions for use. Legend drugs, in original unopened manufacturer's packaging, dispensed or ordered, for herd use. Any changes made by telecommunications shall be recorded; Legend drugs in original unopened manufacturer's packaging dispensed or ordered for herd use are exempt from this rule.

(R) Surgical procedures shall include a description of the procedure, name of the surgeon, type of sedative/anesthetic agent(s) used, dosage, route of administration, and strength, if available in more than one strength;

(S) Progress of the case while in the veterinary medical facility;

(T) Exposed radiographs shall have permanent facility and animal identification;

(U) If a client waives or declines any examinations, tests, or other recommended treatments, such waiver or denial shall be noted in the records.

(2) Surgery: Surgery shall be performed in a manner compatible with current veterinary practice with regard to anesthesia, asepsis or antisepsis, life support and monitoring procedures, and recovery care. The minimum standards for surgery shall be:

(a) Aseptic surgery shall be performed in a room or area designated for that purpose and isolated from other activities during the procedure. A separate, designated area is not necessarily required for herd or flock animal surgery or antiseptic surgery;

(b) The surgery room or area shall be clean, orderly, well-lighted and maintained in a sanitary condition;

(c) All appropriate equipment shall be sterilized:

(A) Chemical disinfection ("cold sterilization") shall be used only for field conditions or antiseptic surgical procedures;

(B) Provisions for sterilization shall include a steam pressure sterilizer (autoclave) or gas sterilizer (e.g., ethylene oxide) or equivalent.

(d) For each aseptic surgical procedure, a separate sterile surgical pack shall be used for each animal. Surgeons and surgical assistants shall use aseptic technique throughout the entire surgical procedure;

(e) Minor surgical procedures shall be performed at least under antiseptic surgical techniques;

(f) All animals shall be prepared for surgery as follows:

(A) Clip and shave the surgical area for aseptic surgical procedures;

(B) Loose hair must be removed from the surgical area;

(C) Scrub the surgical area with appropriate surgical soap;

(D) Disinfect the surgical area;

(E) Drape the surgical area appropriately.

(3) A veterinarian shall use appropriate and humane methods or anesthesia, analgesia and sedation to minimize pain and distress during any procedures and shall comply with the following standards:

(a) Animals shall have a documented physical exam conducted prior to the administration of a sedation or anesthetic, which is necessary for veterinary procedures, unless the temperament of the patient precludes an exam prior to the use of chemical restraint;

(b) An animal under general anesthesia for a medical or surgical procedure shall be under observation during recovery from anesthesia until the patient is awake and in sternal recumbency;

(c) A method of cardiac monitoring shall be available and may include a stethoscope or electronic monitor;

(d) Where general anesthesia is performed in a hospital or clinic for companion animal species (excluding farm animals), anesthetic equipment available shall include an oxygen source, equipment to maintain an open airway and a stethoscope;

(e) Anesthetic procedures and anesthetics used shall be documented;

(f) Adequate means for resuscitation including intravenous catheter and fluids shall be available;

(g) Emergency drugs shall be immediately available at all times;

(h) While under sedation or general anesthesia, materials shall be provided to help prevent loss of body heat;

(i) Appropriate pain management shall be made available to the animal;

(4) Library: A library of appropriate and current veterinary journals and textbooks or access to veterinary internet resources shall be available for ready reference.

(5) Laboratory: Veterinarians shall have the capability for use of either in-house or outside laboratory service for appropriate diagnostic testing of animal samples.

(6) Biologicals and Drugs: The minimum standards for drug procedures shall be:

(a) All controlled substances shall be stored, maintained, administered, dispensed and prescribed in compliance with federal and state laws and manufacturers' recommendations;

(b) Legend drugs shall be dispensed, ordered or prescribed based on a VCPR and shall be labeled with the following:

(A) Name of client and identification of animal(s);

(B) Date dispensed;

(C) Complete directions for use;

(D) Name, strength, dosage and the amount of the drug dispensed;

(E) Manufacturer's expiration date;

(F) Name of prescribing veterinarian and veterinary medical facility.

(c) No biological or drug shall be administered or dispensed after the expiration date, for a fee.

(7) A veterinarian shall not use, or participate in the use of, any form of advertising or solicitation which contains a false, deceptive or misleading statement or claim:

(a) Specialty Services: Veterinarians shall not make a statement or claim as a specialist or specialty practice unless the veterinarian is a diplomate of a recognized specialty organization of the American Veterinary Medical Association;

(b) The public shall be informed of their options when an animal will be left unattended in the hospital.

(8) The veterinarian is readily available or has arranged for emergency coverage or follow-up evaluation in the event of adverse reaction or the failure of the treatment regimen.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.130
Hist.: VME 5-1992, f. & cert. ef. 12-10-92; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-015-0050**
**Veterinary Dentistry**

(1) A veterinary dental operation or procedure is the application or use of any instrument or device to any portion of an animal's tooth, gum, or related tissue for the prevention, cure, or relief of any wound, fracture, injury, disease, or other condition of an animal's tooth, gum, or related tissue. Dental operations or procedures shall be performed only by licensed veterinarians, except for those veterinary dental procedures set out in section (3) of this rule.

(2) Minimum Standards:

(a) Where preventive dental cleanings are offered, appropriate polishing equipment shall be available;

(b) Dental diagnostic radiograph capability shall be available when surgical dental services are offered;

(c) Records of dental work performed shall be kept and become part of the animal's permanent record.

