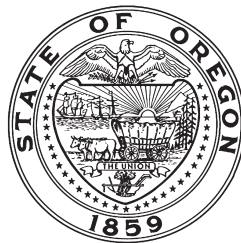


# OREGON BULLETIN

Supplements the 2006 *Oregon Administrative Rules Compilation*

**Volume 45, No. 5**  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## EXECUTIVE ORDER NO. 06-05

### STATE INTERAGENCY COUNCIL TO END HOMELESSNESS AND INTERAGENCY COUNCIL ON HUNGER AND HOMELESSNESS

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

Approximately 3.5 million Americans, 1.35 million of them children, are likely to experience homelessness in a given year (National Law Center on Homelessness and Poverty, 2004). Many are homeless through no fault of their own, but may, for example, have lives disrupted by mental illness, domestic violence or significant economic hardship. Many remain homeless year after year.

People experiencing chronic homelessness use a disproportionate share of state services.

Innovative approaches across the nation and within Oregon show promise for reducing chronic homelessness and the resulting impact on state services.

Making system changes and reducing homelessness requires a high degree of coordination and cooperation among federal, state and local governments, as well as private sector service providers, including faith-based organizations. Creation of a statewide coordinating council is an important and effective tool in supporting the federal initiative to end chronic homelessness.

Coordinating hunger and homelessness efforts in Oregon will aid in effectively achieving optimal program delivery.

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

1. The Ending Homelessness Advisory Council (“EHAC”) is established.

2. EHAC shall:

- a. Serve as the designated state entity planning for ending homelessness.
- b. Serve within state government and in the state at large as an advocate for homeless persons.
- c. Develop a 10-year plan to end homelessness.
- d. Provide leadership for and collaborate with those developing and implementing local plans to end homelessness in Oregon.
- e. Articulate implementation strategies focused on achievable outcomes.
- f. Recommend and promote effective interagency collaboration and system integration.
- g. Recommend needed policy, regulatory and resource distribution changes to the Governor and the Legislative Assembly.
- h. Make recommendations to the Governor and Legislative Assembly in relation to providing oversight that will ensure accountability, results and sustained success.
- i. Develop specific proposals and recommendations for action for presentation to the Governor and the Legislative Assembly.
- j. Prepare an annual report to the Governor and Legislative Assembly by December 1 of each year summarizing EHAC activities, summarizing progress on preventing and ending homelessness in

Oregon, and reporting on outcomes and measures relating to homelessness.

3. EHAC membership shall consist of not more than 24 members comprised as follows:

- a. The President of the Senate is invited to appoint one member from among members of the Senate.
- b. The Speaker of the House of Representatives is invited to appoint one member from among members of the House of Representatives.
- c. The Director of the Housing and Community Services Department, in collaboration with the Director of Human Services, shall invite the following members to participate in the council:
  - i. One member representing the Department of Human Services, Office of Mental Health and Addiction Services.
  - ii. One member representing the Department of Human Services with expertise on issues related to health care delivery systems.
  - iii. One member representing the Department of Education, with expertise on education programs serving the homeless.
  - d. The Director of Housing and Community Services shall invite the following additional members to participate in the council:
    - i. One member representing a statewide food bank.
    - ii. One member representing faith-based organizations.
    - iii. One member representing the Community Action Directors of Oregon.
    - iv. One member representing local Oregon (homelessness) continuums of care.
    - v. One member representing city government.
    - vi. One member representing county government.
    - vii. One member representing an organization that provides assistance to nonprofit housing development.
    - viii. One member representing a public housing authority.
    - ix. One member representing direct service providers.
    - x. One member representing the Housing and Community Services Department.
    - xi. One member representing the Department of Corrections.
    - xii. One member representing the Department of Veterans’ Affairs.
    - xiii. One member representing the Oregon Youth Authority.
    - xiv. One member representing the Department of Community Colleges and Workforce Development.
    - xv. One member representing the Oregon State Commission on Children and Families.
    - xvi. One member representing the Employment Department.
    - xvii. One member representing the Oregon Department of Transportation.
    - xviii. Not more than two members in addition to the members appointed under this paragraph.

## EXECUTIVE ORDERS

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4. The Director of the Department of Housing and Community Services shall chair EHAC or shall appoint a member of EHAC to serve as the chair.

5. EHAC shall strive to operate by consensus; however, EHAC may approve measures and make recommendations based on an affirmative vote of a majority of the quorum present. Twelve members of EHAC shall constitute a quorum for the transaction of business.

6. The term of a non-legislative member of EHAC is three years. EHAC members serve at the will of the appointing authority. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

7. EHAC shall be staffed by the Housing and Community Services Department. If EHAC requires the assistance of any other executive branch agency of the State, then such agency shall provide such assistance to EHAC upon request.

8. EHAC members are volunteers and shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495.

9. The Interagency Coordinating Council on Hunger (ICCH) established under ORS 458.525 is directed to address issues of homelessness as they relate to hunger. The administrative heads of the Employment Department, the Department of Transportation, the

Department of Veterans' Affairs, the Oregon Youth Authority, and the Department of Community Colleges and Workforce Development are directed to work with the ICCH in addressing issues of homelessness related to hunger. The administrative head of these agencies may designate an agency representative who has a policy-making role affecting issues of hunger or homelessness to meet this requirement.

10. ICCH and EHAC shall both work with the Commission on Children and Families Runaway Youth Task Force to coordinate programs relating to homeless youth. In youth-related programs, the Oregon State Commission on Children and Families shall serve as the lead coordinating agency.

11. This Order shall remain in effect until rescinded.

Done at Portland, Oregon, this 4th day of April, 2006.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### NOTICE FOR COMMENT ON PROPOSED CLEANUP APPROACH PORT OF PORTLAND — FORMER WRECKING YARD SITE

**COMMENTS DUE:** May 30, 2006

**PROJECT LOCATION:** Portland International Center, Portland, OR

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed cleanup approach for contaminated soils at the former wrecking yard site. Previous cleanup at the site included removal of contaminated soil. The proposed final approach includes capping remaining contamination and institutional controls to prevent disturbance of the caps.

**HIGHLIGHTS:** Prior to the Port of Portland's purchase of the property in the early 1970s, the site was occupied by several automobile wrecking yards. Environmental investigations conducted between 1996 and 2002 revealed the presence of contamination likely resulting from these activities. Petroleum hydrocarbons, metals, polynuclear aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) were detected in site soils. PAHs were detected in shallow groundwater.

In 1995, about 175 tons of petroleum-contaminated soil and automobile related debris were excavated from the eastern portion of the site and transported to Hillsboro Landfill for disposal. In 2001, about 40 cubic yards of lead-contaminated soil were excavated from two areas in the western portion of the site and transported to Hillsboro Landfill for disposal.

Characterization of remaining contaminated soil at the site was completed in 2002. DEQ proposes the following measures to address remaining contamination at the site:

- Capping contaminated soil in the western portion of the site with an asphalt and concrete surface/parking lot
- Capping contaminated soil in the eastern portion of the site with clean imported fill
- Restrictions notifying property owners/operators of the presence of the cap and associated protocols for proper handling and disposal should the capped material be excavated for any reason
- Monitoring to ensure cap is properly maintained.

**HOW TO COMMENT:** The DEQ staff report on the proposed cleanup approach will be available for public review at the DEQ Northwest Region Office in Portland beginning May 1, 2006. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or [sutter.jennifer@deq.state.or.us](mailto:sutter.jennifer@deq.state.or.us) by May 30, 2006.

**THE NEXT STEP:** DEQ will consider all public comments and the Regional Administrator will make and publish the final decision after consideration of these comments.

### A CHANCE TO COMMENT ON PROPOSED VOLUNTARY AGREEMENT FOR REMEDIAL INVESTIGATION, SOURCE CONTROL MEASURES AND FEASIBILITY STUDY: FORMER PORTLAND SHIPYARD AND OTHER UPLANDS OWNED BY THE PORT OF PORTLAND ON THE SWAN ISLAND PENINSULA IN PORTLAND, OREGON

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** Swan Island Peninsula, North Portland, Oregon (Cascade General's Portland Shipyard (former Portland Shipyard) and other uplands owned by the Port of Portland on the Swan Island Peninsula (collectively the Swan Island Upland Facility) as more fully described in the proposed Agreement.

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Voluntary Agreement with the Port of Portland (Port) for Remedial Investigation, Source Control Measures and Feasibility Study at the above-described project location.

**HIGHLIGHTS:** Swan Island was purchased by the Port in 1921. The Swan Island Upland Facility has been used since then by the Port or others in a variety of industrial operations including, among other things, ship repair and manufacture; steel fabrication and storage; ship dismantling and scrapping; manufacture of wood products, oil tanks and other equipment; printing; storage of chemicals, paint, and roofing supplies; and operation of a service station. During various times of these historic operations, hazardous substances were released at and from the Facility into soil, groundwater and sediments at or adjacent to the Facility.

As proposed, the Agreement requires the Port to complete a remedial investigation and risk assessment; identify and implement source control measures needed to address any unpermitted discharges to the Swan Island Lagoon and Willamette River; complete a feasibility study; and conduct any other (e.g. nonsource control) removal measures DEQ approves for implementation under the Agreement. The work required is more fully described in the Scope of Work prepared in conjunction with the Agreement.

The proposed Agreement will provide the Port of Portland with a release from liability for claims by DEQ under ORS 465.200 et seq. and 42 USC § 9607 for the matters addressed in the Agreement, subject to full and satisfactory performance by the Port of all activities and measures required under the Agreement. DEQ retains all existing rights it may have as to any other parties potentially liable for the releases of hazardous substances at issue, as well as existing rights with respect to all matters outside the scope of the proposed Agreement.

**HOW TO COMMENT:** Written comments concerning the proposed Agreement should be sent to Jennifer Sutter at DEQ Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201. Comments must be received by DEQ by 5:00 pm May 31, 2006. Questions may be directed to Ms. Sutter at that address or by calling (503) 229-6148. The proposed Agreement and DEQ file on the Swan Island Upland Facility may be reviewed at DEQ's Northwest Region office in Portland by contacting Ms. Sutter. Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed Agreement.

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

### OPPORTUNITY FOR PUBLIC COMMENT PROPOSED PARTIAL NO FURTHER ACTION DETERMINATION, FORMER WEYERHAEUSER CONTAINERBOARD MILL, NORTH BEND, OREGON

**COMMENTS DUE:** June 1, 2006

**PROJECT LOCATION:** Horsfall Beach Rd, North Bend, Oregon, 97459

**PROPOSAL:** Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for contaminated soil and groundwater at the former Weyerhaeuser Containerboard Mill in North Bend.

**HIGHLIGHTS:** The mill site was originally developed as a sulfite process pulp and paper mill by the Menasha Wooden Ware Corporation (Menasha) in 1961, and Weyerhaeuser acquired the mill from Menasha in 1981. In 1995, Weyerhaeuser ceased pulp mill operations, and the facility was operated as a 100 percent recycle paper mill until it was closed in 2003. Since 2003, Weyerhaeuser has been

## OTHER NOTICES

decommissioning the facility and preparing the property for future alternate uses and possible sale.

As a part of their facility closure and decommissioning efforts, Weyerhaeuser evaluated environmental conditions within the main mill complex, the southern portion of Jordan Point, and the "Ingram Yard" property (located west of the main mill complex). During the summer of 2005, Weyerhaeuser sampled known and/or potentially contaminated areas of the site. Following the investigation, Weyerhaeuser excavated and removed 700 tons of contaminated soil from the site and disposed at an approved off-site landfill.

The site was screened for human health and ecological risk from exposure to residual levels of contamination that remain at the site. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health or ecological risks associated with the historical releases of hazardous substances in soil and groundwater at the site. Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts from the facility's operations.

DEQ's recommendation for a partial no further action determination does not include the on-site industrial landfill or the former wastewater treatment system (consisting of two settling basins located on the main mill site and the large former lagoon located on the North Spit). Additional closure work will be needed at these locations before the site's DEQ Water Quality and Solid Waste permits can be terminated.

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, Suite 210, Eugene, Phone: (541)-686-7838. The TTY number for the hearing impaired is 541-687-5603.

Many of the project documents also can be reviewed by appointment at DEQ's Coos Bay office, 381 N. Second Street, Coos Bay, Phone: (541) 269-2721.

Key project documents also are available at DEQ's web page for this project: <http://www.deq.state.or.us/wr/LocalProjects/WeycoNB.htm>

Please direct any questions or comments about this pending decision to: Bill Mason, DEQ project manager; 1102 Lincoln St Ste 210, Eugene, OR 97401-3299; (541) 687-7427 (direct) or (800) 847-8467 (toll free in Oregon); email: [mason.bill@deq.state.or.us](mailto:mason.bill@deq.state.or.us)

A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

**THE NEXT STEP:** DEQ will consider all public comments before taking final action on this matter.

### OPPORTUNITY FOR PUBLIC COMMENT PROPOSAL FOR NO FURTHER ACTION FORMER WESTFIR (AKA HINES) MILL SITE, WESTFIR

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** former Westfir (aka Hines) Mill site, Westfir, Oregon 97321, Tax Lot 132, Westfir

**PROPOSAL:** Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-0465, the Department of Environmental Quality (DEQ) requests public comment on its proposal that no further investigation or cleanup action is required for a release of hazardous substances on the former Westfir Mill site property.

**HIGHLIGHTS:** The Oregon Department of Environmental Quality (DEQ) has been overseeing the environmental investigation of the former Westfir (aka Hines) mill site in the town of Westfir. The purchase of the property by the current owners (Mill Site Developers LLC) included a 1999 Prospective Purchaser Agreement with DEQ for environmental investigation and cleanup, if needed, consistent with DEQ requirements.

Although the mill site has been vacant since the late 1980s, it originally consisted of a plywood mill, saw mill, electric power gener-

ating plant, and support facilities. The majority of original site structures were either destroyed during periodic fires that occurred at the site or were demolished after site operations ceased.

Potential sources of surface and subsurface contamination included four glue and/or wastewater disposal ponds, at least three drum disposal areas, two wastewater leach fields, aboveground storage tanks, vehicle fueling areas, and transformers.

In 1986, DEQ requested that the U.S. Environmental Protection Agency take corrective action when past site owners failed to correct waste storage violations and leaking transformers. EPA proceeded with site assessment and environmental cleanup activities in 1987 and 1988, including removal of leaking PCB-containing transformers, asbestos-containing materials, and several leaking hazardous waste drums.

Over the past several years, the current property owners have undertaken additional site investigation including sample collection and subsequent analysis of on-site soils and groundwater. As a result of this investigation, DEQ has determined that none of the on-site contaminants are present at levels which represent a significant threat to human health or the environment.

Therefore, DEQ is proposing that no further investigation or cleanup be required for environmental impacts at the former Westfir Mill site.

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln, Suite 210, Eugene 97401. To schedule an appointment in Eugene, call (541)-686-7838.

Please direct any questions or comments about this pending decision to:

Greg Aitken, DEQ project manager  
address: 1102 Lincoln Street, #210, Eugene, OR 97401  
phone: (541) 687-7361 (TTY 541-686-5603)  
email: [aitken.greg@deq.state.or.us](mailto:aitken.greg@deq.state.or.us)

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

**THE NEXT STEP:** DEQ will consider all comments received by May 31, 2006, before taking final action on this matter, including issuance of a No Further Action determination to Mill Site Developers LLC.

### PROPOSED NO FURTHER ACTION SAUTER TRUCK SERVICE (FORMER) THE DALLES, OREGON

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** 1002 & 1010 West Hostetler Street, The Dalles, 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 Sauter Truck Service site located at 1002 & 1010 West Hostetler Street in The Dalles, Oregon.

The proposed No Further Action determination is documented in the No Further Action Decision Document, dated March 31, 2006. The site was a former trucking, storage, and multi-tenant rental facility. Approximately 85 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 May 31,

## OTHER NOTICES

2006 and sent to Katie Robertson, Project Manager, at the address listed above.

### RECOMMENDED NO FURTHER ACTION DETERMINATION, CORNUCOPIA MINE UPPER TAILINGS PROJECT, HALFWAY, OREGON

**COMMENT PERIOD:** May 30, 2006

**PROJECT LOCATION:** Halfway, 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" (NFA) cleanup decision for the Upper Tailings Impoundment of the Cornucopia Mine, located approximately 12 miles north of Halfway, Oregon.

**HIGHLIGHTS:** The DEQ is proposing to issue a NFA determination based on approval of the environmental investigation and remedial action performed by the United States Forest Service (USFS) at the Upper Tailings Impoundment of the Cornucopia Mine located in Baker County on tax lot 700 and Wallowa-Whitman National Forest lands (lot 1, section 27, T62, R45E). A similar project, the Lower Tailings Impoundment received a NFA determination in late 2004.

The remedial action of the historic tailings impoundment included stabilization, prevention of erosion of the dam, and limiting access to the tailings, primarily contaminated with high levels of metals. The remedial action also required a deed restriction to be placed on private and USFS lands to prevent and restrict ground disturbance, residential development and agricultural activity on the landfill area.

DEQ has made a preliminary determination that cleanup measures and investigations undertaken by USFS 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., May 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 May 30, 2006 deadline. The Regional Administrator will make a final decision after consideration of these public comments.

### PROPOSED NO FURTHER ACTION AT THE FORMER ROSEBURG FOREST PRODUCTS GREEN MILL SITE IN GREEN

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** Former Roseburg Forest Products Green Mill Site, 3442 Carnes Road, Roseburg

**PROPOSAL:** DEQ is recommending no further cleanup action at the Former Roseburg Forest Products Green Mill Site. This notification is required by ORS 465.320.

**HIGHLIGHTS:** The site is a former softwood plywood mill. During July 2005, approximately 111 tons of petroleum impacted soil

was removed and disposed of offsite. During the site investigation, arsenic was detected above industrial standards near the former equipment pits. Additional sampling was conducted, and the remaining arsenic concentrations do not pose a significant risk. There is no unacceptable human health residual risk for this site, as a removal action was undertaken and petroleum contaminated soils have been removed and disposed of. Remaining arsenic soil levels do not pose a significant risk. Remaining concentrations of total petroleum hydrocarbon (TPH) -diesel and TPH-oil in soil are below residential risk-based concentrations for ingestion, dermal contact, and inhalation human exposure. DEQ recommends no further action at the site. A copy of the staff report will be available for review at DEQ's Eugene office during the public comment period.

**HOW TO COMMENT:** The staff report and project files Project documents are available for review at DEQ's Eugene Office. The Eugene office is located at 1102 Lincoln Street, Suite 210 in Eugene, Oregon. Comments should be directed to Mindi English at 1102 Lincoln Street, Suite 210, Eugene, Oregon 97401 or (800)844-8467 extension 7763 by May 31, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more persons or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all public comments and the director will before making a final decision in this matter, expected in June 2006, and publish the final decision after consideration of public comments.

### PROPOSED REMEDIAL ACTION AT THE ACF INDUSTRIES SITE

**COMMENTS DUE:** May 30, 2006

**PROJECT LOCATION:** 3585 SW 198th Avenue, Aloha, Oregon  
**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action proposed for contaminated soil associated with the ACF Industries, Inc. (ACF) site located in Portland, Oregon. The proposed action consists of: removal of on-site hot spot soil and off-site soil exceeding risk-based concentrations (RBCs), capping of on-site soil exceeding RBCs, and institutional controls requiring inspection and maintenance of the cap. Groundwater beneath the site has not been significantly impacted.

**HIGHLIGHTS:** The ACF site is currently vacant. Located in an industrialized area of north Portland, past site activities included lumber mill operation, railroad tank car cleaning, and transformer storage. The Willamette River and the Portland Harbor Superfund site are located approximately 800 feet to the east. Tank car cleaning in the 1960s and 1970s is the primary source of contaminants, including arsenic and petroleum hydrocarbons, detected in site soil. Some soil contamination has migrated onto neighboring railroad property to the east via stormwater runoff. An extensive soil removal action was completed in 1991 during which 6,800 cubic yards of impacted site soil were removed. Recent investigation completed under DEQ identified elevated arsenic on-site, some exceeding hot spot values. A Risk Assessment was completed in 2004 showing that on- and off-soil soils pose a significant risk to human and ecological receptors. The proposed site remedy is: excavation and landfill disposal of on-site hot spot soil and off-site soil exceeding RBCs; capping of on-site soil exceeding RBCs; and the recording of institutional controls. Additional source control measures are not necessary to protect Portland Harbor. The proposed remedy is considered to be consistent with Oregon rule and statute and, if properly implemented, protective to human and ecological receptors.

**HOW TO COMMENT:** To review project records, please call (503) 229-6729. The DEQ project manager is Dan Hafley ((503) 229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by May 30, 2006. A public meeting will be held to receive verbal comments if request-



## OTHER NOTICES

ed by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and make a final decision after consideration of these comments.