(3) Preventive veterinary dental procedures including, but not limited to, the removal of calculus, soft deposits, plaque, and stains, or the smoothing, filing, or polishing of tooth surfaces shall be performed only by licensed veterinarians, certified veterinary technicians or veterinary assistants under the direct supervision of a licensed veterinarian.

(4) This rule does not prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes, or similar items to maintain an animal's oral hygiene.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.040 & 686.370
Hist.: VME 1-1990, f. & cert. ef. 1-26-90; VME 5-1992, f. & cert. ef. 12-10-92; Renumbered from 875-015-0010; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-020-0030**
**Certification of Technicians**

Initial practical examinations of all applicants are conducted by a Task Force member after the satisfactory passing of the written exam following the training. Recertification practical exams are generally given at the applicant's place of employment during August 1 to October 31 of each year, which shall include but not be limited to the certification standards for technicians provided for in OAR 875-020-0035.

(1) A person who has passed the written exam may euthanize animals under the direct supervision of an Oregon licensed veterinarian or C.E.T. until such time as the practical exam and certification is conducted by a Task Force member.

(2) A person who has not passed or taken the written exam or the practical exam may euthanize animals only under the direct supervision of an Oregon licensed veterinarian or C.E.T. until the next regularly scheduled training session.

(3) A person who fails the written exam may be permitted by the Task Force to euthanize animals, as provided for in section (2) of this rule, but may repeat the training and written exam for no more than one additional time.

(4) A person who fails the practical exam may euthanize animals under the supervision of a C.E.T. or an Oregon licensed veterinarian until a Task Force member can re-examine the applicant. If the person fails to pass the practical exam a second time, he or she shall not continue to euthanize animals and may not reapply for certification until completion of the training session and written exam.

(5) Applicants may appeal any decision of a Task Force member, regarding certification to the Task Force.

(6) Upon termination from an agency, a C.E.T. may not euthanize animals until recognized by an agency and reactivated his or her certification, as provided in section (7) of this rule.

(7) If a C.E.T. is employed again within the 18 months of last certification, the C.E.T. and/or employer may request reactivation of certification to the Task Force. If certification has expired past the 18 months maximum, the C.E.T. may euthanize animals under the direct supervision of an Oregon licensed veterinarian or currently certified euthanasia technician until such time as a Task Force member can administer the practical examination and authorize recertification.

(8) The practical exam shall include but not be limited to the certification standards for technicians provided for in OAR 875-020-0035.

(9) All certifications expire on October 31 of each year and are valid for no longer than 18 months from the last certification.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190 & 686.570
Hist.: VME 1-1986(Temp), f. & ef. 7-21-86; VME 1-1989, f. 1-12-89, cert. ef. 2-1-89; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-020-0040**
**Certification Standards for Agencies**

Task Force members shall inspect and certify agencies that serve as a site for animal euthanasia. The inspection shall cover, but not be limited to:

(1) Proper security and storage of lethal drugs:

(a) Sodium pentobarbital shall be kept in a securely locked cabinet whenever a CET is not in the same room with the drug:

(A) Each agency shall maintain a written current list of designated agent(s). Designated agents in an agency may not exceed the minimum necessary for the function of the agency;

(B) Access to the drug storage cabinet is limited to designated agent(s).

(b) All sodium pentobarbital shall be prepared according to the manufacturer's instructions;

(c) Needles: Three different needle sizes are required: 18, 20, and 22 gauge. An agency may have other needle sizes according to its needs. Needles shall be of medical quality, and shall not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. Needles shall not be used more than five times;

(d) Syringes: Three different syringe sizes are required: 3, 6, and 12 cc's. An agency may have other syringe sizes according to its needs. Syringes shall be of medical quality. They may be reused if they are properly cleaned;

(e) Needles and syringes shall be kept in the same secure or temporary storage as the sodium pentobarbital. The temporary storage cabinet may be used to store needles and syringes when the agency is not open;

(f) Needles and syringes shall be disposed of in a manner that makes their re-use impossible;

(g) Chemical restraints. Acepromazine, Rompun, Ketamine and other chemical restraints shall be used in accordance with their label instructions. All chemical restraints shall be stored under the same restrictions as sodium pentobarbital.

(2) Proper storage of sodium pentobarbital. When no CET is on duty, sodium pentobarbital shall be kept in a secure storage cabinet:

(a) The cabinet shall be of such material and construction that it will withstand strong attempts to break into it. A metal safe is preferred. A wooden cabinet is not permitted;

(b) The cabinet shall be securely attached to the building in which it is housed;

(c) If the drug is stored in a safe that can be opened by employees other than the key agent (such as a bookkeeper), it shall be kept in a separate, locked, metal container within the safe. Access to this container shall be available to the designated agent only;

(d) The temperature and environment in the storage cabinet shall be adequate to assure the proper keeping of the drug;

(e) Each container of the sodium pentobarbital shall be labeled with the drug name and strength (if the drug has been mixed as a liquid), the date the drug was received or prepared, a drug hazard warning label and the name and address of the agency owning the drug.

(3) When a CET is on duty and when animals are being euthanized throughout the work day, sodium pentobarbital may be kept in a temporary storage cabinet. It shall be constructed of any strong material and shall be securely locked. The key to this cabinet shall be available only to CET's.

(4) Proper record keeping:

(a) All records shall be filed in chronological order in a binder that is labeled with the name of the agency;

(b) All records shall be kept for a period of three years from the calendar date on the record.

(5) Proper sanitation: The area shall be clean and regularly disinfected.