### PUBLIC NOTICE FINAL SULFUR DIOXIDE MILESTONE REPORT FOR REGIONAL HAZE

**NOTICE:** The Department of Environmental Quality (DEQ) is announcing the completion of the following final report: *2004 Regional SO<sub>2</sub> Emissions and Milestone Report*, March 31, 2006. In March 2006, DEQ issued a notice for public comment on the draft report. The final report is now complete. It identifies 2004 sulfur dioxide (SO<sub>2</sub>) emissions from large industrial sources in five states, including Oregon. The collective SO<sub>2</sub> emissions from these states must be less than the SO<sub>2</sub> milestone for 2004, as described in Section 5.5.2.3.1 of 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 Oregon to cooperate with four other states in preparing an annual report to determine if SO<sub>2</sub> emissions from large industrial sources are less than annual SO<sub>2</sub> emissions milestones. The 2004 SO<sub>2</sub> milestone represents one of several annual milestones that must be met over the next 15 years. The report concludes total SO<sub>2</sub> emissions from the five states — Oregon, Arizona, New Mexico, Wyoming and Utah — were 334,325 tons, while the SO<sub>2</sub> milestone is 448,259 tons, indicating that DEQ has met the annual milestone requirement in the plan.

**HOW TO OBTAIN A COPY:** The final *2004 Regional SO<sub>2</sub> Emissions and Milestone Report*, March 31, 2006 can be found on the Western Regional Air Partnership website at: [http://www.wrapair.org/forums/309/documents/Final\\_WRAP\\_Milestone\\_Report\\_2004.pdf](http://www.wrapair.org/forums/309/documents/Final_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](mailto: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.

### RECORD OF DECISION BURLINGTON NORTHERN AND SANTA FE RAILROAD MIDLAND MARKET 2, KLAMATH FALLS, OREGON

**COMMENT DUE:** May 31, 2006

**PROJECT LOCATION:** 1800 Laverne Avenue, Klamath Falls, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) extends an opportunity for the public to comment on the DEQ's Record-of-Decision (ROD) for the Burlington Northern and Santa Fe Railroad (BNSF) Midland Market 2 facility, which is located in Klamath Falls, Oregon.

The BNSF ROD describes relevant information related to site investigations and interprets this information for the purpose of selection of the preferred remedial action alternative for the facility. The DEQ's Bend, Oregon office is the repository for the draft ROD and it is also available for review on the DEQ's website at: <http://www.deq.state.or.us/er/BNSFmm2.htm>

The administrative file for this facility can be reviewed by contacting Mr. Cliff Walkey, DEQ's project manager located in Bend, Oregon at (541) 388-6146 extension 224.

**HOW TO COMMENT:** A public comment period will extend from May 1 through May 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](mailto: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 issuing a final ROD. DEQ will provide written responses to all comments received during the Public Opportunity to Review and Comment during May 2006.

### PROPOSED CONDITIONAL NO FURTHER ACTION BROGOITTI ELEVATOR — SOUTH PARCEL (FORMER) UMATILLA COUNTY, OREGON

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** Columbia Street & Harper Road, Helix, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based site investigations and remedial actions performed at the former Brogoitti Elevator site located in the southeast corner of the intersection of Columbia Street and Harper Road in Helix, Oregon.

**HIGHLIGHTS:** The former Brogoitti Elevator - South Parcel site consists of a grain elevator, truck scale, and grain silos. Historic operations at the site have included grain storage, gasoline, diesel and heating oil storage and sales. Four petroleum above-ground storage tanks (ASTs) were located in the northwest corner of the site. The ASTs were removed in the mid 1990's. The property was foreclosed by Umatilla County. Soil and groundwater petroleum contamination has been identified on the site.

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

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 31, 2006 and sent to Katie Robertson, Project Manager, at the address listed above.

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

### PROPOSED CONDITIONAL NO FURTHER ACTION HERMISTON BULK PLANT (FORMER) UMATILLA COUNTY, OREGON

**COMMENTS DUE:** May 31, 2006

**PROJECT LOCATION:** 615 North First Place, Hermiston, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based site investigations and remedial actions performed at the former Hermiston Bulk Plant site located at 615 North First Place in Hermiston, Oregon.

**HIGHLIGHTS:** The site is a former bulk petroleum plant that stored petroleum products in four above ground storage tanks (ASTs)

## OTHER NOTICES

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and two underground storage tanks (USTs). The actual operational period is unknown. Based on the operational history of two adjacent bulk plants, the site is likely to have been operational from the 1920s to the early 1990s. All facilities, ASTs, and USTs were removed from the site by 1993. The property was foreclosed by Umatilla County around 1995. The site is currently a fenced vacant lot. Soil and groundwater petroleum contamination has been identified on the site.

The site has been proposed for a risk-based closure. All of the potential exposure concerns are proposed to be addressed through the elimination of potential pathways and by placement of institutional controls on the property. The institutional controls consist of deed restrictions with the following restrictions: 1) no beneficial use of groundwater; 2) no residential use; and 3) any subsurface excavation

of contaminated soil must include proper handling, characterization, and disposal soil.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 31, 2006 and sent to Katie Robertson, Project Manager, at the address listed above.

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

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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**Board of Nursing**  
**Chapter 851**

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-22-06	9 a.m.	Portland State Office Bldg. Rm. 120-C 800 NE Oregon St. Portland, OR 97232

**Hearing Officer:** Saundra Theis, Board President

**Stat. Auth.:** ORS 678.385

**Stats. Implemented:** ORS 678.375 & 678.385

**Proposed Amendments:** 851-050-0131

**Last Date for Comment:** 6-20-06, 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 included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the May and June 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 97232-2162

**Telephone:** (971) 673-0638

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

**Rule Caption:** Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders.

**Stat. Auth.:** ORS 144.050, 144.140, 181.585 & 181.586

**Other Auth.:** V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005)

**Stats. Implemented:**

**Proposed Amendments:** 255-060-0011

**Last Date for Comment:** 5-21-06

**Summary:** The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005).

**Rules Coordinator:** Michael R. Washington

**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301

**Telephone:** (503) 945-9009

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

**Rule Caption:** Housekeeping changes, changes regarding unpaid construction debts, and revises dishonest & fraudulent conduct definition.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-23-06	11 a.m.	West Salem Roth's IGA Glen Creek Rm. 1130 Wallace Rd. Salem, OR

**Hearing Officer:** Cliff Harkins

**Stat. Auth.:** ORS 183.310 - 183.500, 293.445, 670.310, 701.085, 701.235, 701.350 & 701.992

**Stats. Implemented:** ORS 25.270, 25.785, 25.990, 183.310, 183.500, 192.430, 293.445, 701.005, 701.035, 701.058, 701.072, 701.075, 701.077, 701.078, 701.085, 701.105, 701.115, 701.125, 701.135, 701.235, 701.250, 701.252, 701.350 & 701.355

**Proposed Adoptions:** 812-001-0180

**Proposed Amendments:** 812-001-0160, 812-002-0260, 812-002-0533, 812-003-0130, 812-003-0180, 812-003-0200, 812-003-0250, 812-003-0260, 812-003-0280, 812-005-0210, 812-006-0010, 812-006-0011, 812-006-0020, 812-006-0050, 812-008-0074

**Last Date for Comment:** 5-23-06

**Summary:** • 812-001-0160 is amended to delete criteria no longer used to answer public records requests since the information is available on the website.

• 812-001-0180 is adopted to create a separate rule for refunds. Formerly 812-001-0160(7).

• 812-002-0260 is amended add ORS 701.135(2)(a)(D) to the definition of dishonest or fraudulent conduct. This amendment will allow the agency the ability to emergency suspend a license.

• 812-002-0533, 812-003-0130, 812-003-0260, 812-003-0280, 812-006-0010, 812-006-0011, 812-006-0020, & 812-006-0050 are amended to correct cite references.

• 812-003-0180 is amended to allow cancellation of a bond to go into effect more than 30 days from the date of receipt of cancellation notice from bonding company.

• 812-003-0200 is amended to correct a cite reference.

• 812-003-0250 is amended to include limited liability companies, which was inadvertently left off the previous amendment to this rule.

• 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.

• 812-008-0074 is amended to for clarity because in the past home inspector applicants have assumed that the "agency study guide items" referred to in OAR 812-008-0074(1) is the CCB 16 hour licensing class and that it will help them qualify to take the Home Inspector Certification test. Applicants have also assumed that the class can be used for part of the continuing education units (CEUs) needed to renew their certification. This change will help clarify that it is the home inspector study guide they need to refer to.

**Rules Coordinator:** Catherine Dixon

**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

**Telephone:** (503) 378-4621, ext. 4077

# NOTICES OF PROPOSED RULEMAKING

## Department of Administrative Services, Human Resource Services Division Chapter 105

**Rule Caption:** Updated to reflect expanded mechanism for notifying interested parties and to reflect current notification procedures.  
**Stat. Auth.:** ORS 183.335, 183.341, 184.340, 240.250 & 240.145(3)  
**Stats. Implemented:** ORS 183.335 & 183.341  
**Proposed Amendments:** 105-001-0000  
**Last Date for Comment:** 5-21-06

**Summary:** Change "mailing or furnishing" to "sending" to reflect new statutory authority to send notification to interested parties electronically or by regular mail;

Other minor administrative changes with no substantive change or significant impact to rule:

- Add notification requirement to legislators to reflect current process.
- Add clarifying language to rule text and title.

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

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## Department of Agriculture Chapter 603

**Rule Caption:** Voluntary stewardship agreement program for rural landowners, jointly administered by Departments of Agriculture and Forestry.

Date:	Time:	Location:
5-23-06	1:30 p.m.	Oregon Dept. of Forestry 2600 State St. Bldg. D Santiam Rm. Salem, OR 97310
5-24-06	1:30 p.m.	Crook Co. Library Claudia Broughton Rm. 175 NW Meadow Lakes Dr. Prineville, OR

**Hearing Officer:** Ray Jaindl  
**Stat. Auth.:** ORS 541.423 & 561  
**Stats. Implemented:** ORS 541.423  
**Proposed Adoptions:** 603-110-0100, 603-110-0200, 603-110-0300, 603-110-0400, 603-110-0500, 603-110-0600, 603-110-0700, 603-110-0800, 603-110-0900, 603-110-1000, 603-110-1100  
**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The proposed rules establish procedures and criteria for forest and agricultural landowners to enter into voluntary stewardship agreements with the state. The agreements could provide benefits to landowners including expedited permit processing, regulatory certainty, priority consideration for cost-share assistance or other financial incentives and technical assistance, and government certification that certain land management practices have been implemented.

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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**Rule Caption:** Proposed amendment establishes a time and travel fee in the brands program.

Date:	Time:	Location:
5-24-06	10 a.m.	Dept. of Agriculture 635 Capitol St. NE Conference Rm. D Salem, OR 97301

**Hearing Officer:** Ron McKay  
**Stat. Auth.:** ORS 604.046(2) & 561.190  
**Stats. Implemented:** ORS 604.046(2)  
**Proposed Amendments:** 603-014-0055  
**Last Date for Comment:** 5-26-06, 5 p.m.

**Summary:** The proposed amendment establishes a time and travel fee. The time and travel fee will be applied as authorized by ORS 604.046(2) in conjunction with a \$10.00 service fee for brand inspection at locations other than an auction market or registered feedlot.

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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**Rule Caption:** Establishes procedure for applying for property tax exemption for qualified machinery and equipment.

Date:	Time:	Location:
5-23-06	1 p.m.	ODA Conf. Rm. D Salem, OR

**Hearing Officer:** Dan Hilburn  
**Stat. Auth.:** ORS 561.190  
**Stats. Implemented:** ORS 307.453, 307.455 & 307.457  
**Proposed Amendments:** 603-025-0150  
**Last Date for Comment:** 5-26-06

**Summary:** Senate Bill 479, from the 2005 Legislature, authorizes the Oregon Department of Agriculture to establish rules to certify qualified machinery and equipment for tax exemption. These rules establish definitions and describe the process for application and determination of certification for qualified machinery and equipment. The rules also state that a contested case procedure for denial of certification is established in ORS Chapter 183.

The principle document relied upon is Senate Bill 479 which is available at: [www.leg.state.or.us/05reg/measpdf/sb0400.dir/sb0479.en.pdf](http://www.leg.state.or.us/05reg/measpdf/sb0400.dir/sb0479.en.pdf) or is available at the Oregon Department of Agriculture for inspection.

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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**Rule Caption:** Amends blueberry nursery stock control areas to allow official testing on a cost recovery basis.

Date:	Time:	Location:
5-23-06	2 p.m.	ODA Hearings Rm. 635 Capitol St. NE Salem, OR

**Hearing Officer:** Ron McKay  
**Stat. Auth.:** ORS 570.405  
**Stats. Implemented:** ORS 561.510  
**Proposed Amendments:** 603-052-1245  
**Last Date for Comment:** 5-26-06

**Summary:** The proposed amendment would allow the Department of Agriculture to charge participants in the blueberry certification program for official testing on a cost recovery basis. Currently, this testing is offered at the default \$70/hr. This amendment would lower the cost to program participants while allowing the Department to cover costs. The proposal would also update references to penalties for violations.

**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 Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Rulemaking Relating to Coordination of Health Insurance Policy Benefits.

Date:	Time:	Location:
6-8-06	2 p.m.	Conf. Rm. F (basement) 350 Winter St. NE Salem, OR

**Hearing Officer:** Lewis Littlehales

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 731.244 & 743.552  
**Stats. Implemented:** ORS 743.549  
**Proposed Adoptions:** 836-020-0770 – 836-020-0806  
**Proposed Repeals:** 836-020-0700 – 836-020-0765  
**Last Date for Comment:** 6-15-06  
**Summary:** This rulemaking proposes to adopt rules governing coordination of health insurance policy benefits and repeal the existing rules governing that topic.  
**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:** Repeal of rule references to regulation of charitable annuities under the Insurance Code.  
**Stat. Auth.:** ORS 731.244  
**Stats. Implemented:** Ch. 31, OL 2005  
**Proposed Amendments:** 836-080-0501  
**Proposed Repeals:** 836-051-0400  
**Last Date for Comment:** 5-26-06  
**Summary:** The Oregon Legislative Assembly in 2005 enacted legislation that repealed the statutory regulatory program for annuities issued by educational institutions and nonprofit corporations. This rulemaking eliminates rule references to the program because they are now obsolete and ineffective.  
**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:** Workers' Compensation Insurance Rates and Ratemaking; Loss Cost Reporting and Unit Statistical Plan.  
**Stat. Auth.:** ORS 731.244  
**Stats. Implemented:** ORS 737.205(1)-(2), 737.225(1), 737.265(2) & 737.320(2)-(3)  
**Proposed Amendments:** 836-042-0015, 836-042-0045  
**Last Date for Comment:** 5-26-06  
**Summary:** This rulemaking proposes to amend rules relating to workers' compensation insurance rates and ratemaking. The first rule, relating to insurer reporting of workers' compensation insurance loss cost information to the Insurance Division, is amended to allow insurers to use the Oregon or NAIC reporting form. The second rule, which adopts by reference the Unit Statistical Plan, the governing compilation of workers' compensation insurance statistics, is amended to recognize and apply the National Council on Compensation Insurance's change to the statistical plan for the Oregon Employer Paid Medical Program Limits, effective January 1, 2006. The NCCI made the latter change in response to the Oregon Legislative Assembly's enactment of legislation in 2005 that increased the amount of compensation a subject employer may pay for medical services for non-disabling claims.  
**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 changes throughout Division 4, Agriculture.  
**Date:** 6-2-06  
**Time:** 10 a.m.  
**Location:** 350 Winter St. NE  
Second Fl. - Rm. 260  
Salem, OR 97301-3882  
**Hearing Officer:** Sue Joye  
**Stat. Auth.:** ORS 654.025(2) & 656.726(4)  
**Stats. Implemented:** ORS 654.001 - 654.295

**Proposed Adoptions:** 437-004-9010  
**Proposed Amendments:** 437-004-0002, 437-004-0099, 437-004-0240, 437-004-0250, 437-004-0340, 437-004-0405, 437-004-0630, 437-004-0800, 437-004-1030, 437-004-1305, 437-004-1470, 437-004-1630, 437-004-1700, 437-004-2000, 437-004-2230, 437-004-2260, 437-004-2810, 437-004-3100, 437-004-3410, 437-004-3600, 437-004-6000, 437-004-9600, 437-004-9720

**Last Date for Comment:** 6-9-06  
**Summary:** Proposed changes to 16 subdivisions in Division 4, Agriculture, will include: clarify language, correct/add reference changes, add notes, the lead standard is removed from Division 4 and OAR 437-002-1910.1025 (Division 2/Z) is referenced, added requirements to Roll-Over Protective Structures (ROPS) due to Federal OSHA changes, changes to General Requirements in Electricity, a new paragraph on varmint killers, and a new rule on fumigating areas.

All of these changes are necessary to keep OR-OSHA standards understandable, correct, and current with technology and Federal OSHA changes.

Please visit our web site [www.orosha.org](http://www.orosha.org) Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

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

**Rule Caption:** Proposed amendment of workers' compensation rules affecting injured workers, employers, medical providers, insurers, and others.

Date:	Time:	Location:
5-22-06	10 a.m.	Rm. 260 (2nd Fl., Labor & Industries Bldg.) 350 Winter St. NE Salem, OR

**Hearing Officer:** Fred Bruyns  
**Stat. Auth.:** ORS 656.726(4)  
**Stats. Implemented:** ORS 656, primarily: ORS 656.704, Enrolled HB 2091 - OL 2005, Ch. 26 & ORS 656.325, Enrolled SB 311 - OL 2005, Ch. 675

**Proposed Amendments:** 436-010-0005, 436-010-0210, 436-010-0220, 436-010-0230, 436-010-0240, 436-010-0265, 436-010-0275, 436-010-0280, 436-055-0008, 436-055-0070, 436-055-0085, 436-055-0110, 436-060-0035, 436-060-0095, 436-070-0020

**Proposed Repeals:** 436-055-0120  
**Last Date for Comment:** 5-26-06

**Summary:** Proposed substantive amendments affect:

- (OAR 436-010-0220) Referrals to a specialist physician by an attending physician or authorized nurse practitioner — the authority of the specialist physician to provide services and treatment without specific authorization by the attending physician or nurse practitioner (specialist physician is defined in OAR 436-010-0005(38));
- (OAR 436-010-0230) Informed consent for attendance by an employer representative at a worker's medical exam — requirement that the consent form be written in a way that enables the worker to understand it; the worker has the right to refuse such attendance;
- (OAR 436-010-0230) Reimbursement for medications dispensed by physicians and authorized nurse practitioners — removal of the 10-day supply limitation;
- (OAR 436-010-0265) Independent medical examinations (IMEs) — criteria for addition to the list of qualified physicians; exemptions; criteria for removal from list; training curriculum requirements;

# NOTICES OF PROPOSED RULEMAKING

- (OAR 436-010-0265) IMEs — consequences for failing to use a qualified provider from the director's list or obtaining more than three examinations without the director's approval;

- (OAR 436-010-0265) Seven-day time frame for IME provider to send examination report to the insurer — elimination of time frame;

- (OAR 436-010-0265 & 436-060-0095) Survey of injured worker's IME experience — requirements that the insurer send an IME survey form: (1) to the worker with the appointment notice and (2) to the IME provider with the invasive procedure authorization form; requirement that the IME provider give a survey form to the worker to complete after the examination; the survey to be a postage-paid (by the State of Oregon) self-mailer, for delivery to the Workers' Compensation Division;

- (436-010-0275) Insurer-managed care organization (MCO) communication — requirement that the insurer pass along information to the MCO if the information was sent to the insurer in error;

- (OAR 436-055-0008) Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings — transfer to the Workers' Compensation Board.

- (OAR 436-055-0085) Training for renewal of claims examiner certification — for director approval, a training curriculum does not need to cover all of the components listed in OAR 436-055-0085(2);

- (OAR 436-070-0020, making some temporary changes permanent) Failure to File Notice or Notice of Audit Findings — criteria for issuance of a Failure to File Notice or Notice of Audit Findings.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#prop> rules or from WCD Publications, 503-947-7627 or fax 503-947-7630.

**Rules Coordinator:** Fred Bruyns

**Address:** Department of Consumer and Business Services, Workers' Compensation Division, P.O. Box 14480, Salem, OR 97309; 350 Winter St. NE, Salem, OR 97301-3879

**Telephone:** (503) 947-7717

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## Department of Corrections Chapter 291

**Rule Caption:** Apprehension, Arrest and Transport of Offenders by State Parole and Probation Officers.

**Stat. Auth.:** ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030 & 423.075

**Proposed Adoptions:** 291-014-0100 – 291-014-0130

**Last Date for Comment:** 5-22-06

**Summary:** Some counties have turned operation of community corrections back to the Oregon Department of Corrections. These rule amendments are necessary to establish policies for the apprehension and arrest of offenders by state parole and probation officers.

**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:** Internal Grievance and Review System for Inmates.  
**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075.

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

**Proposed Amendments:** 291-109-0100, 291-109-0110, 291-109-0120, 291-109-0140

**Proposed Repeals:** 291-109-0130

**Proposed Ren. & Amends:** 291-109-0140(3) to 291-109-0150, 291-109-0140(4) to 291-109-0160, 291-109-0140(5) to 291-109-0170, 291-109-0140(6) to 291-109-0180, 291-109-0140(7) to 291-109-0190

**Last Date for Comment:** 5-22-06

**Summary:** Amendment of these rules is necessary to revise and update the department's inmate grievance review system. These revisions will simplify the grievance process for inmates, allow department staff to better track status of filed grievances and clearly define what an inmate may and may not grieve.

**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:** Resolution of Inmate Personal Property Claims and Disposition of Abandoned or Unclaimed Inmate Property.

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

**Other Auth.:** 2005 OL, Ch. 184

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

**Proposed Amendments:** 291-117-0130, 291-117-0140

**Last Date for Comment:** 5-22-06

**Summary:** Amendment of OAR 291-117-0130 is necessary to streamline the process for handling inmate personal property claims. The modification will allow for more timely resolution of inmate personal property claims for lost or damaged property. Amendment of OAR 291-117-0140 is necessary to implement 2005 Or Laws, Chapter 184 (HB 2139) that allows the department to direct the disposition of an inmate's unclaimed or abandoned tangible personal property.

**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:** Toxics use and Hazardous Waste Reduction program rules alignment.

**Date:** 5-16-06

**Time:** 2-4 p.m.

**Location:**

DEQ HQ

811 SW 6th Ave., Rm. 3A

Portland, OR

**Hearing Officer:** Scott Latham, DEQ

**Stat. Auth.:** ORS 183, 192, 465.003 - 465.037, 466.005, 466.015, 466.020, 466.075, 466.090, 468.020 & ORS 646

**Stats. Implemented:** ORS 465.003 - 465.037

**Proposed Adoptions:** 340-135-0055, 340-135-0105

**Proposed Amendments:** 340-135-0000, 340-135-0010, 340-135-0020, 340-135-0030, 340-135-0040, 340-135-0050, 340-135-0090, 340-135-0110

**Proposed Repeals:** 340-135-0042, 340-135-0044, 340-135-0046, 340-135-0070, 340-135-0080, 340-135-0100

**Last Date for Comment:** 5-23-06

**Summary:** The proposed changes will align the rules with the Toxics Use Reduction Hazardous Waste Reduction statute. These rules only apply to Oregon businesses that report under federal Toxics Release Inventory program and that generate large quantity generator and small quantity generator amounts of hazardous waste.

To submit comments or request additional information, please contact David Livengood at the Department of Environmental Quality (DEQ), 811 SW 6th Ave., Portland, OR 97204, toll free in Oregon at 800-452-4011 ext. 5181, 503-229-5181, at [livengood.david@deq.state.or.us](mailto:livengood.david@deq.state.or.us), by fax 503-229-6977, or visit DEQ's website at [www.deq.state.or.us/news/publicnotices/](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

# NOTICES OF PROPOSED RULEMAKING

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Wildlife Habitat Conservation and Management Program — Allow Director to designate eligibility for wildlife habitat assessment.

**Date:** 6-9-06  
**Time:** 8 a.m.  
**Location:** 3406 Cherry Ave. NE  
Salem, OR 97303

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162  
**Stats. Implemented:** ORS 504 & SB 791, 1997  
**Proposed Amendments:** Rules in 635-430  
**Last Date for Comment:** 6-9-06

**Summary:** The Administrative rules for the Wildlife Habitat Conservation and Management Program will be amended to allow the Director to designate land as eligible for wildlife habitat special assessment.

**Rules Coordinator:** Casaria Tuttle  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303  
**Telephone:** (503) 947-6035

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**Rule Caption:** Establish big game tags to be raffled and/or auctioned.

**Date:** 6-9-06  
**Time:** 8 a.m.  
**Location:** 3406 Cherry Ave. NE  
Salem, OR 97303

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 497.112  
**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162 & 497.112

**Proposed Amendments:** Rules in 635-067, 635-090  
**Last Date for Comment:** 6-9-06  
**Summary:** Amend rules regarding big game auction and raffle tags.  
**Rules Coordinator:** Casaria Tuttle  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303  
**Telephone:** (503) 947-6035

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**Rule Caption:** Establish Dungeness crab pot limits, buoy tags, pot/permit stacking, and crab fishery permit review board.

**Date:** 6-9-06  
**Time:** 8 a.m.  
**Location:** 3406 Cherry Ave. NE  
Salem, OR 97303

**Hearing Officer:** ODFW Commission  
**Stat. Auth.:** ORS 496.146, 506.109, 506.119, 506.129, 506.755 & 508.921  
**Other Auth.:** Federal Magnuson-Stevens Fishery Conservation and Management Act 16USC§1856(a)  
**Stats. Implemented:** ORS 496.146, 506.109, 506.119, 506.129, 506.755 & 508.921

**Proposed Adoptions:** Rules in 635-005, 635-006  
**Proposed Amendments:** Rules in 635-005, 635-006  
**Proposed Repeals:** Rules in 635-005, 635-006  
**Last Date for Comment:** 6-9-06

**Summary:** Establish a gear limitation program for all vessels fishing off Oregon in the commercial ocean Dungeness crab fishery. The program may include, provisions for permits, licenses, gear requirements and restrictions, fishing area restrictions, cost recovery, reporting requirements, and a process for appeals before the Crab Fishery Permit Review Board. Housekeeping and technical correction to the regulations may occur to ensure rule consistency.

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

**Rule Caption:** 2006 tag numbers and/or bag limits for Controlled Antelope, Sheep, Mountain Goat, Deer, Elk, Squirrel.

**Date:** 6-9-06  
**Time:** 8 a.m.  
**Location:** 3406 Cherry Ave. NE  
Salem, OR 97303

**Hearing Officer:** Fish & Wildlife Commission.  
**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162  
**Stats. Implemented:** ORS 496.012, 496.138, 496.146 & 496.162  
**Proposed Adoptions:** 635-065-0772  
**Proposed Amendments:** Rules in 635-002, 635-045, 635-060, 635-065, 635-066, 635-067, 635-068, 635-069, 635-070, 635-071, 635-072, 635-073, 635-075, 635-078, 635-080  
**Last Date for Comment:** 6-9-06

**Summary:** Establish 2006 controlled hunt tag numbers for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk. Changing bag limits from one buck in certain units in the general archery season. Change bag limits for certain hunts relating to Oregon Disabilities Hunting and Fishing Permit.

Propose 2007 hunting regulations for game mammals, including season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Propose quotas for 2007 cougar seasons and tag numbers for 2007. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2006 and again for adoption in October 2006.

Rules will be adopted regarding tags for terminally-ill children. Rules will be amended regarding the Landowner Preference Program.

Rules will be amended regarding cougar total mortality quotas. Rules will be amended regarding the disposition of cougar carcasses.

These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2006 and again for adoption in October 2006.

**Rules Coordinator:** Casaria Tuttle  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303  
**Telephone:** (503) 947-6035

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**Rule Caption:** Procedures to Suspend or Revoke Licenses.

**Date:** 6-9-06  
**Time:** 8 a.m.  
**Location:** 3406 Cherry Ave. NE  
Salem, OR 97303

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 497.415 & 496.750  
**Other Auth.:** ORS 496.138  
**Stats. Implemented:** ORS 497.415 & 496.750  
**Proposed Amendments:** Rules in 635-001  
**Last Date for Comment:** 6-9-06

**Summary:** Amend rules related to the procedures for suspending or revoking licenses under the Wildlife Violator Compact.  
**Rules Coordinator:** Casaria Tuttle  
**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303  
**Telephone:** (503) 947-6035

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## Department of Forestry Chapter 629

**Rule Caption:** *Voluntary Stewardship Agreement Program* for rural landowners, jointly administered by the Departments of Agriculture and Forestry.

**Date:** 5-23-06  
**Time:** 1:30 p.m.  
**Location:** Oregon Dept. of Forestry  
2600 State St.  
Bldg. D Santiam Rm.  
Salem, OR 97310

**Date:** 5-24-06  
**Time:** 1:30 p.m.  
**Location:** Crook Co. Library  
Claudia Broughton Rm.  
175 NW Meadow Lakes Dr.  
Prineville, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Lanny Quackenbush

**Stat. Auth.:** ORS 541.423 & 526

**Stats. Implemented:** ORS 541.423

**Proposed Adoptions:** 629-021-0100, 629-021-0200, 629-021-0300, 629-021-0400, 629-021-0500, 629-021-0600, 629-021-0700, 629-021-0800, 629-021-0900, 629-021-1000, 629-021-1100

**Proposed Repeals:** 629-606-0000, 629-606-0010, 629-606-0100, 629-606-0200, 629-606-0300, 629-606-0400, 629-606-0500, 629-606-0600, 629-606-0700, 629-606-0800, 629-606-0900, 629-606-1000

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The proposed rules establish procedures and criteria for forest and agricultural landowners to enter into voluntary stewardship agreements with the state. The agreements could provide benefits to landowners including expedited permit processing, regulatory certainty, priority consideration for cost-share assistance or other financial incentives and technical assistance, and government certification that certain land management practices have been implemented. Questions specific to the proposed may be directed to Lanny Quackenbush at lquackenbush@odf.state.or.us, 503-945-7478.

**Rules Coordinator:** Gayle Birch

**Address:** Department of Forestry, 2600 State St., Bldg. B, Salem, OR 97310

**Telephone:** (503) 945-7210

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## Department of Human Services, Advisory Council on Child Abuse Assessment Chapter 417

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

Date:	Time:	Location:
5-22-06	8:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 183.341 & 409.050

**Stats. Implemented:** ORS 183.325, 183.330, 183.335, 183.341, 409.050 & 409.120

**Proposed Amendments:** 417-001-0001

**Last Date for Comment:** 5-22-06

**Summary:** OAR 417-001-0001 concerning Notices of Proposed Rulemaking is being amended to indicate Chapter 417 will be following the Department-wide rules on this topic being adopted at OAR 407-001-0000 and 407-001-0005.

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, Advisory Council on Child Abuse Assessment, 500 Summer St. NE, E-48, Salem, OR 97301

**Telephone:** (503) 945-6067

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

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

Date:	Time:	Location:
5-22-06	8:30 a.m.	Rm. 275 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 183.341 & 409.050

**Stats. Implemented:** ORS 183.325, 183.330, 183.335, 183.341, 409.050 & 409.120

**Proposed Amendments:** 413-001-0000

**Proposed Repeals:** 413-001-0005

**Last Date for Comment:** 5-22-06

**Summary:** OAR 413-001-0000 concerning Notices of Proposed Rulemaking is being amended and OAR 413-001-0005 concerning

model rulemaking rules is being repealed. Services in Chapter 413 will be following the Department-wide rules on these topics being adopted at OAR 407-001-0000 and 407-001-0005.

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:** July 2006 — Current Procedural Terminology code updates for Physical and Occupational Therapy Services.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-131-0280

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Physical and Occupational Therapy Services program administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-131-0280 to update the Current Procedural Terminology (CPT) codes for this program.

**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:** Updating administrative medical examination billing code information.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-150-0120

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Department of Human Services, Office of Medical Assistance Programs administers the administrative examination program for Oregon Health Plan clients. OMAP will update rule information 410-150-0120 in order to comply with the Healthcare Common Procedure Coding System (HCPCS) and ensure continuity of payments for professional medical services provided to clients.

**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:** July 2006 — Current Procedural Code update and providers billing Medicare for visual services.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-140-0080, 410-140-0180



# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Visual Services program administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-140-0080 to clarify that providers must bill Medicare before billing OMAP for Medicare covered visual services and amend 410-140-0180 to update Current Procedural Terminology (CPT) codes for this program.

**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:** July 2006 — Current Procedural Terminology code updates for Speech-language pathology, Audiology, and Hearing Aid Services.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-129-0200, 410-129-0240, 410-129-0260, 410-129-0280

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Speech-language pathology, Audiology, and Hearing Aid Services Administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-129-0200, 410-129-0240, 410-129-0260, and 410-129-0280 to update the Current Procedural Terminology (CPT) codes.

**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:** Updating medical transportation billing codes and billing form information.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-136-0320, 410-136-0340, 410-136-0350, 410-136-0360, 410-136-0420

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Department of Human Services, Office of Medical Assistance Programs administers the medical transportation program for Oregon Health Plan clients. OMAP will update information in rules listed above in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Healthcare Common Procedure Coding System (HCPCS) to ensure continuity of payments for transportation services provided to clients.

**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:** Targeted Case Management for Tribal Governments and Early Intervention/Early Childhood Special Education Programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.050 & 409.010

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 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

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Targeted Case Management Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payment for services provided to certain clients. OMAP, having temporarily adopted the above listed rules February 2006, will permanently adopt these 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

**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:** July 2006 Oregon Health Plan Managed Care Rule Changes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-141-0000, 410-141-0060, 410-141-0070, 410-141-0085, 410-141-0115, 410-141-0180, 410-141-0300, 410-141-0320, 410-141-0400, 410-141-0405, 410-141-0410, 410-141-0420, 410-141-0480, 410-141-0860

**Last Date for Comment:** 6-2-06, 5 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 410-141-0060 to clarify the policy for established relationship disenrollments and to update the Medicare Plan Election Form processing policy. OMAP will amend 410-141-0000, 410-141-0070, 410-141-0085, 410-141-0115, 410-141-0180, 410-141-0300, 410-141-0320, 410-141-0400, 410-141-0405, 410-141-0410, 410-141-0420, 410-141-0480 and 410-141-0860 for housekeeping changes.

**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:** OHP Plus, QMB + OHP with limited drug, OHP with limited drug benefit package reductions.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

## NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 410-120-1210

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP will amend 410-120-1210, related to other OMAP program rule revisions, to add the changes to the OHP Plus, QMB + OHP with limited drug, and the OHP with limited drug benefit packages. These revisions are contingent upon Centers for Medicare and Medicaid Services (CMS) approval. While OMAP anticipates these revisions to be effective on August 1, 2006, the effective date for implementation is not confirmed as it is based upon receipt of CMS approval. Following CMS approval, OMAP will implement the rule revisions and file the rules permanently. On or before the effective date, the permanent rule revisions will be available on OMAP's website at: <http://www.dhs.state.or.us/policy/healthplan/guides/main.html>

**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:** Changes, elimination and exceptions for visual services from the Oregon Health Plan Plus benefit package.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-140-0145

**Proposed Amendments:** 410-140-0050, 410-140-0140, 410-140-0160, 410-140-0200, 410-140-0260

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Visual Services program Administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-140-0050, 410-140-0140, 410-140-0160, 410-140-0200, and 410-140-0260 to eliminate certain visual services (routine eye examinations, frames, and lenses) for adults, 21 years and older, from the Oregon Health Plan Plus benefit package. Then, OMAP will adopt 410-140-0145 to describe when OMAP will make exceptions for payment for routine eye examinations, frames and lenses for adults 21 years of age or older.

These revisions are contingent upon Centers for Medicare and Medicaid Services (CMS) approval. While OMAP anticipates these revisions will be effective August 1, 2006, the effective date for implementation is not confirmed as it is based upon receipt of CMS approval. Following CMS approval, OMAP will implement the rule revisions and file the rules permanently. On or before the effective date, the permanent rules will be available on OMAP's website at: <http://www.dhs.state.or.us/policy/healthplan/guides/main.html>

**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:** July 2006 rule corrections and additional detail for policy clarification.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-120-0000, 410-120-1180, 410-120-1200, 410-120-1210, 410-120-1230, 410-120-1260, 410-120-1280, 410-120-1340, 410-120-1400, 410-120-1460, 410-120-1560, 410-120-1855, 410-120-1960

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP will amend the following rules for housekeeping and clarification purposes: 410-120-0000 to correct the citation number for the CAWEM benefit package and update the federal change from Professional Review Organization (PRO) to Quality Improvement Organization (QIO); 410-120-1230 to correct a table reference; 410-120-1400 and 410-120-1460 to update the federal reference change from PRO to QIO; and 410-120-1560 to clarify claim reconsideration consistent with 410-120-1570. OMAP will provide additional detail for policy clarification: 410-120-1180 to add language to non-emergent out-of-state services regarding services provided to clients who are Medicare beneficiaries; 410-120-1200 to correct the PRO to QIO federal reference and to delete the comorbidity exception from the fertility and sexual dysfunction exclusion consistent with CMS policy; 410-120-1210 to correct the CAWEM benefit package citation; 410-120-1260 to allow retroactive provider enrollment according to federal regulations with OMAP's discretion to consider extenuating circumstances; 410-120-1280 to specify: (1) the waiver requirement including the OMAP allowable and (2) extent of appeal of Medicare coverage before billing OMAP; 410-120-1340 to change rate-setting for physician administered drugs; 410-120-1855 and 410-120-1960 to add a client responsibility to advise the caseworker of insurance coverage changes within 10 days.

**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:** DME, IME, upper payment limit and additional changes to rules awaiting CMS approval.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-125-0141, 410-125-0142, 410-125-0155, 410-125-0181, 410-125-0190, 410-125-0195, 410-125-0220, 410-125-0221, 410-125-0600, 410-125-0720, 410-125-2080

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Hospital Services program rules govern payments for the Office of Medical Assistance Programs' (OMAP) for services provided to certain clients. OMAP will amend rules listed above for housekeeping and clarification purposes, if necessary, otherwise OMAP will amend:

**410-125-0220, 410-125-0600, 410-125-0720, and 410-125-2080**, to update form names and titles for accuracy.

Also, contingent upon receipt of approval from Centers for Medicare and Medicaid Services (CMS), OMAP will amend as follows:

**410-125-0141, 410-125-0142, 410-125-0220, and 410-125-0221**, to eliminate Direct Medical Education (DME) and Indirect Medical Education (IME) settlements to hospitals for teaching expenses.

**410-125-0155**, to clarify calculation of the upper payment limit related to the elimination of DME and IME and to make explicit the inclusion of outpatient in the UPL.

**410-125-0181, 410-125-0190, and 410-125-0195**, to comply with an agreement with the Oregon Association of Hospitals and Health

## NOTICES OF PROPOSED RULEMAKING

Systems to eliminate maternity case management interim reimbursement from payment by Fee-For-Service fee schedule.

The implementation date for the rule revisions, awaiting CMS approval, is not operational and a basis for reimbursement until OMAP determines federal approval has been obtained. Following CMS approval, OMAP will implement the rule revisions and file the rules permanently. On or before the effective date, the permanent rules will be available on OMAP's website at: <http://www.dhs.state.or.us/policy/healthplan/guides/main.html>

**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:** July 2006 — Current Procedural Terminology code updates for Medical-Surgical Services.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-130-0180, 410-130-0190, 410-130-0200, 410-130-0220, 410-130-0225, 410-130-0240, 410-130-0255, 410-130-0580, 410-130-0585, 410-130-0587, 410-130-0595, 410-130-0670, 410-130-0680, 410-130-0700

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Medical-Surgical Services program rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. All rules listed above will be revised for "housekeeping," if necessary. In addition, OMAP will amend rules as follows: 410-130-0180, to require providers to add the National Drug Code (NDC) of drugs administered in their offices to the 837P billing format and remove reference to covered codes; 410-130-0190, to remove references to covered codes; 410-130-0200, to remove codes deleted from HCPCS; 410-130-0220, to remove deleted codes and add new CPT codes; 410-130-0255, to add vaccine codes supplied by the Vaccines for Children's Program; 410-130-0580, to remove billing instructions and to clarify that the person obtaining consent cannot sign the Sterilization Consent form retroactively; 410-130-0595, to add requirement to assist in making referrals for dental services; to clarify all mandatory topics must be reviewed for Full Case Management, and to add Mercury Consumption of fish to the training topics in Table 130-0595-2.

**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:** Prior Authorized Drugs and Prior Authorization Criteria.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065 & 414.325

**Proposed Amendments:** 410-121-0040

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to certain clients. In March 2006, OMAP temporarily amended 410-121-0040 in order to include additional details regarding the specific prior authorization criteria for the drugs and categories of drugs

requiring prior authorization under this rule. The temporary rule amendment did not expand existing OMAP prior authorization to new classes of drugs. The temporary rule provided clarifying criteria for drugs or classes of drugs that were already subject to prior authorization under OAR 410-121-0040. This is the Notice to file this rule permanently.