(6) Other site conditions relevant to the proper euthanasia environment:

(a) Each shelter shall have a specific area designated for euthanasia. The area shall be:

(A) A separate room; or

(B) An area that is physically separated from the rest of the shelter by a wall, barrier or other divider; or

(C) An area that is not used for any other purpose while animals are being euthanized.

(b) The euthanasia area shall meet the following minimum standards:

(A) Lighting shall be bright and even;

(B) The air temperature shall be within a reasonable comfort range for both the personnel and the animals. A minimum 60 degrees F. and maximum 90 degrees F. is recommended;

(C) The area shall have adequate ventilation that prevents the accumulation of odors. At least one exhaust fan vented directly to the outside is recommended; and

(D) The floor of the area shall provide dry, non slip footing to prevent accidents.

(c) The euthanasia area shall have the following equipment:

(A) A table or other work area where animals can be handled while being euthanized. The surface shall have a non-slip texture that provides a comfortable footing for the animals;

(B) A cabinet, table or work bench where the drug, needle, syringes and clippers can be placed. This surface shall be separate from the area where the animals are being handled;

(C) A sink or faucet shall be available within 25 feet of the euthanasia area, for emergencies.

(d) The following materials shall be kept in the euthanasia area or shall be brought to the area each time an animal is euthanized:

(A) A first aid kit that meets minimum first aid supply standards as required under OAR 437-002-0161(2);

(B) One or more tourniquets;

(C) Standard electric clippers with No. 40 blade;

(D) Animal control stick for dogs and animal net for cats (if the agency handles cats);

(E) Stethoscope;

(F) Towels, sponges, disinfectant.

(e) All equipment shall be in good working order;

(f) All equipment shall be stored so that it does not create a safety hazard for the personnel;

(g) All drugs and other chemical agents used in the euthanasia area shall be clearly labeled.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190, 609.405 & 686.510
Hist.: VME 1-1986(Temp), f. & ef. 7-21-86; VME 1-1989, f. 1-12-89, cert. ef. 2-1-89; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-020-0055**
**Disciplinary Actions**

(1) C.E.T.s and certified agencies may be subject to disciplinary actions if they:

(a) Euthanize animals without proper supervision while on probationary status;

(b) Euthanize animals without an active certificate; or

(c) Violate any of these rules therein, or Board of Pharmacy ORS 475.190 Controlled Substances, or OAR 855-080-0100.

(2) Such disciplinary actions shall include, but are not limited to:

(a) Letters of reprimand;

(b) Suspension;

(c) Revocation; or

(d) Any of the above in combination.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 475.190, 609.405 & 686.510
Hist.: VME 1-1989, f. 1-12-89, cert. ef. 2-1-89; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-030-0010**
**Criteria for Becoming a Certified Veterinary Technician**

In order to become a certified veterinary technician, an individual must:

(1) Pass the examinations referred to in OAR 875-030-0020; and

(2)(a) Hold a certificate in veterinary technology (or a comparable certificate) from a college accredited by the American Veterinary Medical Association, or other program approved by the Board; or

(b) Have received at least four calendar years of on-the-job training in the following technical procedures as certified by the licensed veterinarian or veterinarians who presented the instruction:

(A) Medical Terminology;

(B) Basic Comparative Animal Anatomy and Physiology;

(C) Veterinary Office Procedures;

(D) Basic Pharmacology;

(E) Practical Animal Nutrition;

(F) Nursing Care and Handling of Animals;

(G) Animal Behavior;

(H) Applied Radiography;

(I) Applied Anesthesiology;

(J) Applied Clinical Laboratory Procedures;

(K) Principles and Practices of Medical and Surgical Assistance;

(L) Animal Diseases.

(3)(a) Have a minimum of a Bachelor's degree in a field approved by the Board, e.g., Veterinary Technology, Animal Technology, Animal

Husbandry, Zoology, etc., and a minimum of on-the-job training that meets the requirements of (2)(b); or

(b) Have at a minimum an Associate's degree in a field approved by the Board, e.g., Veterinary Technology, Animal Husbandry, Zoology, etc., and a minimum of on-the-job training and that meets the requirements of (2)(b); or

(c) Have acquired a minimum of 30 credit hours of training from a school or program approved by the Board in a field approved by the Board, e.g., Veterinary Technology, Animal Husbandry, Zoology, etc., and of on-the-job training that meets the requirements of (2)(b);

(d) Any other combination of Board-approved education and experience.

(4) The Board may waive the requirement of passing the VTNE (875-030-0020(1)) for applicants who:

(a) Graduated from an accredited veterinary technology college program prior to 1990;

(b) Hold an active veterinary technician license or animal health technician license in another state, province or territory of the United States; and

(c) Have a minimum of five calendar years of on-the-job training and experience as specified in subsection (b) of this section.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.350 - 686.370
Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 2-2000, f. & cert. ef. 6-21-00; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-030-0020**
**Examinations for Certified Veterinary Technicians**

(1) Applicants for certification as veterinary technicians shall pass the Veterinary Technician National Examination (VTNE) with a criterion score of 425 or greater. The Board shall offer the VTNE at least once every year at a place and time designated by the Board. The Board will accept VTNE scores transferred to Oregon through the Interstate Reporting Service if the examination was taken in another state.

(2) In addition to the VTNE, applicants must successfully complete an open book examination on the Oregon Veterinary Practice Act and Administrative Rules relating to veterinary medicine and veterinary technology, with a passing score of at least 95 percent.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.350 - 686.370
Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VME 2-1996, f. & cert. ef. 11-6-96; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-030-0025**
**Application for Certified Veterinary Technicians**

(1) Complete applications for the VTNE and certification must be submitted no later than 60 days prior to the examination.