In addition, OMAP will amend OAR 410-121-0040 to implement OMAP's Over-the-Counter (OTC) drug limitation proposal as it relates to prior authorization requirements. This rule amendment involves one proposal among many that were presented to stakeholders last year during public meetings that occurred shortly after the end of the legislative session. The OTC drug limitation rule amendment being proposed here is contingent on approval from the Centers for Medicare and Medicaid Services (CMS). While OMAP expects these changes to become effective August 1, 2006, the actual effective date will be contingent on approval from CMS. Upon approval from CMS, OMAP will implement the rule revisions and file the rule revisions permanently.

**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:** Pharmaceutical Rule Revisions for July 1, 2006.

Date:	Time:	Location:
5-16-06	10:30 a.m.–12 p.m.	DHS Bldg. Rm. 137C Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0030, 410-121-0060, 410-121-0100, 410-121-0140, 410-121-0147, 410-121-0150, 410-121-0155, 410-121-0160

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to certain clients. All rules listed above will be revised to make housekeeping corrections, if necessary; otherwise, OMAP will revise rules as follows:

410-121-0060: to clarify that if a client is enrolled in managed care and the particular pharmacy is not a participating provider with the managed care plan, the pharmacist should inform the client of that fact and should also inform the client he or she can contact their managed care plan for a list of participating providers.

410-121-0100: to clarify that a dispensing pharmacist may offer to counsel a client's caregiver rather than the client presenting the new prescription if the pharmacist determines that it is appropriate under the circumstances.

410-121-0140: to delete the definition of Durable Medical Equipment (DME) and instead refer to the definition of DME located in the OMAP DMEPOS administrative rule 410-122-0010.

410-121-0147: to delete subsection (10) that says OMAP will not cover drug products and drug product quantities that do not need OMAP guidelines. OMAP Pharmacy Program rules clearly indicate coverage for drugs and drug quantities.

410-121-0160: to clarify that an institutional pharmacy must send to OMAP a copy of its institutional pharmacy license along with its provider application in order to qualify for the enhanced institutional reimbursement.

**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

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** July 2006 rule updates for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program.

**Date:** 5-16-06  
**Time:** 10:30 a.m.–12 p.m.  
**Location:** DHS Bldg.  
Rm. 137C  
Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-122-xxxx

**Proposed Amendments:** 410-122-0010, 410-122-0040, 410-122-0080, 410-122-0180, 410-122-0204, 410-122-0240, 410-122-0300, 410-122-0320, 410-122-0325, 410-122-0330, 410-122-0340, 410-122-0400, 410-122-0510, 410-122-0525, 410-122-0700

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will make "housekeeping" corrections to all rules listed above, if necessary, otherwise, revisions are as follows: OMAP will adopt **410-122-xxxx**, *Neuromuscular Electrical Stimulator (NMES)*, and move the coverage criteria for this device from 410-122-0510 Electronic Stimulators to this new rule. Rule text will be added to reflect evidence-based clinical practice guidelines.

**410-122-0010:** to add definitions for activities of daily living, durable medical equipment, medical records, medical supplies, mobility-related activities of daily living, and prosthetic and orthotic devices.

**410-122-0040:** to change the rule title to more accurately reflect the rule content and to specify information contained in OMAP's fee schedule.

**410-122-0080:** to change the rule title and add language regarding limitations and restrictions. These changes will assist DMEPOS providers in making appropriate dispensing and billing decisions.

**410-122-0180:** to change the rule title to more accurately reflect the procedure codes used in this division. This amendment also adds specific coding information.

**410-122-0204:** to add general conditions of coverage and documentation requirements that did not exist previously. Coverage information is based on evidence-based clinical practice guidelines and will assist DMEPOS providers in making appropriate dispensing and billing decisions.

**410-122-0240:** will be rewritten to reflect current generally accepted standards of medical practice regarding apnea monitors for infants. Amendments will assist providers in making appropriate dispensing and billing decisions.

**410-122-0300:** to replace code S9098 (Home visit, phototherapy services (e.g., bili-lite), including equipment rental, nursing services, blood draw, supplies and other services, per diem) with code E0202 (Phototherapy (bilirubin) light with photometer) and to add rule text for this service. DMEPOS providers typically do not provide all the services included in S9098, but do provide the services included in E0202.

**410-122-0320, 410-122-0325, 410-122-0330 and 410-122-0340 to:**

1) Ensure Medicaid clients have access to medically appropriate wheeled mobility devices and related options/accessories that provide the greatest possible functional value;

2) Ensure program integrity, i.e., outlays for wheeled mobility devices are consistent with statute and regulations;

3) Support the Centers for Medicare and Medicaid Services (CMS) intent to strengthen oversight and fiscal soundness surrounding mobility products;

4) Develop a set of clinical and functional characteristics that are evidence based and will better predict who would benefit from a powered mobility device;

5) Reduce historical fraud, waste and abuse in the wheeled mobility device benefit; and,

6) Allow for provision of clear evaluation procedures and coverage criteria based on accepted current standards of professional practice, and by proposing skilled and knowledgeable professionals conduct these evaluations.

**410-122-0400:** will be rewritten to reflect current generally accepted standards of medical practice regarding pressure reducing support surfaces. Amendments will assist providers in making appropriate dispensing and billing decisions.

**410-122-0510:** to change the rule title, remove rule text regarding neuromuscular electrical stimulator, clarify coverage criteria for an osteogenesis stimulator and add some definitions to the rule.

**410-122-0525:** to update coverage criteria for an external insulin infusion pump based on clinical practice guidelines and replace an incorrect supplies code with the correct code.

**410-122-0700:** will be rewritten to reflect current generally accepted standards of medical practice regarding negative pressure wound therapy. Amendments will assist providers in making appropriate dispensing and billing decisions.

**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:** Clarification of current FQHC and RHC policies, including enrollment, covered services and encounter rate determination.

**Date:** 5-16-06  
**Time:** 10:30 a.m.–12 p.m.  
**Location:** DHS Bldg.  
Rm. 137C  
Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010, 409.110 & 409.050

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-147-0020, 410-147-0040, 410-147-0060, 410-147-0080, 410-147-0085, 410-147-0120, 410-147-0125, 410-147-0140, 410-147-0160, 410-147-0180, 410-147-0200, 410-147-0220, 410-147-0240, 410-147-0280, 410-147-0320, 410-147-0360, 410-147-0400, 410-147-0460, 410-147-0480, 410-147-0500, 410-147-0540, 410-147-0610, 410-147-0620

**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Services program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-147, 0020, 410-147-0040, 410-147-0060, 410-147-0080, 410-147-0085, 410-147-0120, 410-147-0125, 410-147-0140, 410-147-0160, 410-147-0180, 410-147-0200, 410-147-0220, 410-147-0240, 410-147-0280, 410-147-0320, 410-147-0360, 410-147-0400, 410-147-0460, 410-147-0480, 410-147-0500, 410-147-0540, 410-147-0610, and 410-147-0620 to remove duplicate and outdated information, clarify language, and add reference to OARs for individual service programs. 410-147-0460: Language is added for a pilot program for Prepaid Health Plan supplemental payments to be made to clinics by OMAP according to an expedited process.

**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:** HIPAA, benefit reductions for OHP Plus adults and other rule clarification and updates.

**Date:** 5-16-06  
**Time:** 10:30 a.m.–12 p.m.  
**Location:** DHS Bldg.  
Rm. 137C  
Salem, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010, 409.110 & 409.050  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-123-1060, 410-123-1160, 410-123-1240, 410-123-1260, 410-123-1620  
**Proposed Repeals:** 410-123-1100  
**Last Date for Comment:** 6-2-06, 5 p.m.

**Summary:** The Dental Services Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend rules listed above to take care of necessary housekeeping corrections; otherwise, OMAP will amend as follows:

410-123-1060, 410-123-1160, 410-123-1240 and 410-123-1620, to update claim information to reflect Health Insurance Portability and Accountability Act (HIPAA) electronic standards, date on documents and update terminology.

410-123-1260, to include additional limitations on specific services that is reflective of clinical standards; clarification of the intent of existing limitations; and dental benefit reductions for OHP Plus adult clients. These changes are in response to the need to reduce the overall Dental Program budget and to improve administrative efficiencies.

Implementation of rules awaiting federal approval from Centers for Medicare and Medicaid Services (CMS) is contingent upon receipt of the approval. While OMAP anticipates an August 1, 2006 effective date, the effective date for implementation is not confirmed as it is based upon receipt of CMS approval. Following CMS approval, OMAP will implement the rule revisions and file the rules permanently. On or before the effective date, the permanent rule revisions will be available on OMAP's website at: <http://www.dhs.state.or.us/policy/helathplan/guides/main.html>

OMAP will repeal 410-123-1100 to eliminate unnecessary or duplicate language.

**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:** CMS Upper Limits for Drug Payments listing for April 2006.  
**Stat. Auth.:** ORS 409.010, 409.110 & 409.050  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-121-0300  
**Last Date for Comment:** 5-16-06, 5 p.m.

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs' payment for pharmaceutical products provided to clients. OMAP, having temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing, will permanently amend the rule with this Notice filing. OMAP updated Transmittal #37, with the March 10, 2006, Title XIX State Agency Letter, including changes to the list. These changes are effective for services rendered on or after April 10, 2006, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

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

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**Rule Caption:** Medicaid Drug Rebate Program list from CMS letter dated March 15, 2006.  
**Stat. Auth.:** ORS 409.010, 409.110 & 409.050  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-121-0157  
**Last Date for Comment:** 5-16-06, 5 p.m.

**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to certain clients. OMAP temporarily amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #140, date March 15, 2006, indicating the changes to be effective April 1, 2006.

**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, Director's Office Chapter 407

**Rule Caption:** Medicare Part C and D Authorized Decision Makers.

Date:	Time:	Location:
5-19-06	9-10 a.m.	DHS Bldg., Rm. 137D 500 Summer St. NE Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640  
**Stats. Implemented:** ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630  
**Proposed Adoptions:** 407-050-0000, 407-050-0005, 407-050-0010

**Last Date for Comment:** 5-19-06, 5 p.m.  
**Summary:** Establishes the parties that are authorized to make Medicare Part C and D decisions for clients of the Department of Human Services. These rules currently exist as temporary rules in effect through 5/26/06.

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

**Rules Coordinator:** Jennifer Bittel  
**Address:** Department of Human Services, Director's Office, 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 947-5250

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**Rule Caption:** Review of Abuse When Self-Defense is Asserted at State Hospitals/Department-Operated Residential Training Homes.

Date:	Time:	Location:
5-22-06	2-3 p.m.	DHS Bldg., Rm. 137A 500 Summer St. NE Salem, OR 97301

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 179.040, 409.010 & 409.050  
**Stats. Implemented:** ORS 179.390, 426.385, 427.031, 430.210 & 430.735 - 430.768

**Proposed Adoptions:** 407-045-0000, 407-045-0010, 407-045-0020, 407-045-0030, 407-045-0040, 407-045-0050, 407-045-0060, 407-045-0070, 407-045-0080, 407-045-0090, 407-045-0100, 407-045-0110

**Last Date for Comment:** 5-22-06, 5 p.m.  
**Summary:** The purpose of these rules is to outline procedures for employees to have notice and to request a review of a determination when a physical abuse investigation in a state hospital or Department-operated residential training home results in a "substantiated" determination and the person alleged to be responsible for the abuse indicates their conduct was in self-defense.

**Rules Coordinator:** Jennifer Bittel  
**Address:** Department of Human Services, Director's Office, 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 947-5250

# NOTICES OF PROPOSED RULEMAKING

## Department of Human Services, Public Health Chapter 333

5-23-06

6 p.m.

Portland State Office Bldg.  
800 NE Oregon St.  
Suite 120C  
Portland, OR

**Rule Caption:** Adopts rules relating to the WIC Farm Direct Nutrition Program.

**Date:** 5-24-06  
**Time:** 9 a.m.  
**Location:** Portland State Office Bldg.  
800 NE Oregon St.  
Rm. 140  
Portland, OR

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 409.600

**Other Auth.:** 7 CFR 248, Public Law 108-265

**Stats. Implemented:** ORS 409.600

**Proposed Adoptions:** 333-052-0030 – 333-052-0130

**Last Date for Comment:** 5-24-06, 5 p.m.

**Summary:** Federal legislation governs operation of farmers' market nutrition programs in each state. The Department of Human Services is required to enact and adopt Oregon Administrative Rules in order to administer the federal requirements for authorization and oversight of farmers and farmers' markets, operating within the special supplemental nutrition program for Women, Infants and Children (WIC) Farm Direct Nutrition Program.

The rules include: definitions of a farmer, a farmers' market and a farm stand; the types of foods that may be purchased with these program funds; the requirements for authorization; expectations of the state WIC program, farmers and markets, and the correlating violations and sanctions; and opportunity for appeals.

**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:** Department of Human Services revisions to the Oregon Administrative Rules for Birthing Centers.

**Date:** 5-25-06  
**Time:** 1:30 p.m.  
**Location:** Portland State Office Bldg.  
800 NE Oregon St.  
Rm. 120A  
Portland, OR

**Hearing Officer:** Jana Fussell

**Stat. Auth.:** ORS 441 & 442

**Stats. Implemented:** ORS 441 & 442

**Proposed Amendments:** 333-076-0450, 333-076-0470, 333-076-0490, 333-076-0510, 333-076-0530, 333-076-0550, 333-076-0560, 333-076-0570, 333-076-0590, 333-076-0610, 333-076-0650, 333-076-0670, 333-076-0690, 333-076-0710

**Last Date for Comment:** 5-25-06, 5 p.m.

**Summary:** The Department of Human Services is proposing to amend their Oregon Administrative Rules relating to Birthing Centers. These amendments to the Birthing Center rules contain mostly minor corrections such as changing references of: Division to Department; Patient to Client; and Medical Record to Clinical Record. A reference to the North American Registry of Midwives standards was added as were Tables I, II, and III which define those conditions that, if present, would necessitate transfer of the client to a higher level of care. Changes were made to OAR 333-076-0670(18) to reflect the current required newborn testing.

**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:** Updates rules related to Radiation Protection Services.

**Date:** 5-23-06  
**Time:** 1 p.m.  
**Location:** Portland State Office Bldg.  
800 NE Oregon St.  
Suite 120C  
Portland, OR

**Hearing Officer:** Richard Brown

**Stat. Auth.:** ORS 453.605 - 453.807

**Stats. Implemented:** ORS 453.605 - 453.807

**Proposed Adoptions:** Rules in 333-109, 333-113, 333-116, 333-120, 333-122, 333-123

**Proposed Amendments:** Rules in 333-100, 333-101, 333-102, 333-103, 333-105, 333-106, 333-109, 333-111, 333-113, 333-116, 333-120, 333-121

**Proposed Repeals:** Rules in 333-106, 333-109, 333-116

**Last Date for Comment:** 5-26-06, 5 p.m.

**Summary:** The Department of Human Services is proposing to update their Oregon Administrative Rules relating to Radiation Protection Services.

1. Division 100 is being amended to set forth minimum record retention time.

2. Division 101 is being amended to include registration for suppliers, installers and service providers of x-ray film processors and chemicals.

3. Division 102 is being amended to meet Nuclear Regulatory Commission compatibility requirements.

4. Division 103 is being amended to increase fees for radioactive materials licensees. Fees have not been increased for over 12 years and are necessary to cover current expenditures.

5. Rules for industrial x-ray radiographers will be removed from Division 105 and adopted in Division 122. Rules for radiographers using radioactive materials will continue to be in Division 105.

6. The dental and fluoroscopy requirements in Division 106 will be updated and the x-ray therapy requirements will be repealed from Division 106 and adopted in Division 123.

7. Division 109 is being revised to only address industrial accelerators.

8. Amendments to Division 111 are grammatical or formatting only.

9. Amendments to Divisions 113, 116, 120, and 121 are required to meet Nuclear Regulatory Commission compatibility requirements.

10. Adopt new Division 122 for industrial x-ray radiographers' rules.

11. Adopt new Division 123 addressing Medical X-Ray Therapy Facilities. In the past three years, several incidents involving significant over exposures to patients have prompted a re-evaluation of the importance of regulatory oversight at x-ray therapy facilities. These rules are being adopted based on model rules from the Conference of Radiation Program Control Directors.

12. All Divisions listed contain grammatical and/or formatting corrections and/or a change of the word "shall" to "must" as recommended by the Attorney General's office.

**Rules Coordinator:** Christina Hartman

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

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## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Date:** 5-22-06  
**Time:** 10 a.m.  
**Location:** Rm. 257  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 183.341, 409.050, 410.070, 411.060, 411.070, 411.095, 411.101, 411.660, 411.710, 411.816, 414.032, 414.042, 414.342 & 418.100

## NOTICES OF PROPOSED RULEMAKING

**Other Auth.:** 7 CFR 272.4(e); 7 CFR 273.1 (b)(4); 7 CFR 273.9(c)(1)(vii); 7 CFR 273.9(d); 7 CFR 273.10(c)(2)(ii); 7 CFR 273.10(d)(3); 7 CFR 273.12; 7 CFR 273.13(b)(11); 7 CFR 273.15(g); 20 CFR 416.112(d); 28 CFR 35.101 et seq.; 42 CFR 435.135; 45 CFR Parts 98 & 99; 7 U.S.C. 2012(h); 7 U.S.C. 2014(e); 7 U.S.C. 2015 (c)(1); 7 U.S.C. 2020(e); Social Security Act § 1925, 42 U.S.C. 1396f-6; 42 USC 12132; Centers for Medicare and Medicaid Services, State Medicaid Manual § 3308 and 3258.10; Sections 1612(a)(2)(F) and 1902(a)(10)(E)(iv) and 1935(a)95(E) of the Social Security Act; 42 USC 1396a(a)(10)(E)(iv) as amended by Section 101 of Public Law 109-91, the “QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005”; Sections 1634(c) and 1935(a)(2)(D) of the Social Security Act; Section 503 of P.L. 94-566; P.L. 99-643; Employment Opportunities for Disabled Americans Act of 1986; Social Security Program Operations Manual System (POMS) section SI 00815.050; Food and Nutrition Services Administrative Notices 04-21 and 04-39; Medicare Modernization Act; Section 711 of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360); Americans with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973; Section 1924 of the Social Security Act (42 U.S.C. 1396f-5(d)) as amended by the Deficit Reduction Act (DRA) of 2005 (sections 6011, 6012, 6013, 6014, and 6016)

**Stats. Implemented:** ORS 183.341, 409.050, 410.070, 411.060, 411.070, 411.095, 411.099, 411.101, 411.117, 411.122, 411.630, 411.632, 411.635, 411.660, 411.700, 411.710, 411.816, 414.032, 414.042, 414.342 & 418.100

**Proposed Adoptions:** 461-135-1175, 461-145-0022, 461-145-0108, 461-155-0175, 461-155-0180

**Proposed Amendments:** 461-001-0010, 461-025-0310, 461-025-0315, 461-101-0010, 461-105-0190, 461-110-0110, 461-110-0370, 461-110-0410, 461-110-0630, 461-115-0210, 461-135-0095, 461-135-0096, 461-135-0505, 461-135-0710, 461-135-0730, 461-135-0830, 461-135-1110, 461-140-0040, 461-140-0210, 461-140-0220, 461-140-0242, 461-140-0296, 461-140-0300, 461-145-0020, 461-145-0088, 461-145-0180, 461-145-0220, 461-145-0250, 461-145-0310, 461-145-0330, 461-145-0340, 461-155-0030, 461-155-0150, 461-155-0225, 461-155-0250, 461-155-0660, 461-160-0055, 461-160-0120, 461-160-0415, 461-160-0580, 461-160-0610, 461-160-0620, 461-165-0030, 461-170-0025, 461-170-0103, 461-175-0220, 461-175-0230, 461-180-0080, 461-180-0120, 461-185-0050, 461-190-0195, 461-195-0511, 461-195-0521, 461-195-0561

**Proposed Repeals:** 461-140-0295

**Last Date for Comment:** 5-22-06

**Summary:** OAR 461-001-0010 concerning Notices of Proposed Rulemaking and Rulemaking rules is being amended. Services covered by Chapter 461 will be following the department-wide rule on notices being adopted at OAR 407-001-0000 and 407-001-0005.

OAR 461-025-0310 about hearing requests is being amended to implement HB 3268 on the subject of hearings for reduction or termination of services. This rule is also being amended to reflect current federal regulations regarding the time period for requesting hearings for the Food Stamp program.