(2) In order to be considered complete, applications for certification shall include:

(a) An application (form available from the Board office) signed by the applicant;

(b) The application fee;

(c)(A) Copy of diploma or verification of impending graduation from school; or

(B) A letter from the veterinarian or veterinarians certifying the on-the-job training required in OAR 875-030-0010(2)(b).

(d) The completed examination on Oregon veterinary medicine and technology laws; and

(e) The VTNE score report if the examination was taken in another state.

(3) The application fee for the VTNE and certification is $105. The application fee for certification if the VTNE was taken in another state is $25.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.225 & 686.350 - 686.370
Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 1-2006, f. & cert. ef. 2-8-06

**875-030-0040**
**Supervision of Certified Veterinary Technicians**

(1) All duties of certified veterinary technicians must be performed under the supervision of a licensed veterinarian. "Supervision" means that each act shall be performed by the certified veterinary technician only after receiving specific directions from a licensed veterinarian.

(2) Certified veterinary technicians may perform the following acts:

(a) Obtain and record information:

(A) Complete admission records, including recording the statements made by the client concerning the patient's problems and history. The veterinary technician may also record the technician's own observations of the patient. However, the veterinary technician cannot state or record his or her opinion concerning diagnosis of the patient;

(B) Maintain daily progress records, surgery logs, X-ray logs, Drug Enforcement Administration (DEA) logs, and all other routine records as directed by the supervising veterinarian.

(b) Prepare Patients, Instruments, Equipment and Medicant for Surgery:

(A) Prepare and sterilize surgical packs;

(B) Clip, surgically scrub, and disinfect the surgical site in preparation for surgery;

(C) Administer preanesthetic drugs as prescribed by the supervising veterinarian;

(D) Position the patient for anesthesia;

(E) Induce anesthesia as prescribed by the supervising veterinarian;

(F) Operate anesthetic machines, oxygen equipment, and monitoring equipment.

(c) Collect Specimens and Perform Laboratory Procedures:

(A) Collect urine, feces, sputum, and all other excretions and secretions for laboratory analysis;

(B) Collect blood samples for laboratory analysis;

(C) Collect skin scrapings;

(D) Perform routine laboratory procedures including urinalysis, fecal analyses, hematological and serological examinations.

(d) Apply Wound Dressing. Veterinary Technicians may apply and remove wound and surgical dressings, casts, and splints;

(e) Assist the Veterinarian in Diagnostic, Medical, and Surgical Proceedings:

(A) Monitor and record the patient's vital signs;

(B) Medically bathe the patient;

(C) Administer topical, oral hypodermic, and intravenous medication as directed by the supervising veterinarian;

(D) Operate X-ray equipment and other diagnostic imaging equipment;

(E) Take electrocardiograms, electroencephalograms, and tracings;

(F) Perform dental prophylaxis, including operating ultrasonic dental instruments pursuant to OAR 875-015-0050.

(G) Perform extractions under the immediate supervision of a licensed veterinarian.

(H) Administer rabies vaccine under the direct supervision of a licensed veterinarian.

(3) Veterinary Technicians may perform other acts not specifically enumerated herein under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Oregon. However, nothing in this section shall be construed to permit a veterinarian technician to do the following:

(a) Make any diagnosis;

(b) Prescribe any treatments;

(c) Perform surgery, except as an assistant to the veterinarian;

(d) Sign a rabies vaccination certificate.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.350 - 686.370
Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 1-2002(Temp), f. & cert. ef. 4-23-02 thru 10-20-02; Administrative correction 12-2-02; VMEB 1-2006, f. & cert. ef. 2-8-06

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## Water Resources Department
## Chapter 690

**Rule Caption:** Contests in the Adjudication of Water Rights — Amendments or Alteration of Claims.
**Adm. Order No.:** WRD 1-2006
**Filed with Sec. of State:** 1-30-2006
**Certified to be Effective:** 1-30-06
**Notice Publication Date:** 7-1-05
**Rules Amended:** 690-030-0085
**Subject:** The Water Resources Department amended rules relating to contests in the adjudication of water rights (OAR Chapter 690, Division 30). The rules under OAR Chapter 690, Division 30 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 on the same source, do not increase the rate or duty and are downstream of the original diversion point. Without this 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—(503) 986-0878

**690-030-0085**
**Amendment or Alteration of Claim**

(1) Except as provided in Sections (2) through (12) of this rule, the Water Resources Director (Director) may not permit any alteration or amendment of the original claim after the period for inspection has commenced; but any new matter that the claimant may wish to set forth must be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Director prior to the close of the period for public inspection.

(2) A claimant may add to the claim additional point(s) of diversion or change the location of the point(s) of diversion as described in the claim, as long as the following conditions are satisfied:

(a) The claimant must file the request for the proposed additional or relocated point(s) of diversion with the Director before diverting water from the additional or relocated point(s) of diversion. The request must include the number of the claim for which the requested additional or relocated point(s) of diversion is being made. The request must be set forth in a verified affidavit. For each point of diversion included in the requested amended claim, whether additional, relocated, or previously claimed, the request must also identify for each type of use claimed, the rate of diversion and the number of acres served within each quarter/quarter section.

(b) At the time the claimant files a request as specified in Section (2)(a), the claimant must provide a map prepared by a Certified Water Rights Examiner showing the original point(s) of diversion and all additional or relocated point(s) of diversion proposed in the request. If the request proposes more than one point of diversion serving the claim, the map must identify which lands or uses are served by each diversion point. The map must conform to the standards set forth in OAR 690-014-0170.

(c) The additional or relocated point(s) of diversion may not be upstream from the point(s) of diversion described in the claim.

(d) Use of water from the additional or relocated point(s) diversion must not increase the total claimed rate, duty, acreage benefited, or season of use.

(e) The amount of water to be diverted from all points of diversion included in the requested amended claim is limited to no more than the rate and duty of water that was previously claimed and is lawfully available for use by the claimant at the original point of diversion.

(f) The additional or relocated point(s) of diversion may not be located on a different source than the source identified in the original claim. For the purposes of 690-030-0085, a downstream source does not constitute a different source, even where the source has a different name at the downstream location, if the source of the original diversion is on the mainstem of or a tributary to the source for the additional or relocated downstream point(s) of diversion.

(3) If the claimant's request meets the requirements in Section (2) and the claimant has prepaid the estimated cost of the notice in accordance with Section (4), the Director must give notice of the proposed additional or relocated point(s) of diversion as follows:

(a) By regular mail to all those identified in the Department's files whose points of diversion lie between the point of diversion as claimed and the proposed additional or relocated points of diversion furthest downstream from the point of diversion as claimed, specifically:

(A) Claimants and contestants to any claim;

(B) Holders of existing water use permits;

(C) Holders of water rights under certificates; and

(D) Holders of water rights established by court decree; and

(b) By publication in a newspaper having general circulation in the area in which the claim is located, not less than once each week for three consecutive weeks; and

(c) By publication in the Director's weekly notice.

(d) Each notice must include the date on which claims of injury under Section (5) must be filed with the Director.

(4) If the claimant's request meets the requirements under Section 2, the Director must provide the claimant an estimate of the actual cost of providing the notice described in Section (3). The actual cost is the total cost of publishing the notice in the newspaper, plus the paper, postage and staff time involved to prepare and mail the notice. The claimant must prepay the estimated cost before the Director provides notice of the proposed point of diversion changes. If the actual cost exceeds the estimated cost, the claimant must pay the difference by a date certain provided by the Director, or the Director or the Director's delegated Adjudicator shall not consider the amendment in the Findings of Fact and Order of Determination.

(5) Any adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree claiming injury as a result of the proposed additional or relocated point(s) of diversion must file a written claim of injury with the Director on or before the date specified in the Notice. An existing contestant to the claimant's claim need not file a claim of injury, but must comply with the provisions of Section (8). For purposes of OAR 690-030-0085, an adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree filing a claim of injury pursuant to this Section is referred to as the "petitioner." All claims of injury must be received in the office of the Director by the date specified. For claims of injury under this Section, the postmarked date will not be deemed the filing date. An injury claim must:

(a) Provide a description of the claimed injury; and

(b) Identify the number of the adjudication claim, permit, or certificate, or identify the water right established by court decree that would allegedly be injured.

(6) If, based upon the information provided in Section (5), the Director determines that the petitioner has demonstrated a personal interest that could reasonably be affected by the outcome of the proceeding, the Director must name the petitioner to be a limited party to the contested case hearing for the sole purpose of contesting the proposed additional or relocated point(s) of diversion.

(7) If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, at the time of a ruling under Section (6) allowing participation, the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings, for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(8) If an existing contestant to the claimant's claim wishes to contest the proposed additional or relocated point(s) of diversion, the existing contestant must notify the Director in writing on or before the date specified in the Notice. The existing contestant's notification must be received in the office of the Director by the date specified. If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, upon timely receipt of the existing contestant's notification the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(9) The Director's ruling under Section (6) must be by written order and served promptly on the petitioner, all parties to the contested case, and the Office of Administrative Hearings or assigned administrative law judge. If participation in the contested case hearing is allowed, the agency must provide the participant with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

(10) A petitioner or party to the contested case adversely affected by the Director's ruling under Section (6) may file a notice of intent to oppose the ruling within 30 days of the date of the order. Such notice shall be filed with the Director and the Office of Administrative Hearings or assigned administrative law judge, and must be served upon the petitioner and all parties to the contested case hearing. Any opposition to the Director's ruling under Section (6) must be heard by the Office of Administrative Hearings as part of the contested case hearing, and the administrative law judge's findings must be incorporated into the administrative law judge's proposed order in the contested case. If the record has closed in the contested case hearing, the Director must request the administrative law judge to re-open the record for the purpose of hearing opposition to the Director's ruling.

(11) The administrative law judge's findings on the issue of the proposed additional or relocated point(s) of diversion must be incorporated into the administrative law judge's proposed order in the contested case.

(12) For purposes of the Klamath Basin Adjudication, the last day to request additional or relocated points of diversion pursuant to Sections (2) through (11) is December 1, 2006. For other general stream adjudications, any request by a claimant for additional or relocated point(s) of diversion pursuant to Sections (2) through (11) must be made on or before the date specified by the Director as adopted by rule.

(13) Sections (2) through (12) create the process to amend claims under ORS Chapter 539 following the commencement of the period for inspection and have no effect on the permissibility of a change in point of diversion under other provisions of law.