OAR 461-025-0315 is being amended so that clients who are older adults or people with physical disabilities who receive Medicaid paid Title XIX Home and Community based care waived services will be have a right to an expedited hearing on the denial of the continuation of their services while they are waiting for a non-expedited hearing on an action by the Department. This change gives the client access to an immediate review of a Department denial to maintain the individual's services at the current level in the period between a hearing request and a non-expedited hearing on the Department's proposed action.

OAR 461-101-0010 is being amended and OAR 461-135-1175 is being adopted to include the Senior Farm Direct Nutrition Program (SFDNP), which has been operating as a pilot program since 2001, as part of chapter 461 of the Oregon Administrative Rules. SFDNP provides food vouchers for low-income seniors. These rules

describe the scope of the program as well as its eligibility requirements and timeframes.

OAR 461-105-0190 is being amended so that the rule is consistent with the new Department-wide rules about prohibiting discrimination against individuals with disabilities.

OAR 461-110-0110 is being amended to clarify the definitions of a standard living arrangement and nonstandard living arrangements. These terms are primarily used in the eligibility rules for the Food Stamp, OSIP, and OSIPM programs.

OAR 461-110-0370 is being amended to follow federal food stamp regulations which state that a person in foster care, along with their spouse or a child under age 22 and living with them, may only receive food stamps if their foster care provider applies for benefits for them.

OAR 461-110-0410 is being amended to clarify who is considered a member of the filing group for the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs. The circumstances of members of a filing group are considered in the eligibility determination process.

OAR 461-110-0630 is being amended to make permanent temporary rule amendments that became effective on April 1, 2006. These amendments establish that the need group for the Extended Medical Assistance (EXT) program consists of all members of the EXT financial group. The income and resources of members of a financial group count toward determining eligibility. The basic and special needs of members of a need group are considered in determining eligibility.

OARs 461-115-0210 and 461-180-0080 are being amended to clarify the application processing time frames and the effective dates for starting benefits in the Food Stamp at certification and recertification.

OAR 461-135-0095 is being amended to make permanent temporary rule amendments that became effective on April 1, 2006. These amendments change the eligibility requirements for the Extended Medical Assistance (EXT) program as follows: to incorporate a requirement that a filing group must have been found eligible for and received Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) for at least three of the six months prior to the beginning date of the EXT eligibility period; to require that the filing group must meet certain employment, earnings, and reporting requirements to continue EXT eligibility beyond six months; to clarify that a filing group may become eligible for EXT due to a combination of increased earnings and increased child support; and to clarify that EXT eligibility is limited to members of the MAA or MAF benefit group when those benefits ended. The filing group is the people whose circumstances are considered in the eligibility determination process.

OAR 461-135-0096 is being amended to make permanent temporary rule amendments that became effective on April 1, 2006. These amendments indicate that the eligibility period for the Extended Medical Assistance (EXT) program which results from an increase in the earnings of the caretaker relative is six months, and may be extended for up to an additional six months if the filing group meets certain employment, earnings, and reporting requirements. The filing group is the people whose circumstances are considered in the eligibility determination process. This rule is also being amended to clarify specific situations in which eligibility for EXT is characterized as based on increased earnings.

OARs 461-135-0505, 461-155-0150, 461-155-0225, and 461-195-0561 are being amended to reference the new income standard rule (OAR 461-155-0180) instead of referencing other rules or repeating income standards. OAR 461-155-0180 is being adopted to identify the current poverty level monthly income standard as well as other monthly income standards that are based on this poverty level income standard. These income standards determine eligibility for some public assistance and medical assistance programs. This

## NOTICES OF PROPOSED RULEMAKING

approach will eliminate some \$1 discrepancies between some programs for these income standards. OAR 461-155-0150 is also being amended to set the eligibility standard in the Employment Related Day Care (ERDC) program for need groups larger than eight at the standard for need groups of eight (currently \$4,200 per month).

OAR 461-135-0710 is being amended to clarify that an individual meets the eligibility requirements for Oregon Supplemental Income Program – Medical (OSIPM, providing medical coverage to the elderly and individuals with disabilities) if the individual meets the requirements in OAR 461-135-0750 (which include some clients whose income exceeds the income standard that would otherwise apply).

OAR 461-135-0730 is being amended to re-open the QI-1 program in Oregon. These changes were originally adopted by temporary rule in February 2006. 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 dropped (from 5,800 to 4,100). Starting in February 2006, a new allocation allowed 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 allowed the Department to open the program once again.

OAR 461-135-0830, which concerns eligibility for disabled adult children in the OSIPM program (Oregon Supplemental Income Program Medical, providing medical coverage for elderly and disabled individuals) is being amended to incorporate the language from federal law to clarify who is considered an adult disabled child.

OAR 461-135-1110, concerning the eligibility requirements for students in the OHP-OPU program (Oregon Health Plan for adults who qualify with incomes below 100 percent of the poverty standard), is being amended to update the years for which the Student Aid Report may be used in the eligibility process. The 2006-2007 eligibility standard based on the amount of expected family remains unchanged from 2005-2006.

OAR 461-140-0040 and 461-145-0088 are being amended to resolve potential conflicts between the two rules about whether certain expenditures by a business entity on behalf of a principal may be considered for determining the eligibility of a client for the Oregon Health Plan (OHP), and for all programs whether certain income may be considered for eligibility purposes if held by a corporation to which a member of financial group has a legal right. OAR 461-140-0040 is also being amended to indicate for the OHP and ERDC (Employment or Education-Related Day Care) programs the situations in which money withheld or returned to the source are considered available income for eligibility purposes. OAR 461-145-0088 is also being amended to include certain expenditures by a business entity on behalf of a principal as available income for clients of the Food Stamp program and to describe how income from business entities and corporations is treated in the Food Stamp program.

OAR 461-140-0210 concerning the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs is being amended to clarify the rule, make the rule consistent with other rules, remove unnecessary language, and implement a 60-month look back period for all transfers of assets that occur on or after July 1, 2006. This amendment expands the situations in which a transfer of resources will disqualify an individual from program eligibility.

OAR 461-140-0220 is being amended to clarify the rule, cross-reference the new rule (461-145-0022) about annuities affecting clients of OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and clarify when the purchase of an annuity on or after July

1, 2006 is a transfer of resources that disqualifies a client from eligibility.

OAR 461-140-0242, which identifies transfers of resources that disqualify clients from some public and medical assistance programs, is being amended to clarify the strength of the presumption that an action was taken in order to maintain eligibility if a Medicaid recipient transfers an excluded resource (such as a home or other real property) for less than fair market value. The rule is also being rewritten and reorganized to merge duplicative provisions.

OAR 461-140-0295 — concerning the groups that filed an application for benefits between October 1, 1993, and September 30, 1998 for the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs — is being repealed because there are no longer any clients affected by this rule. In addition, the one divisor amount that may still apply to calculating a disqualification penalty for a transfer of resources for less than fair market value is being moved to OAR 461-140-0296 where the other pertinent divisors are located.

OAR 461-140-0296 is being amended to extend the duration of disqualification from eligibility due to a resource transfer in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. This amendment establishes partial month penalties for disqualifying transfers of resources that do not currently exist; and for OSIPM clients who receive long-term care or home- or community-based services, states the penalty will be served either at the time the transfer was made or when the client would have been eligible for medical benefits but for the disqualifying transfer, whichever is later. In addition, one divisor amount for calculating a disqualification penalty for a transfer of resources for less than fair market value was moved from OAR 461-140-0295 which was repealed, to this rule.

OAR 461-140-0300 is being amended to establish criteria in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs for deciding whether a disqualification penalty due to a transfer of resources must be waived because of the undue hardship it would cause for the client.

OAR 461-145-0020 – concerning the treatment of annuities, interest, dividends, and royalties to determine eligibility for public assistance, medical assistance and food programs — is being amended to reduce its scope to cover only annuities in programs other than OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities). This rule is also being amended to clarify certain terms such as annuity, commercial annuity, and child. The policies about the treatment of dividends, interest and royalties are being moved to a new rule (OAR 461-145-0108). The policies about the treatment of annuities for OSIPM clients are being moved to a new rule (OAR 461-145-0022).

OAR 461-145-0022 is being adopted to describe the policies about the treatment of annuities to determine eligibility for clients in the OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) program. For OSIPM clients and spouses of these clients who purchase an annuity on or after July 1, 2006, there are stricter requirements than in the current rule (461-145-0020). The new rule requires a client and spouse to declare any annuity on each application and redetermination of eligibility. By signing the application, the client and spouse agree that the Department becomes a remainder benefi-



## NOTICES OF PROPOSED RULEMAKING

ciary on the annuity for providing medical benefits. For any annuity declared, the Department will notify the annuity issuer that the Department is a preferred remainder beneficiary. In order for an annuity to not be considered a disqualifying transfer of resources for the client and the spouse of the client, the annuity must name the Department as the first remainder beneficiary unless there is a spouse or minor child or child with a disability that meets the Social Security Administration (SSA) disability criteria to name as the first remainder beneficiary. In addition, in order for an annuity to not be considered a disqualifying transfer of resources for a client, it must be irrevocable and non-assignable, provide for payments in equal amounts over the annuitant's lifetime and be purchased from a business. In addition, in order for the annuity to not be considered a countable resource, the annuity must meet all of these criteria for both the client and the spouse of the client. For an OSIPM client (and their spouse) who receives long-term care or home- or community-based services and for all other OSIPM clients (and their spouses) who purchase an annuity prior to July 1, 2006, the new rule continues the requirements for OSIPM clients set out in OAR 461-145-0020 prior to this amendment.

OAR 461-145-0108 is being adopted to describe the policies about the treatment of dividends, interest, and royalties to determine eligibility for public assistance, medical assistance and food stamp programs in a separate rule from one that also covers annuities. These policies are being moved to this rule from OAR 461-145-0020.

OAR 461-145-0180 is being amended to ease the eligibility and client contribution requirements in the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program), and QMB (Qualified Medicare Beneficiaries) programs. This amendment will exclude from the income counted toward eligibility and client contribution requirements any family support payments distributed by state or local agencies to or on behalf of families who are caring for persons with extraordinary care needs in their home.

OAR 461-145-0220 is being amended to set out the new requirements about the treatment of home equity in determining eligibility for clients in the OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) program who receive long-term or home- or community-based care services. Under these requirements (which take effect on July 1, 2006), a client whose initial application for services is on or after January 1, 2006 and who has a home with equity of \$500,000 or less is excluded (from consideration in determining eligibility) when the client resides there. A home with equity of more than \$500,000 is counted (to determine eligibility) unless a spouse or minor child or child with a disability that meets the SSA criteria resides there, or the property produces income consistent with its equity value that is essential to the client's self-support, or the client is legally unable to convert the home equity to cash. A client has a new initial application for services whenever there has been a break in assistance of at least one full calendar month.

OAR 461-145-0250 is being amended to clarify that an individual that rents out a room or other space will have that space considered as income-producing property. This rule is also being amended to indicate that income-producing property is excluded as a resource in the Food Stamp program if its value is under \$1,500. This rule is also being amended to treat income-producing property for grandfathered OSIP and OSIPM clients in the same manner as other OSIP and OSIPM clients. It is also being reorganized for easier reading.

OAR 461-145-0310 is being amended to clarify the rule and to implement the new requirements about the treatment of life estates in determining eligibility for clients in the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. Under these requirements, if a client purchases an interest in a life estate in another person's home on or after July 1, 2006, the transaction is a disqualifying transfer of resources, unless

the purchaser lives in the home for at least 12 consecutive months after the date of the purchase.

OAR 461-145-0330 is being amended to clarify the rule and to implement the new requirements about the treatment of loans and loan payments for purposes of determining eligibility for the in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. Under these requirements, if a client purchases a promissory note, loan or mortgage, the transaction is considered a disqualifying transfer of resources unless the repayment plan occurs over the client's lifetime in equal installments and does not have a provision for cancellation if the client should die. The penalty for a transaction that does not meet these requirements is to count the entire balance of the payments owing as a disqualifying transfer of resources that may result in a penalty period. After the penalty period has been served, the entire balance owing is counted as an available resource for purposes of eligibility.

OAR 461-145-0340 is being amended to treat lodger income as self-employment income in all medical and public assistance programs to provide program simplification and adherence to the federal guidelines related to income. In the current rule, this income is excluded for Medicaid and public assistance; this amendments will count the income for eligibility purposes.

OAR 461-155-0030 is being amended to raise the Adjusted Income/Payment Standard for the TANF, MAA, MAF, REF and SAC programs. The payment standard for these programs is being increased by 2.4% effective April 1, 2006. This standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

OAR 461-155-0150 is also being amended to implement a legislatively approved 2.4 percent cost of living adjustment for child care providers in the ERDC (Employment or Education-Related Day Care), JOBS, JOBS Plus, and TANF programs.

OAR 461-155-0175, "Income Standard; EXT", is being adopted to make permanent a temporary rule adopted effective April 1, 2006. This rule establishes income standards or limits that apply to eligibility for the Extended Medical Assistance (EXT) program.

OAR 461-155-0250 is being amended to correct the earnings standard for attachment to the workforce for the OSIP-EPD and OSIPM-EPD programs.

OAR 461-155-0660 is being amended because the rule is not clear about the standard that staff should use when determining eligibility for the accommodation allowance for non-SSI clients of OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD). OSIP is Oregon Supplemental Income Program, which provides cash supplements and special need payments to eligible persons who are blind, disabled, or 65 years of age or older. OSIPM is the Oregon Supplemental Income Program Medical, which provides medical coverage for elderly and disabled individuals who are eligible. Additional clarification is being added this rule to limit the amount of time an accommodation allowance may be authorized and to change the way the allowance is calculated. The title of the rule is being changed to clarify that the rule is to be used to help clients who have a disability and who have increased costs due to an accommodation issue, or who need help maintaining their residence while confined for a short time to a medical or care facility.

OAR 461-160-0055 is being amended to remove language that allows a deduction for the cost of the Medicare-approved Drug Discount card. The Medicare-approved Drug Discount card expires May 15, 2006.

OAR 461-160-0120 is being amended to clarify current policy regarding the treatment of income of the father of an ineligible non-citizen or an unborn in the Medical Assistance to Families (MAF) program. In MAF program, when a father of an ineligible non-citizen or an unborn is excluded from the need group, his income is

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deemed to the need group. Additionally, this rule is being amended to correct a rule reference, clarifying that deeming for ineligible non-citizens in the MAF program applies to those non-citizens who do not meet alien status requirements of OAR 461-120-0125.

OAR 461-160-0415 about medical deductions in the Food Stamp program is being amended to update its terminology and to change the policy on when to allow income deductions for unanticipated medical costs. The purpose of this amendment is to simplify policy on budgeting unanticipated medical costs for elderly clients and clients with disabilities, and to allow more of the medical cost to be deducted from countable income.

OAR 461-160-0580 – which concerns clients in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs — is being amended to be consistent with the new federal requirement that available income of the Medicaid client receiving long term care or home- or community-based services (after required deductions for personal needs, etc.) and income of the spouse of the client must be used to meet the spouse's monthly maintenance needs before any additional resources may be transferred to the spouse to generate interest income to meet the need. This amendment makes permanent a temporary rule amendment adopted in March of 2006. Prior to enactment of the Deficit Reduction Act of 2005, using the income first was optional. Under the new federal law, using income first is mandatory in all situations. Although the Department's calculation for the needs of the spouse of the client used income first, court actions filed by attorneys on behalf of spouses for transfers of resources and spousal support orders were not required to use income first.

OAR 461-160-0610 and 461-185-0050 are being amended to comply with the federal statute and regulation whereby those individuals who are identified as eligible for Medicaid under the "Pickle Amendment" may receive benefits for in-home services provided under a Home and Community Based Waiver are not required to contribute any of their income toward the cost of their Medicaid-funded services.

OAR 461-160-0620 is being amended to make a required, annual adjustment to the income protection requirements for Medicaid offered to married couples where one spouse remains at home. The amount of protection is based on 150% of the federal poverty level for a two person household.

OAR 461-165-0030 is being amended to clarify that no person in a filing group for cash, medical, or food stamp benefits is allowed duplicate benefits in the same month.

OAR 461-170-0025 is being amended to indicate that clients in the EXT (Extended Medical) program are required to report a change in school status for children in the benefit group who are age 18.

OAR 461-170-0103 is being amended to describe more accurately when the Department closes or reduces benefits to Food Stamp clients in response to changes that a client is required to report, including income exceeding the allowed limit.

OAR 461-175-0220 is being amended to clarify the rule and state new requirements for certain notices of disqualification of clients in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. Under these new requirements, a notice of a disqualification due to a transfer of resources for less than fair market value will advise the client that they (or the facility in which they reside on their behalf) may apply for a hardship waiver.

OAR 461-175-0230 – which concerns the types of decision notices required for clients of all public assistance, food stamp, and medical assistance programs who are in a nonstandard living situa-

tion — is being amended to clarify the rule, remove outdated language, keep the rule consistent with pending amendments to OAR 461-110-0110, modify the situations in which no decision notice is required in the Food Stamp program, describe the type of decision notice that applies when benefits are suspended, and add unique requirements that apply to the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs.

OAR 461-180-0120 is being amended to state that the effective date for removing an inmate from the benefit group for public assistance, medical assistance and food stamp programs is the day the notice is mailed.

OAR 461-190-0195 is being amended to make changes to the DCI (JOBS Program Degree Completion Initiative) application process.

OAR 461-195-0511 is being amended to update and clarify the rule and to include language to protect individuals from a child care overpayment when an aspect of a documented disability caused the overpayment and the individual would have otherwise been eligible.

OAR 461-195-0521 which concerns the special rules for calculating overpayments — is being amended to clarify the rule, remove outdated language, and identify what is included in the overpayment calculation for clients who receive benefits in the OSIPM program (Oregon Supplemental Income Program Medical, medical coverage for elderly and disabled individuals) and do not pay their share of the costs of service.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301

**Telephone:** (503) 945-6067

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

**Rule Caption:** Revisions were made to rule definitions, eligible living arrangements and authorization of service plan hours.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-15-06	8 a.m.	500 Summer St. NE Rm. 137C Salem, OR 97301

**Hearing Officer:** Lisa Richards

**Stat. Auth.:** ORS 410.010, 410.020 & 410.070

**Other Auth.:** Home Care Commission 05-07 Bargaining Agrmt

**Stats. Implemented:** ORS 410.010, 410.020 & 410.070

**Proposed Adoptions:** 411-030-0055

**Proposed Amendments:** 411-030-0020, 411-030-0033, 411-030-0040, 411-030-0050, 411-030-0070, 411-030-0080, 411-030-0090

**Proposed Repeals:** 411-030-0055(T)

**Last Date for Comment:** 5-18-06, 12 p.m.

**Summary:** Clarifications include:

- Eligible living arrangements for receiving in-home services, including what is considered the client's home,
- Authorization and eligibility for service-plan hours, including exceptions to maximums
- "Live-in paid leave" as opposed to "respite" for Spousal Pay providers
- Contract agencies do not provide live-in services.
- Service-related transportation includes trips to and from work for EPD eligible individuals.
- General Assistance eligibility and hardship shelter allowances were removed.

**Rules Coordinator:** Lisa Richards

**Address:** 500 Summer St NE, E10, Salem, OR 97301

**Telephone:** (503) 945-6398

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Clarifying Definitions, Activities Daily Living, and Service Assessment Policies, termination waived service eligibility for TANF.

**Date:** 5-16-06      **Time:** 8 a.m.      **Location:** DHS, 500 Summer St. NE  
Rm. 137C  
Salem, OR 97301

**Hearing Officer:** Lisa Richards

**Stat. Auth.:** ORS 410.070 & 411.095

**Other Auth.:** Title XIX 1915(c) Home and Community Based Services Waiver

**Stats. Implemented:** ORS 410.070 & 411.095

**Proposed Adoptions:** 411-015-0006, 411-015-0008

**Proposed Amendments:** 411-015-0000, 411-015-0005, 411-015-0010, 411-015-0015, 411-015-0100

**Last Date for Comment:** 5-18-06, 12 p.m.

**Summary:** All rules are amended as appropriate to reflect language changes that are more person-centered. The standards for assessing assistance needs in Activities of Daily Living have been removed from the Definitions rule OAR 411-015-0005 and established in a new rule for Activities of Daily Living. The criteria for assistance and full assistance in Activities of Daily Living, which underlies the service priority levels, has not changed. Another new rule was added to address standards for service assessment and re-assessments of new applicants and eligible individuals. In accordance with HB 3238, this rule gives individuals a voice in some of the logistics of assessments and requires SPD to send a notice of the need for a service re-assessment at least 14 days in advance of the re-assessment. Other changes were made to clarify and increase consistency in language and terms used across rules and to add references to relevant rules. These changes are necessary to assist staff to improve the consistency and quality of service assessments. Language allowing individuals on TANF to receive waived services through SPD has been eliminated. Eligibility for individuals with natural supports who meet all of the individual's service needs has been clarified to be consistent with the program purpose specified in OAR 411-015-0000.