Stat. Auth.: ORS 536 & 543
Stats. Implemented:
Hist.: WRD 3, f. & ef. 2-18-77;WRD 1-2006, f. & cert. ef. 1-30-06

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| 309-120-0210 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0215 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0220 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0225 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0230 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0235 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0240 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0245 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0250 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0255 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0260 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0265 | 1-1-06 | Adopt | 2-1-06 |
| 309-120-0270 | 1-1-06 | Am. & Ren. | 2-1-06 |
| 309-120-0275 | 1-1-06 | Am. & Ren. | 2-1-06 |
| 309-120-0280 | 1-1-06 | Am. & Ren. | 2-1-06 |
| 309-120-0285 | 1-1-06 | Am. & Ren. | 2-1-06 |
| 309-120-0290 | 1-1-06 | Am. & Ren. | 2-1-06 |
| 309-120-0295 | 1-1-06 | Am. & Ren. | 2-1-06 |
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| 325-010-0030 | 2-6-06 | Adopt | 3-1-06 |
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| 325-010-0060 | 2-6-06 | Adopt | 3-1-06 |
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| 330-070-0022 | 1-1-06 | Amend | 2-1-06 |
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| 330-070-0026 | 1-1-06 | Amend | 2-1-06 |
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| 413-010-0082 | 2-6-06 | Adopt(T) | 3-1-06 |
| 413-010-0083 | 2-6-06 | Adopt(T) | 3-1-06 |
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| 413-010-0085 | 2-6-06 | Adopt(T) | 3-1-06 |
| 413-010-0086 | 2-6-06 | Adopt(T) | 3-1-06 |
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| 413-015-0212 | 12-1-05 | Adopt | 1-1-06 |
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| 413-015-0215 | 12-1-05 | Amend | 1-1-06 |
| 413-015-0220 | 12-1-05 | Amend | 1-1-06 |
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| 413-015-0302 | 1-1-06 | Adopt(T) | 2-1-06 |
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| 413-050-0110 | 1-1-06 | Repeal | 2-1-06 |
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| 413-080-0120 | 1-1-06 | Repeal | 2-1-06 |
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| 635-006-0215 | 1-1-06 | Amend | 1-1-06 |
| 635-006-0232 | 1-9-06 | Amend | 2-1-06 |
| 635-006-0810 | 1-1-06 | Amend | 1-1-06 |
| 635-006-0850 | 1-1-06 | Amend | 1-1-06 |
| 635-006-0850 | 1-1-06 | Amend | 1-1-06 |
| 635-006-0910 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1010 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1010 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1015 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1015 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1025 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1025 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1035 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1035 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1065 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1065 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1075 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1075 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1085 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1085 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1095 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1095 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1110 | 1-1-06 | Amend | 1-1-06 |
| 635-006-1110 | 1-1-06 | Amend | 1-1-06 |
| 635-011-0072 | 1-1-06 | Amend | 1-1-06 |
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| 635-013-0003 | 1-1-06 | Amend | 1-1-06 |
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| 635-014-0090 | 11-23-05 | Amend(T) | 1-1-06 |
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| 635-016-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-016-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-017-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-017-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-017-0095 | 1-1-06 | Amend | 1-1-06 |
| 635-017-0095 | 1-1-06 | Amend(T) | 2-1-06 |
| 635-017-0095 | 2-15-06 | Amend | 3-1-06 |
| 635-018-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-018-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-019-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-019-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-021-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-021-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-023-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-023-0085 | 2-15-06 | Adopt | 3-1-06 |
| 635-023-0090 | 1-1-06 | Amend | 1-1-06 |
| 635-023-0095 | 1-1-06 | Amend | 1-1-06 |
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| 635-023-0095 | 2-15-06 | Amend | 3-1-06 |
| 635-023-0125 | 1-1-06 | Amend | 1-1-06 |
| 635-023-0125 | 2-15-06 | Amend | 3-1-06 |
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| 635-039-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-039-0080 | 1-1-06 | Amend | 1-1-06 |
| 635-039-0090 | 11-29-05 | Amend(T) | 1-1-06 |
| 635-039-0090 | 12-30-05 | Amend(T) | 1-1-06 |
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| 635-042-0022 | 2-15-06 | Amend | 3-1-06 |
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| 635-042-0110 | 2-15-06 | Amend | 3-1-06 |
| 635-042-0130 | 1-1-06 | Amend(T) | 2-1-06 |
| 635-042-0133 | 1-1-06 | Amend(T) | 2-1-06 |
| 635-042-0133 | 2-15-06 | Amend | 3-1-06 |
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| 635-042-0160 | 2-15-06 | Amend | 3-1-06 |
| 635-042-0180 | 2-15-06 | Amend | 3-1-06 |
| 635-043-0085 | 12-16-05 | Amend | 2-1-06 |
| 635-045-0000 | 1-1-06 | Amend | 1-1-06 |
| 635-045-0002 | 12-16-05 | Amend | 2-1-06 |
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| 635-060-0055 | 4-1-06 | Amend | 1-1-06 |
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| 635-065-0090 | 12-16-05 | Amend | 2-1-06 |
| 635-065-0401 | 1-1-06 | Amend | 1-1-06 |
| 635-065-0625 | 1-1-06 | Amend | 1-1-06 |
| 635-065-0635 | 1-1-06 | Amend | 1-1-06 |
| 635-065-0720 | 1-1-06 | Amend | 1-1-06 |
| 635-065-0735 | 12-16-05 | Amend | 2-1-06 |
| 635-065-0740 | 1-1-06 | Amend | 1-1-06 |
| 635-065-0760 | 6-1-06 | Amend | 1-1-06 |
| 635-065-0765 | 1-1-06 | Amend | 1-1-06 |
| 635-066-0000 | 1-1-06 | Amend | 1-1-06 |
| 635-067-0000 | 1-1-06 | Amend | 1-1-06 |
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| 635-067-0015 | 1-1-06 | Amend | 1-1-06 |
| 635-068-0000 | 3-1-06 | Amend | 1-1-06 |
| 635-069-0000 | 2-1-06 | Amend | 1-1-06 |
| 635-070-0000 | 4-1-06 | Amend | 1-1-06 |
| 635-071-0000 | 4-1-06 | Amend | 1-1-06 |
| 635-072-0000 | 1-1-06 | Amend | 1-1-06 |
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| 635-412-0015 | 1-9-06 | Adopt | 2-1-06 |
| 635-412-0020 | 1-9-06 | Amend | 2-1-06 |
| 635-412-0025 | 1-9-06 | Amend | 2-1-06 |
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| 635-412-0040 | 1-9-06 | Adopt | 2-1-06 |
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| 690-315-0030 | 11-22-05 | Amend | 1-1-06 |
| 690-315-0040 | 11-22-05 | Amend | 1-1-06 |
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| 690-315-0070 | 11-22-05 | Amend | 1-1-06 |
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| 690-315-0090 | 11-22-05 | Amend | 1-1-06 |
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| 731-035-0040 | 11-21-05 | Adopt(T) | 1-1-06 |
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| 731-035-0040(T) | 1-24-06 | Repeal | 3-1-06 |
| 731-035-0050 | 11-21-05 | Adopt(T) | 1-1-06 |
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| 731-035-0050(T) | 1-24-06 | Repeal | 3-1-06 |
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| 731-035-0070(T) | 1-24-06 | Repeal | 3-1-06 |
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| 860-011-0036 | 11-28-05 | Adopt | 1-1-06 |
| 860-011-0080 | 11-30-05 | Amend | 1-1-06 |
| 860-011-0080 | 12-21-05 | Amend | 2-1-06 |
| 860-012-0040 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0008 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0010 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0033 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0045 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0205 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0326 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0335 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0405 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0410 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0414 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0415 | 11-30-05 | Amend | 1-1-06 |
| 860-021-0420 | 11-30-05 | Amend | 1-1-06 |
| 860-022-0001 | 11-30-05 | Amend | 1-1-06 |
| 860-022-0017 | 11-30-05 | Amend | 1-1-06 |
| 860-022-0040 | 11-30-05 | Amend | 1-1-06 |
| 860-022-0046 | 11-30-05 | Amend | 1-1-06 |
| 860-022-0075 | 11-30-05 | Adopt | 1-1-06 |
| 860-023-0000 | 12-23-05 | Amend | 2-1-06 |
| 860-023-0001 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0001 | 12-23-05 | Amend | 2-1-06 |
| 860-023-0005 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0005 | 12-23-05 | Amend | 2-1-06 |
| 860-023-0020 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0054 | 12-23-05 | Adopt | 2-1-06 |
| 860-023-0055 | 12-27-05 | Amend | 2-1-06 |
| 860-023-0080 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0090 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0100 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0110 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0120 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0130 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0140 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0150 | 11-30-05 | Amend | 1-1-06 |
| 860-023-0160 | 11-30-05 | Amend | 1-1-06 |
| 860-025-0001 | 11-30-05 | Amend | 1-1-06 |
| 860-026-0005 | 11-30-05 | Amend | 1-1-06 |