**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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## Department of Justice Chapter 137

**Rule Caption:** Adoption of Federal Truth-in-Lending Act, Federal Consumer Leasing Law, and the FTC Used Car Rule.

**Date:** 7-20-06      **Time:** 10 a.m.      **Location:** Commerce Bldg.  
158 12th St. NE  
Salem, OR

7-21-06      10 a.m.      Commerce Bldg.  
158 12th St. NE  
Salem, OR

**Hearing Officer:** Eugene Ebersole

**Stat. Auth.:** ORS 646.608(4)

**Stats. Implemented:** ORS 646.608(1)(u)

**Proposed Amendments:** 137-020-0040

**Last Date for Comment:** 7-13-06

**Summary:** This amendment clarifies existing law concerning federal Truth-in-Lending Act and Consumer Leasing Act. It also adds the FTC Used Motor Vehicle Rule to this rule. The rule clarifies specific Federal consumer protection laws that are enforced under the provisions of the Oregon Unlawful Trade Practices Act.

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 947-4700

**Rule Caption:** Misleading Use of "Free" Offers.

**Date:** 7-20-06      **Time:** 10 a.m.      **Location:** Commerce Bldg.  
158 12th St. NE  
Salem, OR

7-21-06      10 a.m.      Commerce Bldg.  
158 12th St. NE  
Salem, OR

**Hearing Officer:** Eugene Ebersole

**Stat. Auth.:** ORS 646.608(4)

**Stats. Implemented:** ORS 646.608(1)(u)

**Proposed Amendments:** 137-020-0015

**Last Date for Comment:** 7-13-06

**Summary:** The amendments modify the Misleading Use of "Free" Offers rule to eliminate free offers in any negotiated price transactions, including, but not limited to certain door-to-door sales, construction related sales and motor vehicle sales.

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 947-4700

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**Rule Caption:** Motor Vehicle Price Disclosure.

**Date:** 7-20-06      **Time:** 10 a.m.      **Location:** Commerce Bldg.  
158 12th St. NE  
Salem, OR

7-21-06      10 a.m.      Commerce Bldg.  
158 12th St. NE  
Salem, OR

**Hearing Officer:** Eugene Ebersole

**Stat. Auth.:** ORS 646.608(4)

**Stats. Implemented:** ORS 646.608(1)(u)

**Proposed Amendments:** 137-020-0020

**Last Date for Comment:** 7-13-06

**Summary:** The proposed amendments define specific instances and clarify specific instances of unfair or deceptive conduct in the price disclosure and sale of motor vehicles. The standards for permissible pricing practices and sales of used and new cars will be made more definite and certain by the amendments. Disclosures by advertising agents, brokers and dealers of motor vehicles will be enlarged in scope. The amendments clarify existing law concerning the pricing disclosure, sales and leasing practices and financing of used and new motor vehicles.

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 947-4700

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**Rule Caption:** Motor Vehicle Advertising.

**Date:** 7-20-06      **Time:** 10 a.m.      **Location:** Commerce Bldg.  
158 12th St. NE  
Salem, OR

7-21-06      10 a.m.      Commerce Bldg.  
158 12th St. NE  
Salem, OR

**Hearing Officer:** Eugene Ebersole

**Stat. Auth.:** ORS 646.608(4)

**Stats. Implemented:** ORS 646.608(1)(u)

**Proposed Amendments:** 137-020-0050

**Last Date for Comment:** 7-13-06

**Summary:** The proposed amendments define specific instances and clarify specific instances of unfair or deceptive conduct in the advertising motor vehicles. The standards for permissible advertising of used and new cars will be made more definite and certain by the amendments. Disclosures by advertising agents, brokers and dealers of motor vehicles will be enlarged in scope. The amendments clarify existing law concerning the advertisement of used and new motor vehicles.

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Carol Riches  
**Address:** Department of Justice, 1162 Court St. NE, Salem, OR 97301  
**Telephone:** (503) 947-4700

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**Rule Caption:** Amends child support rules to deal with additional child attending school and other miscellaneous issues.

**Stat. Auth.:** ORS 18.005, 18.225, 25.260, 25.610, 180.345, 180.380, 183.415 & 416.455

**Stats. Implemented:** ORS 18.225 - 18.238, 18.645, 25.020, 25.080, 25.125, 25.260, 25.287, 25.610, 107.108, 107.135, 109.252, 127.005, 411.320 & 416.400 - 416.470

**Proposed Amendments:** 137-055-1020, 137-055-1140, 137-055-1145, 137-055-2160, 137-055-3020, 137-055-3060, 137-055-3100, 137-055-3140, 137-055-3420, 137-055-3430, 137-055-5110, 137-055-5120, 137-055-5220, 137-055-6021, 137-055-6210, 137-055-6260

**Last Date for Comment:** 6-23-06, 5 p.m.

**Summary:** Amendment to OAR 137-055-1020 incorporates changes from HB 2359 and SB 1050 which removes "installments" and adds a definition for "tiered order"; Changes to OAR 137-055-1140 removes language regarding information released to a state agency from OAR 137-055-1145 and inserts it into OAR 137-055-1140; Changes to OARS 137-055-2160, 137-055-3020, 137-055-3060, 137-055-3100, and 137-055-3140 incorporate changes from SB 234 regarding paternity and presumptions; Changes to OARS 137-055-3420, 137-055-3430, 137-055-5110, 137-055-5120, 137-055-5220, and 137-055-6021 incorporate further changes due to SB 1050 for the child attending school and the adult child; Amendment to OAR 137-055-6210 provides an exception to the rule for a deceased obligor without assets or an estate; Change to OAR 137-055-6260 provides for a return of overcollected support when no order exists for current support.

**Rules Coordinator:** Shawn Brenizer

**Address:** Department of Justice, Division of Child Support, 494 State Street, Suite 300, Salem, OR 97301

**Telephone:** (503) 986-6240

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

**Rule Caption:** Increase certification requirements for fire officials who review construction and fire protection systems plans.

Date:	Time:	Location:
5-15-06	9 a.m.	4760 Portland Rd. Salem, OR 97305

**Hearing Officer:** John Caul

**Stat. Auth.:** ORS 479.165

**Stats. Implemented:** ORS 479.165

**Proposed Amendments:** 837-039-0001, 837-039-0003, 837-039-0010, 837-039-0015, 837-039-0040, 837-039-0055, 837-039-0060, 837-039-0070, 837-039-0080, 837-039-0110

**Last Date for Comment:** 5-15-06, 5 p.m.

**Summary:** Fire officials who review plans shall successfully attain certification within eighteen months from the effective date of these rules. The Office of State Fire Marshal shall maintain a roster of ICC Fire Inspector II and ICC Fire Plans Examiner certified fire officials and provide this list to each building jurisdiction annually.

**Rules Coordinator:** Pat Carroll

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

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

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**Rule Caption:** Adopting amendments Mid-Cycle to the 2004 Oregon Fire Code, adopted by temporary rule January 9, 2006.

**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030

**Proposed Adoptions:** 837-040-0020

**Proposed Amendments:** 837-040-0001, 837-040-0010, 837-040-0140

**Last Date for Comment:** 5-21-06

**Summary:** These rules are necessary to define and clarify when sprinkler systems are required in parking garages, piers and wharves; to adopt the most recent standards for sprinkler installations in commercial and residential properties; to correlate various provisions within the code and to address certain fire, life-safety concerns related to exit door hardware. These rules will maintain correlation with the Oregon Structural Specialty Code.

**Rules Coordinator:** Pat Carroll

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

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

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## Department of Veterans' Affairs Chapter 274

**Rule Caption:** Monthly Assistance Amount Payable from the Covered Care Program.

**Stat. Auth.:** ORS 406.050, 408.360, 408.365 & 408.368

**Stats. Implemented:** ORS 408.365 & 408.368

**Proposed Amendments:** 274-040-0030

**Proposed Repeals:** 274-040-0030(T)

**Last Date for Comment:** 5-22-06

**Summary:** This rule amends 274-040-0030 and supersedes the Temporary Rule filed on March 31, 2006 and effective upon filing through September 25, 2006.

The maximum monthly amount of financial assistance payable from the Covered Care Program account for the care received by an Oregon Veterans' Home (OVH) resident is being deleted to provide the Oregon Department of Veterans' Affairs (ODVA) more flexibility in determining the amount of the Program's financial assistance to OVH residents.

Housekeeping changes are a result of the passage of ORS 406.005 in the 2005 Legislature which establishes the Department of Veterans' Affairs. Text is being amended to replace "Director" with "Department."

**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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## Employment Department, Child Care Division Chapter 414

**Rule Caption:** Amending rules in OAR 414-350, pursuant to the passage of HB 2999, increasing children in care to 16.

Date:	Time:	Location:
5-23-06	9 a.m.	Employment Dept. Auditorium Salem, OR

**Hearing Officer:** Lynn Nelson

**Stat. Auth.:** ORS 657A

**Stats. Implemented:** ORS 657A.260, 657A.270, 657A.280, 657A.290, 657.300, 657.310, 657A.390 & 657A.400

**Proposed Amendments:** Rules in 414-350

**Last Date for Comment:** 5-23-06, 5 p.m.

**Summary:** OAR Chapter 414-350 is being amended pursuant to the passage of HB 2999, increasing the number of children a certified family child care home provider can provide care.

**Rules Coordinator:** Lynn M. Nelson

**Address:** Employment Department, Child Care Division, 875 Union St. NE, Salem, OR 97311

**Telephone:** (503) 947-1724

# NOTICES OF PROPOSED RULEMAKING

## Landscape Contractors Board Chapter 808

**Rule Caption:** Requires statement in contracts about guidelines, clarifies definitions and when contractor to be on payroll, and house-keeping issues.

**Date:** 5-19-06  
**Time:** 11 a.m.  
**Location:** Roth's IGA  
1130 Wallace Rd. NW  
Salem, OR

**Hearing Officer:** Martin Seibold

**Stat. Auth.:** ORS 670.310 & 671.670

**Stats. Implemented:** ORS 183, 671.520, 671.540, 671.560, 671.570, 671.625, 671.660, 671.690, 671.703 & 671.710

**Proposed Amendments:** 808-001-0005, 808-002-0020, 808-002-0328, 808-002-0480, 808-002-0500, 808-003-0018, 808-004-0120, 808-004-0240, 808-004-0250, 808-004-0340, 808-004-0450, 808-004-0520, 808-004-0540, 808-004-0550, 808-004-0600

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

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

**Summary:** 808-001-0005 Adopts the Attorney General's Model Rules of Procedure that became effective January 1, 2006.

808-002-0020 Requires a statement in all contracts about whether the work performed is or is not to be measured against the guidelines established by OLCA dated March 2004.

808-002-0328 This rule currently states the individual landscape contractor is responsible for the landscaping work. The statutes state the landscaping business is responsible for the landscaping work. This amendment removes the incorrect language.

808-002-0480 Clarifies definition of Irrigation Systems to include: assemblies of valves, piping, sprinklers, nozzles, emitters, filters, or controllers and the positioning and piping of pumps that are installed for the purpose of watering lawns, trees, shrubs or nursery stock. Irrigation system do not include systems used to irrigate agricultural products including nursery stock grown for sale or for pasture used for the grazing or raising of animals unless done in conjunction with a landscape job.

808-002-0500 Adds statutory cites and clarifies definition of Landscaping Work to include planning and installing of fences, decks, arbors, patios, landscape edging, driveways, walkways and retaining walls when performed by a licensed landscaping business.

808-003-0018 Requires the individual landscape contractor who is the phase basis for the landscaping business license to be on the payroll each hour or meet the salary test for salaried employees when the landscaping business is performing landscape work related to the landscape contractor's phase of license; the landscaping business must require the individual landscape contractor to directly supervise the non-licensed employees; moves requirement for the Verification form to this rule from 808-003-0050, which is being repealed; removes requirement to have verification of employment form notarized, changes name of form to "Verification" and only requires a copy of the licensed landscape contractor's most current pay stub if that individual is a paid employee.

808-003-0050 Is being repealed/moved to 808-003-0018.

808-004-0120 Adds limited partnership to the rule as a legal entity.

808-004-0240 Clarifies exhaustion of bond or security may be partial or full exhaustion.

808-004-0250 Adds arbitration award as appropriate and includes awards for interest expressly allowed as damages under a contract that is the basis of the claim.

808-004-0340 Removes requirement for claimant to give a brief statement of the nature of the claim and replaces it with an identification of the type of claim as already defined in OAR 808-002-0220 (negligent work, breach of contract, etc.).

808-004-0450 Adds requirement that the individual landscape contractor whose phase of license is the basis for the landscaping business license must attend the on-site meeting for a claim. This is already a requirement as one of the supervisory duties, but this addi-

tion makes it clear when reading about the attendance of the on-site meeting.

808-004-0520 Adds that before suspending the processing of a claim because one or both of the parties filed a complaint in court and, if both parties to a claim are in agreement, the agency may hold an on-site meeting if the agency finds that it may help resolve the claim.

808-004-0540 Clarifies that the declaration of damages form submitted by the claimant is limited to the items listed in the statement of claim form.

808-004-0550 Adds arbitration award as appropriate and adopts the dismissal of a claim for failure to be licensed during all or part of the work period, lack of a direct contractual relationship or for work performed outside the state of Oregon.

808-004-0600 Clarifies that the notification to the surety company or deposit holder of claims ready for payment constitutes notice that payment is due and adds the language "irrevocable letter of credit" to comply with the statute.

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 235 Union Street NE, Salem, OR 97301

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

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## Office of Private Health Partnerships Chapter 442

**Rule Caption:** Clarifying FHIAP requirements and implementing SB 303 (2005), HB 2062 (2005) and HB 2064 (2005).

**Stat. Auth.:** ORS 735.734

**Other Auth.:** SB 303 & HB 2064

**Stats. Implemented:** ORS 735.720 - 735.740

**Proposed Adoptions:** Rules in 442-005

**Proposed Repeals:** Rules in 442-004

**Last Date for Comment:** 5-26-06

**Summary:** This amended Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact is being filed under ORS 183.335(12) to show all changes to the rules by striking through material to be deleted and underlining all new material. Please refer below as to where a copy of the rules may be obtained.

OPHP is repealing Division 4 and adopting Division 5 in an effort to clarify the intent of the rules. The new rules will streamline the application and determination process for the Family Health Insurance Assistance Program (FHIAP). In early 2005 FHIAP conducted a Business Process Improvement study. Many of the rule changes are a direct result of the report that was generated from that study.

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

The rules are available on the FHIAP website at <http://www.oregon.gov/OPHP/FHIAP/index.shtml>

The drafts will be updated weekly until the effective date. Anyone who would like a set of the drafted rules mailed to them may contact Cindy Bowman at 503-378-4674, or 1-888-564-9669 x 84674.

**Rules Coordinator:** Nicole Shuba

**Address:** Office of Private Health Partnerships, 250 Church St. SE, Ste. 200, Salem, OR 97301

**Telephone:** (503) 378-4676

# NOTICES OF PROPOSED RULEMAKING

## Oregon Department of Aviation Chapter 738

**Rule Caption:** Establish rural airport pilot program to encourage through the fence operations.

**Date:** 5-26-06      **Time:** 10-11 a.m.      **Location:** Oregon Dept. of Aviation Conference Rm. Salem, OR

**Hearing Officer:** Jennifer Kellar

**Stat. Auth.:** ORS 835.035, 836.642 & Sec. 4, Ch. 820, OL 2005

**Stats. Implemented:** ORS 836.640, 836.642 & Ch. 820, OL 2005

**Proposed Adoptions:** 738-014-0010 – 738-014-0060

**Last Date for Comment:** 5-26-06, 5 p.m.

**Summary:** Oregon Laws 2005, Chapter 820, directs the Department to adopt rules implementing a pilot program to encourage through the fence operations at three rural airports. Aurora State Airport is one of the three pilot airports by statutory designation. The rules establish a process for selecting the other two volunteer airports, adopt standards and guidelines for the program, and provide for pilot program evaluation. The purpose of the pilot program is to encourage economic development at these airports by creating family wage jobs, increasing local tax bases and increasing financial support for rural airports.

**Rules Coordinator:** Jennifer Kellar

**Address:** Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302

**Telephone:** (503) 378-4881

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## Oregon Housing and Community Services Chapter 813

**Rule Caption:** Defines the purpose, eligibility and criteria for participating in the Vertical Housing Program.

**Date:** 5-22-06      **Time:** 1:30 p.m.      **Location:** 725 Summer Street NE Suite B Salem, Oregon 97301

**Hearing Officer:** Debie Zitzelberger

**Stat. Auth.:** ORS 456.555, HB 2199 & 2005 OL, Ch. 119

**Stats. Implemented:** ORS 456.555, HB 2199 & 2005 OL, Ch. 119

**Proposed Adoptions:** 813-013-0001, 813-013-0005, 813-013-0010, 813-013-0015, 813-013-0020, 813-013-0025, 813-013-0030, 813-013-0035, 813-013-0040, 813-013-0045, 813-013-0050, 813-013-0055, 813-013-0060

**Proposed Repeals:** 813-013-0001(T), 813-013-0005(T), 813-013-0010(T), 813-013-0015(T), 813-013-0020(T), 813-013-0025(T), 813-013-0030(T), 813-013-0035(T), 813-013-0040(T), 813-013-0045(T), 813-013-0050(T), 813-013-0055(T), 813-013-0060(T)

**Last Date for Comment:** 6-23-06, 5 p.m.

**Summary:** The rules will carry out the provisions of HB 2199, 2005 Oregon Laws, Oregon Chapter Law 119, as they pertain to the administration of the Vertical Housing Program. The program encourages construction or rehabilitation of properties in targeted areas of communities in order to augment the availability of appropriate housing and to revitalize such communities. Division 813-013 sets forth relevant aspects of the Program, including processes and criteria for the designation of Vertical Housing Development Zones (VHDZ) for the application and approval of Certified Projects, for the calculation of any applicable property tax exemptions, and for the monitoring and maintenance of properties as qualifying Certified Projects. Division 813-013 is not meant to interfere with the direct administration of property tax assessments by county assessors and does not supersede administration rules of the Department of Revenue in OAR Chapter 150 pertaining to the valuation of property for purposes of property tax assessments as adopted or amended in the future for such purposes.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301

**Telephone:** (503) 986-2012

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amend ten rules in Division 15 to make minor housekeeping changes.

**Date:** 5-23-06      **Time:** 10 a.m.–12 p.m.      **Location:** 9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030, 471.040, 730(1) & (5)

**Stats. Implemented:** ORS 471.710, 471.740, 471.745, 471.750 & 471.752

**Proposed Amendments:** 845-015-0101, 845-015-0118, 845-015-0120, 845-015-0130, 845-015-0135, 845-015-0145, 845-015-0168, 845-015-0170, 845-015-0173, 845-015-0180

**Last Date for Comment:** 6-6-06

**Summary:** The ten rules in this package need minor amendments to clarify terminology, correct internal inconsistencies, reorganize and rename rules for clarity, correct outdated references. The proposed amendments are minor in nature.

**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:** IAP Account Adjustment for Earnings or Losses and Employer Remitting of Employee Contributions.

**Date:** 5-23-06      **Time:** 1:30-3 p.m.      **Location:** Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

**Hearing Officer:** Brendalee Wilson

**Stat. Auth.:** ORS 238.650 & 238A.450

**Stats. Implemented:** ORS 238A.350 & 238.205

**Proposed Amendments:** 459-009-0200, 459-080-0200

**Last Date for Comment:** 6-2-06

**Summary:** OAR 459-080-0200 & 459-009-0200 — The proposed rule modifications streamline the administration and operation of the IAP program structure to better align the process with member and stakeholder expectations, comprehension and satisfaction and to conform closer to the program as established.

Copies of the proposed rules are available to any person upon request. The rules are also available at [www.pers.state.or.us](http://www.pers.state.or.us)

Public comment may be mailed to the above address or sent via email to [Brendalee.Wilson@state.or.us](mailto:Brendalee.Wilson@state.or.us)

**Rules Coordinator:** Brendalee S. Wilson

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

**Telephone:** (503) 431-8902

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Establish boundaries for no-wake zones in select day use areas on Lake Billy Chinook.

**Date:** 5-18-06      **Time:** 7 p.m.      **Location:** Jefferson County Commission Office 66 SE D St. Madras, OR

**Hearing Officer:** Randy H. Henry

**Stat. Auth.:** ORS 830.110 & 830.175

**Stats. Implemented:** ORS 830.110 & 830.175

**Proposed Amendments:** 250-020-0161

**Last Date for Comment:** 5-31-06

**Summary:** A petition was received by the Marine Board to amend boating rules for a series of slow no-wake, maximum 5 mph zones

# NOTICES OF PROPOSED RULEMAKING

around the Crooked River Day Use, Lower Deschutes Day Use, and Upper Deschutes Day Use areas. At the March 16, 2006 meeting in Portland, the Board accepted the request and directed staff to initiate rulemaking, schedule a public hearing, provide notice and gather comment from the public on the proposal. The rule would help to identify the preferred location for placement of buoys to mark the boundaries of no-wake zones currently in place at the day use locations noted. The request is supported by the Jefferson County Sheriffs Department marine officers.

**Rules Coordinator:** Jill E. Andrick  
**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065  
**Telephone:** (503) 378-2617

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**Rule Caption:** Slow no-wake, maximum 5 mph zone, Hewitt Park, Brownlee Reservoir to protect boats and swimmers.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-06	7 p.m.	Courtroom Baker County Courthouse Baker City, OR

**Hearing Officer:** Paul Donheffner  
**Stat. Auth.:** ORS 830.110 & 830.175  
**Stats. Implemented:** ORS 830.110 & 830.175  
**Proposed Amendments:** 250-020-0013  
**Last Date for Comment:** 5-31-06

**Summary:** Baker County Commissioners petitioned the Marine Board to amend boating rules to expand the existing slow no-wake, maximum 5 mph zone adjacent to Hewitt Park on the Powder River arm of Brownlee Reservoir. At the March 16, 2006, meeting in Portland, the Board accepted the request and directed staff to initiate rulemaking, schedule a public hearing, provide notice and gather comment from the public on the proposal. The existing rule extends 200' from shore. The proposed rule would extend bank-to-bank adjacent to Hewitt Park. The rule would protect boats tied to shoreline rocks due to limited moorage facilities. In addition, swimmers who frequent this section of water would also be protected from wakes caused by high speed boat operation. The request is supported by Baker County Sheriffs Department marine officers.

**Rules Coordinator:** Jill E. Andrick  
**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065  
**Telephone:** (503) 378-2617

\*\*\*\*\*  
**Oregon State Treasury**  
**Chapter 170**

**Rule Caption:** Procedure for Submission, Review, and Approval of an Advance Refunding Plan.

**Stat. Auth.:** ORS 178.050  
**Stats. Implemented:** ORS 288  
**Proposed Amendments:** 170-062-0000  
**Last Date for Comment:** 5-22-06

**Summary:** This Rule describes the procedures by which the State Treasurer approves refunding of outstanding obligations at least one year prior to their optional call date. There are three permissible purposes for this refunding: 1 - a present value savings; 2 - favorable reorganization of debt; and 3 - fiscal distress. The amendment identifies the maturity requirements for an agreement for exchange of interest rates when used in an advance refunding plan. The maturity of the swap must be fixed to the length of the advance refunding bonds in order to correctly determine the amount of savings. Valid reasons for approval for a reorganization of debt are added, providing clarity of purpose and intent. Additionally, adoption of the rule amendment would no longer require that the financial advisor enter into a contract with the issuer which is non-contingent upon the sale of the advance refunding bonds.

**Rules Coordinator:** Sally Furze

**Address:** Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301  
**Telephone:** (503) 378-4990

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

**Rule Caption:** Amends existing rule to clarify definition of "degree mill" and "diploma mill."

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-16-06	9:30 a.m.	1500 Valley River Dr. Ste. 100 Eugene, OR 97401

**Hearing Officer:** Dean Wendle  
**Stat. Auth.:** ORS 348.609 & 2005 SB 1039 Enrolled  
**Stats. Implemented:** ORS 348.609  
**Proposed Amendments:** 583-050-0011, 583-050-0014  
**Last Date for Comment:** 6-15-06, 5 p.m.

**Summary:** This rule implements Oregon Revised Statutes (ORS) 348.594 to 348.615 and 348.992 insofar as each section therein relates to ORS 348.609, intended to protect postsecondary institutions, businesses and other employers, professional licensing boards, patients and clients of degree holders, and all citizens from any person claiming to possess a valid academic degree that in fact was issued by a fraudulent or nonexistent school, by a non-educational entity posing as a school, by a nonstandard school without the use of a disclaimer, or by any entity in violation of statute or Commission rules.

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

\*\*\*\*\*  
**Oregon University System,**  
**Oregon Institute of Technology**  
**Chapter 578**

**Rule Caption:** To amend the Schedule of Special Institution Fees and Charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-06	2 p.m.	Executive Staff Conf. Rm. Snell Hall Klamath Falls, OR

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 351  
**Stats. Implemented:** ORS 351.070  
**Proposed Amendments:** 578-041-0030  
**Last Date for Comment:** 5-29-06

**Summary:** 578-041-0030 — Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2006–07. The schedule of subject fees may be obtained from the Oregon Institute of Technology office.

**Rules Coordinator:** Ceilia E. Foster  
**Address:** Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603  
**Telephone:** (541) 885-1105

\*\*\*\*\*  
**Rule Caption:** To amend the Parking Fees and Charges with text revisions.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-06	2 p.m.	Executive Staff Conf. Rm. Snell Hall Klamath Falls, OR

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 351  
**Stats. Implemented:** ORS 351.070  
**Proposed Amendments:** 578-072-0030  
**Last Date for Comment:** 5-29-06

# NOTICES OF PROPOSED RULEMAKING

**Summary:** 578-072-0030 — Amends the Parking Permits and Fees with text revisions. Amendments allow for increases and text revisions, for fiscal year 2006–07. The schedule of parking fees and text revisions may be obtained from the Oregon Institute of Technology office.

**Rules Coordinator:** Ceilia E. Foster

**Address:** Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

**Telephone:** (541) 885-1105

.....  
**Oregon University System,  
Oregon State University  
Chapter 576**

**Rule Caption:** Setting fees and charges at Oregon State University for fiscal year 2006–2007.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-31-06	12 p.m.	Memorial Union 206 Oregon State University Corvallis, OR

**Hearing Officer:** Bonnie Dasenko

**Stat. Auth.:** ORS 351.070, 352.360 & OAR 580-040-0010

**Stats. Implemented:** ORS 351.070 & 352.360

**Proposed Amendments:** 576-010-0000

**Last Date for Comment:** 6-1-06

**Summary:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2006–2007. The rule states: “The University hereby adopts by reference a list of fees and charges for fiscal year 2006–2007. The list of fees and charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.”

**Rules Coordinator:** Bonnie Dasenko

**Address:** Oregon University System, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331-2128

**Telephone:** (541) 737-2474

.....  
**Oregon Youth Authority  
Chapter 416**

**Rule Caption:** Adoption of new rules for administration of the Interstate Compact on Juveniles.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 417.010 - 417.080

**Proposed Adoptions:** 416-115-0000, 416-115-0010, 416-115-0020, 416-115-0030, 416-115-0040, 416-115-0050, 416-115-0060, 416-115-0070, 416-115-0080, 416-115-0090, 416-115-0100, 416-115-0110, 416-115-0120, 416-115-0130, 416-115-0140, 416-115-0150, 416-115-0160, 416-115-0170, 416-115-0180, 416-115-0190, 416-115-0200, 416-115-0210, 416-115-0220, 416-115-0230, 416-115-0240, 416-115-0250, 416-115-0260, 416-115-0270, 416-115-0280

**Last Date for Comment:** 5-30-06

**Summary:** The 2003 Oregon Legislature transferred the authority for administration of the Interstate Compact on Juveniles to the Oregon Youth Authority. These rules are necessary to implement that Compact.

**Rules Coordinator:** Mike Riggan

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

**Telephone:** (503) 378-3864

.....  
**Rule Caption:** Adoption of a new rule for definitions; amending “child attending school” provision.

**Stat. Auth.:** ORS 420A.025

**Stats. Implemented:** ORS 107.108 & 416.400 - 416.486

**Proposed Adoptions:** 416-100-0005

**Proposed Amendments:** 416-100-0000, 416-100-0010, 416-100-0050, 416-100-0060, 416-100-0070

**Last Date for Comment:** 5-30-06

**Summary:** OAR 416-100-0005 will be adopted as a “Definitions” rule. OAR 416-100-0000, OAR 416-100-0010, OAR 416-100-0060 and OAR 416-100-0070 will be amended to change some grammatical references and OAR 416-100-0050 will be amended to update and incorporate recent legislative directives regarding the provisions and understandings of child support as it relates to “a child attending school.”

**Rules Coordinator:** Mike Riggan

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

**Telephone:** (503) 378-3864

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**Public Utility Commission  
Chapter 860**

**Rule Caption:** Annual Tax Reports and Automatic Adjustment Clauses Relating to Public Utility Taxes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-31-06	9 a.m.	550 Capitol St. NE Main Hearing Rm., 1st Flr. Salem, OR
8-21-06	9:30 a.m.	550 Capitol St. NE Main Hearing Rm., 1st Flr. Salem, OR

**Hearing Officer:** Kathryn Logan

**Stat. Auth.:** ORS 756.060

**Stats. Implemented:** ORS 757.267 & 757.268

**Proposed Adoptions:** 860-022-0041

**Last Date for Comment:** 8-21-06, close of hearing

**Summary:** This rule establishes the required content for the tax reports required by ORS 757.268 for purposes of aligning taxes collected with taxes paid by four energy utilities. The rule also defines certain statutory terms, such as “properly attributed,” so that automatic adjustment clauses can be established and amended based on information provided by the utilities in their tax reports.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

**Telephone:** (503) 378-4372

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

**Rule Caption:** Secretary of State certification of vendors offering notary public education.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-22-06	8:30–11:30 a.m.	255 Capitol St. NE Ste. 151 Salem, OR 97310
6-9-06	9:30–12 p.m.	255 Capitol St. NE Ste. 151 Salem, OR 97310

**Hearing Officer:** Kristine Hume Bustos

**Stat. Auth.:** ORS 194.028

**Stats. Implemented:** ORS 194.028

**Proposed Adoptions:** 160-100-1000, 1010, 1020, 1030, 1040, 1050, 1060, 1070, 1080, 1090, 1100, 1110, 1120, 1130, 1140, 1150

**Last Date for Comment:** 6-16-06, 5 p.m.

**Summary:** ORS 194.028 directs the Secretary of State to adopt requirements for certification of providers of notary public education. These rules provide for the review of education vendor applications and lesson plans, certification of vendors and the listing of vendors on the Corporation Division website. They entail amendment and renewal procedures, as well as cancellation and termination of the Certificate of Approval.

**Rules Coordinator:** Kristine Hume Bustos

**Address:** 255 Capitol St. NE, Ste. 151, Salem, OR 97310

**Telephone:** (503) 986-2356



# NOTICES OF PROPOSED RULEMAKING

## Travel Information Council Chapter 733

**Rule Caption:** Modify Logo Sign criteria to meet federal guidelines; repeal duplicate language; add new Logo Riders.

**Stat. Auth.:** ORS 377.700 - 377.840

**Stats. Implemented:** ORS 183.310 - 183.550

**Proposed Amendments:** Rules in 733-030

**Proposed Repeals:** 733-030-0041

**Last Date for Comment:** 5-31-06

**Summary:** The Travel Information Council held a quarterly meeting on April 3, 2006. The Council proposed rule changes to make criteria for Logo Signs consistent with guidelines in the federal Manual on Uniform Traffic Control Devices; to re-assign separate rules for Expressways into rules for Interstate and Secondary highways and repeal the duplicated Expressway rules; and to add new legends for Logo Riders and clarify the approved size and width of Logo Riders.

**Rules Coordinator:** Angela Willhite

**Address:** Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302

**Telephone:** (503) 378-4508

## Water Resources Department Chapter 690

**Rule Caption:** Amend district water right transfer rules related to emergency point of diversion changes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-23-06	1-2 p.m.	North Mall Office Bldg. Conference Rm. 124b 725 Summer St. NE Salem, OR

**Hearing Officer:** Greg Nelson

**Stat. Auth.:** ORS 536.025 & 536.027

**Stats. Implemented:** ORS 540.570 & HB 2875 (Ch. 401, 2005 Oregon Water Laws)

**Proposed Adoptions:** 690-385-3145

**Proposed Amendments:** 690-385-0100, 690-385-3100, 690-385-3200, 690-385-3500

**Last Date for Comment:** 6-9-06, 5 p.m.

**Summary:** The Water Resources Department is proposing to amend district water right transfer rules (OAR Chapter 690, Division 385) to provide certain districts the opportunity to apply to temporarily (for one irrigation season) change the point of diversion for a water right in the event an emergency prevents a district from diverting the water to which it is legally entitled. The proposed rules implement HB 2875 (Chapter 401, 2005 Oregon Laws) which created this new emergency provision for districts. The rule amendments describe the requirements and procedures for the Department to evaluate an application to temporarily change a point of diversion in response to an emergency.

**Rules Coordinator:** Debbie Colbert

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

**Telephone:** (503) 986-0878

**Rule Caption:** Amends water right transfer rules and adopts rules for modifications to ground water registrations.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-22-06	2-3:30 p.m.	OWRD Conf. Rm. 124 725 Summer St. NE Salem, OR

**Hearing Officer:** Bill Ferber

**Stat. Auth.:** ORS 536.025, 536.027, 537.610, 540.531 & HB 2123 (Ch. 614, 2005 Oregon Water Laws)

**Stats. Implemented:** ORS 537.610, 540.505 - 540.532 & HB 2123 (Ch. 614, 2005 Oregon Water Laws)

**Proposed Adoptions:** 690-380-2240, 690-382-0010 - 690-382-1200

**Proposed Amendments:** Rules in 690-380

**Last Date for Comment:** 6-9-06, 5 p.m.

**Summary:** In 2005, the Oregon Legislative Assembly passed House Bill (HB) 2123 which modifies ORS 537.610 to require the Oregon Water Resources Commission to adopt rules defining the process and standards by which the Commission will recognize changes in the place of use, type of use, or point of appropriation for claims to appropriate ground water registered under ORS 537.610. The proposed Division 382 rules define the process and standards for recognizing ground water modifications. HB 2123 also modifies ORS 540.531 to provide greater flexibility for surface water to ground water point of diversion transfers. The proposed rule amendments in Division 380 implement provisions of HB 2123 related to surface water to ground water transfers and also clarify other provisions related to water right transfers.

**Rules Coordinator:** Debbie Colbert

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

**Telephone:** (503) 986-0878

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**Rule Caption:** Amends instream water right rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-06	2-3 p.m.	OWRD Conf. Rm. 124 a & b 725 Summer St. NE Salem, OR
5-25-06	1-2 p.m.	Deschutes County Commission Hearing Rm. Administration Bldg. 1130 NW Harriman Ave. Bend, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 536.025 & 536.027

**Stats. Implemented:** ORS 537.332 - 537.360 & 537.455 - 537.500

**Proposed Adoptions:** 690-077-0076

**Proposed Amendments:** Rules in 690-077

**Last Date for Comment:** 6-8-06, 5 p.m.

**Summary:** The Water Resources Department is proposing to amend the OAR Chapter 690, Division 077 rules to streamline rules related to instream water rights and provide greater consistency with the water right transfer rules (Division 380). The proposed rules clarify the general provisions affecting instream water rights and the standards for state agency applied instream water rights. Additionally, the proposed rules make other clarifications to instream water right leases and transfers, including allowing split season use instream leases up to five years.

**Rules Coordinator:** Debbie Colbert

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

**Telephone:** (503) 986-0878

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**Rule Caption:** Updates rules related to contested case hearings and rulemaking; adopts rules for public records requests.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-25-06	1:30-3 p.m.	Rm. 124 North Mall Office Bldg. Salem, OR

**Hearing Officer:** Kimberly Grigsby

**Stat. Auth.:** ORS 183.341, 536.025 & 536.027

**Other Auth.:** OAR 137-003-0501, 137-003-0535 & 137-003-0555

**Stats. Implemented:** ORS 183.325 - 183.410, 183.413 - 183.464, 192.410 - 192.505 & 538.480

**Proposed Adoptions:** 690-002-0075, 690-002-0190, 690-003-0100 - 690-003-0240

**Proposed Amendments:** 690-001-0000, 690-001-0005, 690-002-0000, 690-002-0010, 690-002-0020, 690-002-0023, 690-002-0025, 690-002-0030, 690-002-0035, 690-002-0105, 690-002-0175

**Proposed Repeals:** 690-001-0003, 690-002-0040, 690-002-0050, 690-002-0060, 690-002-0080, 690-002-0090, 690-002-0100, 690-

## NOTICES OF PROPOSED RULEMAKING

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002-0110, 690-002-0120, 690-002-0130, 690-002-0140, 690-002-0150, 690-002-0160, 690-002-0170, 690-002-0180

**Last Date for Comment:** 6-8-06

**Summary:** The Oregon Water Resources Department is proposing to update its rules related to rulemaking to reflect the latest version of the Attorney General's Uniform Rules, and to update its rules related to contested case hearings to be consistent with the Attorney General's Model Rules of Procedure. The Department is also proposing to adopt rules related to requests for public records and the processing of those requests.

**Rules Coordinator:** Debbie Colbert

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

**Telephone:** (503) 986-0878

# ADMINISTRATIVE RULES

## Board of Chiropractic Examiners Chapter 811

**Rule Caption:** Updates Guide to Policy and Practice Questions recognizing all policy updates adopted since July 31, 2003.

**Adm. Order No.:** BCE 3-2006

**Filed with Sec. of State:** 3-27-2006

**Certified to be Effective:** 3-27-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 811-010-0093

**Subject:** 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, Continuing Education Credit For Teaching, Collection of Liquidated and Delinquent accounts, Imminent Danger Exception to Patient Confidentiality.

**Rules Coordinator:** Dave McTeague—(503) 378-5816

### 811-010-0093

The Board's Guide to Policy and Practice Questions, originally dated January 14, 1998, and last amended January 19, 2006, is hereby adopted.

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

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.010 & 684.155

Hist.: BCE 3-1998, f. & cert. ef. 8-4-98; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2003, f. & cert. ef. 9-17-03; BCE 3-2006, f. & cert. ef. 3-27-06

## Board of Geologist Examiners Chapter 809

**Rule Caption:** Official university transcripts should reflect courses as listed in this rule.

**Adm. Order No.:** BGE 1-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 3-17-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 809-030-0025

**Subject:** This Rule now lists the university coursework that should be included on official transcripts used for qualifying to the exam. Applicants must have a minimum number of courses from this list reflected on their official transcript.

**Rules Coordinator:** Susanna R. Knight—(503) 566-2837

### 809-030-0025

**Qualifications for Geologist Fundamentals Examination and Certification as a Geologist-in-Training**

(1) To qualify to take the geologist fundamentals examination, an applicant shall:

(a) Have an undergraduate degree in geology, geological sciences, or earth science from an accredited college or university, or

(b) Have completed the equivalent of 45 quarter hours.

(2) At least 80% of the qualifying 45 quarter hours presented must include upper division coursework from the following list or substitutions approved by the Board:

- (a) Coastal processes;
- (b) Economic geology;
- (c) Engineering geology;
- (d) Environmental geology;
- (e) Geochemistry;
- (f) Geology field camp;
- (g) Geology field methods;
- (h) Geomorphology;
- (i) Geophysics;
- (j) Glacial geology;
- (k) Historical geology;
- (l) Hydrogeology;
- (m) Invertebrate paleontology;
- (n) Lithology;
- (o) Marine geology;
- (p) Mineralogy;
- (q) Paleopedology/Paleosols;

- (r) Petrography;
- (s) Petroleum geology;
- (t) Petrology;
- (u) Planetology;
- (v) Remote sensing;
- (w) Rock mechanics;
- (x) Sedimentology;
- (y) Seismology;
- (z) Stratigraphy;
- (aa) Structural geology;
- (bb) Tectonics;
- (cc) Volcanology.

Stat. Auth.: ORS 183 & 672.505 - 672.991

Stats. Implemented: ORS 672.555

Hist.: GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 1-1990, f. & cert. ef. 10-2-90; BGE 1-2006, f. & cert. ef. 3-17-06

## Board of Optometry Chapter 852

**Rule Caption:** Amends Rules with regard to diagnostic and Nontopical Pharmaceutical Agent Certification.

**Adm. Order No.:** OPT 2-2006

**Filed with Sec. of State:** 3-20-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 852-020-0070, 852-050-0006, 852-050-0012, 852-050-0014, 852-080-0030, 852-080-0040

**Subject:** 852-020-0070 — Delete reference to diagnostic pharmaceutical agents; Add licensure requirement for Nontopical pharmaceutical agents.

852-050-0006; 050-0012; 050-0014 — Delete reference to 852-080 subsection regarding CPR certification requirements.

852-080-0030; 080-0040 — Delete requirements for DPA certification; Revise requirements for AT certification; Add requirements for ATI certification.