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| 860-027-0045 | 11-30-05 | Amend | 1-1-06 |
| 860-027-0120 | 11-30-05 | Amend | 1-1-06 |
| 860-027-0300 | 11-30-05 | Amend | 1-1-06 |
| 860-030-0005 | 11-30-05 | Amend | 1-1-06 |
| 860-030-0010 | 11-30-05 | Amend | 1-1-06 |
| 860-030-0015 | 11-30-05 | Amend | 1-1-06 |
| 860-030-0018 | 11-30-05 | Amend | 1-1-06 |
| 860-032-0012 | 12-27-05 | Amend | 2-1-06 |
| 860-034-0390 | 12-27-05 | Amend | 2-1-06 |
| 860-038-0005 | 11-30-05 | Amend | 1-1-06 |
| 860-038-0300 | 11-30-05 | Amend | 1-1-06 |
| 860-038-0400 | 11-30-05 | Amend | 1-1-06 |
| 860-038-0410 | 11-30-05 | Amend | 1-1-06 |
| 863-015-0186 | 1-1-06 | Adopt(T) | 2-1-06 |
| 863-015-0225 | 1-1-06 | Adopt(T) | 2-1-06 |
| 863-015-0230 | 1-1-06 | Adopt(T) | 2-1-06 |
| 875-001-0000 | 2-8-06 | Amend | 3-1-06 |
| 875-001-0005 | 2-8-06 | Amend | 3-1-06 |
| 875-001-0010 | 2-8-06 | Repeal | 3-1-06 |
| 875-001-0015 | 2-8-06 | Adopt | 3-1-06 |
| 875-001-0020 | 2-8-06 | Repeal | 3-1-06 |
| 875-001-0030 | 2-8-06 | Repeal | 3-1-06 |
| 875-005-0000 | 2-8-06 | Adopt | 3-1-06 |
| 875-005-0005 | 2-8-06 | Adopt | 3-1-06 |
| 875-005-0010 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0000 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0006 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0010 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0016 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0021 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0026 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0030 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0045 | 2-8-06 | Amend | 3-1-06 |
| 875-010-0050 | 2-8-06 | Amend | 3-1-06 |
| 875-010-0055 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0060 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0065 | 2-8-06 | Amend | 3-1-06 |
| 875-010-0070 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0075 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0080 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0085 | 2-8-06 | Repeal | 3-1-06 |
| 875-010-0090 | 2-8-06 | Adopt | 3-1-06 |
| 875-010-0095 | 2-8-06 | Adopt | 3-1-06 |
| 875-011-0005 | 2-8-06 | Adopt | 3-1-06 |
| 875-011-0010 | 2-8-06 | Adopt | 3-1-06 |
| 875-015-0000 | 2-8-06 | Repeal | 3-1-06 |
| 875-015-0020 | 2-8-06 | Amend | 3-1-06 |
| 875-015-0030 | 2-8-06 | Amend | 3-1-06 |
| 875-015-0050 | 2-8-06 | Amend | 3-1-06 |
| 875-020-0000 | 2-8-06 | Repeal | 3-1-06 |
| 875-020-0030 | 2-8-06 | Amend | 3-1-06 |
| 875-020-0040 | 2-8-06 | Amend | 3-1-06 |
| 875-020-0055 | 2-8-06 | Amend | 3-1-06 |
| 875-030-0010 | 2-8-06 | Amend | 3-1-06 |
| 875-030-0020 | 2-8-06 | Amend | 3-1-06 |
| 875-030-0025 | 2-8-06 | Amend | 3-1-06 |
| 875-030-0040 | 2-8-06 | Amend | 3-1-06 |
| 877-001-0000 | 12-22-05 | Amend | 2-1-06 |
| 877-010-0025 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0000 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0009 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0010 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0012 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0013 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0015 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0016 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0020 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0030 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0031 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0046 | 12-22-05 | Amend | 2-1-06 |
| 877-020-0050 | 12-22-05 | Repeal | 2-1-06 |
| 877-020-0055 | 12-22-05 | Adopt | 2-1-06 |
| 877-025-0000 | 12-22-05 | Amend | 2-1-06 |
| 877-025-0005 | 12-22-05 | Amend | 2-1-06 |
| 877-030-0040 | 12-22-05 | Amend | 2-1-06 |
| 877-030-0050 | 12-22-05 | Amend | 2-1-06 |
| 877-030-0070 | 12-22-05 | Amend | 2-1-06 |
| 877-030-0090 | 12-22-05 | Amend | 2-1-06 |
| 877-030-0100 | 12-22-05 | Adopt | 2-1-06 |
| 877-035-0012 | 12-22-05 | Amend | 2-1-06 |
| 877-035-0013 | 12-22-05 | Adopt | 2-1-06 |
| 877-035-0015 | 12-22-05 | Amend | 2-1-06 |
| 877-040-0015 | 12-22-05 | Amend | 2-1-06 |
| 877-040-0025 | 12-22-05 | Repeal | 2-1-06 |
| 877-040-0027 | 12-22-05 | Repeal | 2-1-06 |
| 877-040-0050 | 12-22-05 | Amend | 2-1-06 |
| 877-040-0055 | 12-22-05 | Amend | 2-1-06 |
| 877-040-0060 | 12-22-05 | Repeal | 2-1-06 |
| 877-040-0065 | 12-22-05 | Repeal | 2-1-06 |
| 877-040-0070 | 12-22-05 | Repeal | 2-1-06 |
| 918-001-0010 | 2-13-06 | Amend | 3-1-06 |
| 918-008-0075 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0080 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0085 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0090 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0095 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0110 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0115 | 1-1-06 | Adopt | 2-1-06 |
| 918-008-0120 | 1-1-06 | Adopt | 2-1-06 |
| 918-020-0090 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0000 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0010 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0020 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0030 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0100 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0110 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0120 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0130 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0140 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0150 | 1-1-06 | Amend | 2-1-06 |
| 918-050-0160 | 1-1-06 | Amend | 2-1-06 |

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| 918-050-0800 | 1-1-06 | Amend | 2-1-06 |
| 918-090-0000 | 1-1-06 | Amend | 1-1-06 |
| 918-090-0010 | 1-1-06 | Amend | 1-1-06 |
| 918-090-0200 | 1-1-06 | Amend | 1-1-06 |
| 918-090-0210 | 1-1-06 | Amend | 1-1-06 |
| 918-100-0000 | 1-1-06 | Amend | 2-1-06 |
| 918-100-0030 | 1-1-06 | Amend | 2-1-06 |
| 918-225-0440 | 1-1-06 | Repeal | 2-1-06 |
| 918-225-0610 | 1-1-06 | Amend | 2-1-06 |
| 918-251-0030 | 1-1-06 | Repeal | 2-1-06 |
| 918-251-0040 | 1-1-06 | Repeal | 2-1-06 |
| 918-261-0025 | 1-1-06 | Adopt | 2-1-06 |
| 918-305-0030 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0110 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0120 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0130 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0150 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0160 | 1-1-06 | Amend | 2-1-06 |
| 918-305-0180 | 1-1-06 | Amend | 2-1-06 |
| 918-400-0230 | 1-1-06 | Repeal | 2-1-06 |
| 918-460-0015 | 2-1-06 | Amend | 3-1-06 |
| 918-525-0310 | 1-1-06 | Amend | 2-1-06 |
| 918-525-0410 | 1-1-06 | Amend | 2-1-06 |
| 918-525-0420 | 1-1-06 | Amend | 2-1-06 |
| 918-525-0520 | 1-1-06 | Amend | 2-1-06 |
| 918-690-0340 | 1-1-06 | Repeal | 2-1-06 |
| 918-690-0350 | 1-1-06 | Repeal | 2-1-06 |