**Rules Coordinator:** David W. Plunkett—(503) 399-0662, ext. 23

### 852-020-0070

#### Optometric Physician Educational and Professional Standards

(1) In order to meet the expanded optometric scope of practice and current standard of care in Oregon, all Doctors of Optometry shall have demonstrated qualification and have obtained certification to use topical and nontopical therapeutic pharmaceutical agents for the practice of optometry.

(2) Effective with year 2009 license renewal, beginning January 1, 2009, all active status licensees practicing optometry in Oregon shall have demonstrated qualification and have obtained certification to use "topical and nontopical therapeutic pharmaceutical agents" as a condition of license renewal. Application must be made to the Board in accordance with Division 80 — Certification to use Pharmaceutical Agents prior to using topical and nontopical therapeutic pharmaceutical agents.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.210(1), 683.270(1)(k) & 182.466

Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

### 852-050-0006

#### Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-080-0040, if licensed to use Nontopical TPA's.

# ADMINISTRATIVE RULES

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be \$210, plus an additional \$20 assessed for continuing education offerings and a \$35.00 disciplinary fee.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This late payment fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

## 852-050-0012

### Inactive Status License

(1) Eligible licensees may be granted an inactive status license by petitioning the board by letter.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Inactive licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year. License renewals will cover 12-month license periods based upon birth dates.

(3) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(4) The license renewal application must include the following to be considered complete:

- (a) A completed license renewal form signed by the licensee;
- (b) Check or money order for the correct license renewal fees;

(5) The Board will, as a courtesy, send license year renewal forms to inactive status licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(6) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(7) If a person is more than 60 days delinquent in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(8) The renewal fee for inactive status licensees shall be \$90.

(9) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This late payment fee must be received before the license will be issued.

(10) To reactivate a license to practice optometry in Oregon an inactive status licensee shall meet the following prior to the first day of practice in Oregon:

(a) Pay the difference between the inactive and active status license renewal fees;

(b) Submit continuing education hours equivalent to Oregon requirements for the previous license renewal period;

(c) submit documentation of current CPR certification, as required in OAR 852-080-0040, if licensed to use Nontopical TPA's;

(d) Submit the inactive license certificate issued during the current license renewal period;

(e) Provide the Board's office with the current practice location in the State of Oregon;

(f) Submit written verification of good standing from state(s) licensed. This verification shall contain a statement to indicate the status of the licensee regarding past and/or present sanctioning or investigations for sanctioning; and

(g) Pass the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon.

(h) If the request for reactivation occurs within one year from the date of being placed in inactive license status by the Board there will be a \$100 reactivation fee in addition to the other conditions in (a) through (f) above.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Hist.: OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

## 852-050-0014

### Reinstatement of License

(1) A person who has been previously licensed by the Board may have his/her license reinstated to its former status if the person:

(a) Voluntarily surrendered his/her license to the Board and at the time of so doing was in good standing and not under investigation, notice for proposed disciplinary action, or final order of the Board, or

(b) Had his/her license suspended due to nonpayment of the license renewal fee or late fee and at the time of suspension was not under investigation, notice for proposed disciplinary action, or final order of the Board.

(2) To reinstate an Oregon optometry license a Doctor of Optometry shall meet the following:

(a) Provide confirmation from all states ever licensed regarding violation of laws, rules and standards of ethics while licensed in those states;

(b) Pay delinquent fees as determined by the Board;

(c) Pay the reinstatement fee of \$100; and

(d) Submit documentation of current CPR certification, as required in OAR 852-80-040, if licensed to use Nontopical TPA's.

(e) The requirements in (2)(a) and (2)(c) above may be waived by the Board if the license is not more than 60 days expired.

(3) Reinstatement of a license to active status shall require in addition to (2)(a)(b)(c) & (d) above, passage of the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon and submission of continuing education hours equivalent to Oregon requirements for the previous license renewal period.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.070, 683.120, 683.270 & 182.466

Hist.: OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

## 852-080-0030

### Conditions of Formulary Application

The following conditions apply to the formulary of pharmaceutical agents in 852-080-0020 and 852-080-0025:

(1) Doctors of optometry certified for Topical and Nontopical Therapeutic Pharmaceutical Agents may use, administer, and prescribe any and all over-the-counter pharmaceutical agents.

(2) Doctors of optometry certified for topical TPA use may use, administer and prescribe topical agents in Categories 1-16.

(3) Doctors of optometry certified for nontopical TPA use may use, administer and prescribe topical and nontopical agents in Categories 1-24 as indicated for procedures that are permitted under OAR chapter 852, division 20 — Standards of Optometric Practice.

(4) Prior to instituting treatment with Anti-glaucoma medication, doctors of optometry shall consult with an ophthalmologist or other doctor of medicine or doctor of osteopathy licensed under ORS chapter 677.

(5) Doctors of optometry certified for nontopical TPA shall consult with a doctor of medicine or doctor of osteopathy, licensed under chapter 677, prior to extending treatment with nontopical corticosteroids or Schedule III analgesics beyond 7 days. They should be diligent in preventing the diversion of drugs for illegitimate purposes.

(6) Doctors of optometry may not use, administer or prescribe agents classified principally as anti-neoplastics.

# ADMINISTRATIVE RULES

(7) Doctors of optometry may use or administer pharmaceutical agents in cases of emergency requiring immediate attention.

(8) Doctors of optometry certified for nontopical TPA with injections (ATI) use, may administer subcutaneous and subconjunctival injections. Sub-Tenon, retrobulbar, intraocular and botulinum toxin injections are excluded.

(9) Doctors of optometry certified for nontopical TPA use, may administer oral pre-medication for light sedation. Conscious sedation, deep sedation or general anesthesia are excluded.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.240, 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 4-1998, f. 6-25-98, cert. ef. 7-1-98; OPT 1-2000, f. & cert. ef. 3-15-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

## 852-080-0040

### Certification to Use Pharmaceutical Agents

(1) Topical TPA Certification (T) for inactive status licensee — Any doctor of optometry licensed in Oregon in inactive status must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed a 100 hour TPA course approved by the Board and have been continuously practicing using therapeutic pharmaceutical agents in another state or states without disciplinary incident;

(b) Pay a \$75 TPA examination and licensure fee for topical TPA certification; and

(c) Receive a certificate from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents".

(2) Nontopical TPA Certification (AT) for active status licensee — Prior to using nontopical therapeutic pharmaceutical agents as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Meet Topical TPA Certification;

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire and maintain CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification.

(i) After the initial CPR certification, the Board will accept the American Heart Association BLS Healthcare Providers Online Renewal course. A hands-on component is not required for renewal CPR certification. An online CPR course that is not equivalent will not be approved by the Board.

(ii) The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(iii) The Board, as a courtesy, will send a reminder to licensee's last address of record, 60 days prior to their CPR expiration, indicating that current CPR certification is required to maintain their Nontopical TPA certification. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected.

(iv) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification shall be subject to a fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

(3) Nontopical TPA Certification (AT) for inactive status licensee — Any doctor of optometry licensed in Oregon in inactive status must:

(a) Meet all criteria for Topical TPA Certification in OAR 852-080-0040(1);

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(4) Nontopical TPA Certification with Injections (ATI) for active status licensee — Prior to using nontopical therapeutic pharmaceutical agents with injections as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least 7 hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire and maintain CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification.

(i) After the initial CPR certification, the Board will accept the American Heart Association BLS Healthcare Providers Online Renewal course. A hands-on component is not required for renewal CPR certification. An online CPR course that is not equivalent will not be approved by the Board.

(ii) The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(iii) The Board, as a courtesy, will send a reminder to licensee's last address of record, 60 days prior to their CPR expiration, indicating that current CPR certification is required to maintain their Nontopical TPA certification. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected.

(iv) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification shall be subject to a fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

(f) Effective April 1, 2006, all doctors of optometry that have been certified by the board as meeting the requirements for Nontopical TPA Certification and met the original certification requirements which included the injections workshop, will automatically have their licensure and certification changed to Nontopical TPA Certification with Injections.

(5) Nontopical TPA Certification with Injections (ATI) for inactive status licensee — Prior to using nontopical therapeutic pharmaceutical agents with injections as listed in this rule, any doctor of optometry licensed in Oregon in inactive status must:

(a) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least 7 hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(d) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for ini-

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tial CPR certification. The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(f) Effective April 1, 2006, all doctors of optometry that have been certified by the board as meeting the requirements for Nontopical TPA Certification and met the original certification requirements which included the injections workshop, will automatically have their licensure and certification changed to Nontopical TPA Certification with Injections.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.270 & 182.466  
Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 3-2003, f. 9-15-03, cert. ef. 10-1-03; OPT 3-2004, f. 9-24-04, cert. ef. 10-1-04; OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06

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**Rule Caption:** Implement fees and adjust fee schedule in accordance with previously adopted budget.

**Adm. Order No.:** OPT 3-2006

**Filed with Sec. of State:** 3-20-2006

**Certified to be Effective:** 7-1-06

**Notice Publication Date:** 5-1-05

**Rules Amended:** 852-010-0080, 852-050-0006

**Subject:** 852-010-0080(1)(a) - Implements changes to Schedule of Fee adopted for 2005 - 2007 biennium.

852-050-0006(7) - Implements license renewal fee adopted for 2005 - 2007 biennium.

**Rules Coordinator:** David W. Plunkett—(503) 399-0662, ext. 23

## 852-010-0080

### Schedule of Fees

(1) The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

- (a) Annual Renewal — Active License \$235
- (b) Annual Renewal — Inactive License \$90
- (c) Continuing Education Renewal Fee \$20
- (d) Disciplinary Renewal Fee \$35
- (e) Additional Office License \$40
- (f) Multiple Office License \$80
- (g) Application for Examination and Licensure \$150
- (h) Application for Endorsement Examination and Licensure \$250
- (i) Application for TPA Certification \$75
- (j) Law and Administrative Rule Examination \$75
- (k) Reactivation of License \$100
- (l) Reinstatement of License \$100
- (m) Wall Display Certificate \$20
- (n) License Verification \$20
- (o) Law and Administrative Rules Booklet \$25
- (p) List of Licensees \$25 — \$50
- (q) Late Renewal application, payment, continuing optometric education \$50 — \$200
- (r) Failure to notify the Board of practice locations \$50 – \$200

(2) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, etc. has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.270 & 182.466  
Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06

## 852-050-0006

### Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

- (a) A completed license renewal form signed by the licensee;
- (b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-080-0040, if licensed to use Nontopical TPA's.

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be \$235, plus an additional \$20 assessed for continuing education offerings and a \$35.00 disciplinary fee.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This late payment fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466  
Hist.: OE 2-1982, f. & cert. ef. 3-18-82; OE 2-1984, f. & cert. ef. 7-14-84; OP 1-1987, f. & cert. ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06

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

**Rule Caption:** Amendment of Rules Regarding Procedure for Designation of Predatory Sex Offenders.

**Adm. Order No.:** PAR 1-2006(Temp)

**Filed with Sec. of State:** 3-20-2006

**Certified to be Effective:** 3-20-06 thru 9-15-06

**Notice Publication Date:**

**Rules Amended:** 255-060-0011

**Subject:** The amendment of this rule is necessary in order to be consistent with the Oregon Supreme Court ruling in V.L.Y. v. Board of Parole and Post-Prison Supervision, 338 Or 44 (2005).

**Rules Coordinator:** Michael R. Washington—(503) 945-9009

## 255-060-0011

### Procedures for Predatory Sex Offender Designation

(1) For purposes of this rule, a predatory sex offender is defined as a person who exhibits characteristics showing a tendency to victimize or injure others and has been convicted of one or more of the following offenses: Rape in any degree, Sodomy in any degree, Unlawful Sexual Penetration in any degree or Sexual Abuse in any degree. In determining whether an inmate or offender is a predatory sex offender under this rule, the Board shall use the STATIC-99 (Exhibit Q-I) and definitions (Exhibit Q-II), which have been approved by the Department of Corrections as required by ORS 181.585(2). The Board may also consider any other evidence that the inmate or the offender exhibits characteristics showing a tendency to victimize or injure others.

(2) Predatory sex offender designations made by the board for inmates or offenders released from a Department of Corrections institution before February 10, 2005, are not included in this rule. Those designations are governed by the rules in effect when the designation was made.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate or offender is a candidate for predatory sex offender designation, if the inmate or offender scores six or more points on the STATIC-99.

(4) Subject to the procedures set forth below, inmates or offenders who score six or more points on the STATIC-99, and have been identified as a candidate for predatory designation, have the right to be advised of their score and submit written objections to the Board before the Board makes a predatory sex offender finding. The Notice of Rights and Written

# ADMINISTRATIVE RULES

Objections form for this rule are Exhibits Q-III and Q-IV of the Board's rules.

(a) Written objections must be received by a Department of Corrections' institution or release counselor, a supervising officer or the Board within three days of the date the offender or inmate signed the Notice of Rights (Exhibit Q-III).

(b) The Board must receive and review the signed Notice of Rights (Exhibit Q-III) or written documentation that the inmate or offender refused to sign the Notice of Rights before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding.

(c) The Board must consider any written objections to the score on the STATIC-99 timely submitted by the inmate or offender before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate or offender is a candidate for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.

(d) Inmates or offenders may elect to waive their right to submit written objections. Any such waiver must be in writing. When an inmate or offender waives their right to submit written objections, the Board may find an inmate or offender is a candidate for predatory sex offender designation if the inmate's or offender's score on the STATIC-99 is six or more points.

(5) A finding that an inmate or offender is a predatory sex offender may be made by one Board Member. The finding may only be made after the inmate or offender has participated in an evidentiary hearing or waived participation in such a hearing to determine whether the offender is exhibiting characteristics showing a tendency to victimize or injure others. A finding that an offender is a predatory sex offender will be contained in the inmate's or offender's original order of supervision or an amended order of supervision.

(6) The sole purpose of the evidentiary hearing will be to determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The Board may receive a written report from a supervising officer or a release counselor of any Department of Corrections institution indicating that an inmate or offender who has been determined to be a candidate for designation as a predatory sex offender under paragraphs (3) and (4) exhibits characteristics showing a tendency to victimize or injure others.

(a) Upon receipt of a written report from a supervising officer or a release counselor, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate or offender should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will forward the report to its Hearing Officer, who will schedule an evidentiary hearing.

(b) The Board's Hearing Officer will provide the inmate or offender with a copy of the Notice of Rights (Exhibit Q-V) prior to the evidentiary hearing. Upon receipt of the Notice of Rights (Exhibit Q-V), the inmate or offender may proceed with the evidentiary hearing or waive their right to the hearing. At the evidentiary hearing, the Hearings Officer will consider the written report submitted by the supervising officer or release counselor and the results of the STATIC-99 risk assessment scale, and may accept additional evidence supporting the STATIC-99 score or otherwise indicating that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. The inmate or offender may present evidence rebutting claims made in the written report submitted by a supervising officer or release counselor, challenging the score on the STATIC-99, or rebutting other evidence that the inmate or offender exhibits characteristics showing a tendency to victimize or injure others. At the conclusion of the evidentiary hearing, the Hearing Officer will submit his report to the Board with a recommendation as to whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others.

(c) Upon receipt of the report and recommendation from the Board's Hearing Officer, the Board will review the report and recommendation and determine whether the inmate or offender exhibits characteristics showing a tendency to victimize or injure others and is, therefore, a predatory sex offender.

(7) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall notify anyone whom the agency determines is appropriate that the person is a predatory sex offender. The agency shall make this determination as required by ORS 181.586.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 144.050, 144.140, 181.585 & 181.586  
Stats. Implemented:  
Hist.: PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; PAR 4-2002, f. & cert. ef. 3-12-02; PAR 5-2003, f. & cert. ef. 10-10-03; PAR 2-

2004(Temp), f. & cert. ef. 1-41-04 thru 7-11-04; PAR 7-2004, f. & cert. ef. 6-14-04; PAR 1-2006(Temp), f. & cert. ef. 3-20-06 thru 9-15-06

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**Rule Caption:** Extension of the period of time for retention of tape recordings of board hearings.

**Adm. Order No.:** PAR 2-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 255-015-0003

**Subject:** 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—(503) 945-8978

**255-015-0003**

**Oral Record of Hearing**

A tape of the oral proceedings of any hearing shall be kept by the Board for at least four years.

Stat. Auth.: ORS 144.050 & 144.140

Stats. Implemented: ORS 144.120(7), 144.130, 144.185 & 192.410 - 192.505

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 1-1987(Temp), f. & ef. 1-12-87; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1998(Temp), f. & cert. ef. 10-14-98 thru 4-11-99; PAR 1-1999, f. & cert. ef. 1-15-99; PAR 2-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Extension of time to conduct psychological or psychiatric evaluations in dangerous offender cases.

**Adm. Order No.:** PAR 3-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 255-036-0010, 255-037-0010

**Subject:** 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—(503) 945-8978

**255-036-0010**

**Evaluations**

(1) Within one hundred twenty (120) days of the last day of the prison term and at least every two years thereafter, the Board shall order a complete mental and psychological or psychiatric examination of the inmate.

(2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychologist or psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.

(3) The report of the psychologist or psychiatrist shall:

(a) Include a statement as to whether the dangerous offender has any mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;

(b) Any other information which would aid the Board in determining whether the inmate is eligible for release;

(c) State progress or changes in the condition of the examined inmate;

(d) Contain recommendations for treatment or medication that would assist the inmate in performing satisfactorily in the community upon release;

(e) Be filed with the Board within 60 days after the examination;

(f) Be certified and sent to the inmate, the inmate's attorney, and to the institution superintendent.

Stat. Auth.: ORS 144.226 & 144.228

Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 51 OL 1997 (Enrolled SB156)

Hist.: PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-1994, f. 8-1-94, cert. ef. 8-15-94; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-2006, f. & cert. ef. 4-5-06

# ADMINISTRATIVE RULES

255-037-0010

## Evaluations

(1) Within one hundred twenty (120) days of the last day of the incarceration term and at least every two years thereafter, the Board shall order a complete mental and psychological or psychiatric examination of the inmate.

(2) The evaluation provided may consist of a diagnostic study, including a comprehensive evaluation of the individual's personality, intelligence level, personal and social adjustments, or other information the psychologist or psychiatrist believes will aid the Board in determining whether the examined person is eligible for release.

(3) The report of the psychologist or psychiatrist shall:

(a) Include a statement as to whether or not the dangerous offender has any mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;

(b) Any other information which would aid the Board in determining whether the inmate is eligible for release;

(c) State progress or changes in the condition of the examined inmate;

(d) Contain recommendations for treatment or medication that would assist the inmate in performing satisfactorily in the community upon release;

(e) Be filed with the Board within 60 days after the examination;

(f) Be certified and sent to the inmate, the inmate's attorney, and to the institution superintendent.

Stat. Auth.: ORS 144.226 & 144.228

Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 52, OL 1997 (Enrolled SB 156)

Hist.: PAR 4-1989, f. & ef. 11-1-89; PAR 4-1991(Temp), f. 6-27-91, cert. ef. 7-1-91; PAR 9-1991, f. 11-27-91, cert. ef. 12-1-91; PAR 1-1993(Temp), f. & cert. ef. 7-26-93; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-1994, f. 8-1-94, cert. ef. 8-15-94; PAR 3-1998, f. 8-26-98, cert. ef. 8-27-98; PAR 3-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Amendment of sex offender special conditions to comply with statutory changes.

**Adm. Order No.:** PAR 4-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 255-070-0001

**Subject:** 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—(503) 945-8978

255-070-0001

## Conditions Not Limited by Exhibit J

(1) The Board may order parole conditions pursuant to OAR 255-070-0015.

(2) The Board shall approve post-prison supervision conditions pursuant to OAR 213-011-0001.

(3) Conditions of parole and post-prison supervision are not limited to those shown in Exhibit J.

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

Stat. Auth.: ORS 144.096, 144.102 & 144.270

Stats. Implemented:

Hist.: 2PB 15-1985, f. & ef. 5-31-85; 2PB 1-1986(Temp), f. & ef. 11-3-86; PAR 2-1987, f. & ef. 4-1-87; PAR 5-1988(Temp), f. & ef. 4-15-88; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1988, f. & ef. 7-1-88; PAR 17-1988, f. & ef. 10-18-88; PAR 2-1990, f. & cert. ef. 4-5-90; PAR 4-1990, f. 6-29-90, cert. ef. 7-1-90; PAR 3-1992, f. & cert. ef. 4-15-92; PAR 4-1992(Temp), f. & cert. ef. 4-30-92; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 3-1993, f. & cert. ef. 10-15-93; PAR 5-1993(Temp), f. & cert. ef. 12-3-93; PAR 1-1994, f. & cert. ef. 4-4-94; PAR 3-1994, f. 11-9-94, cert. ef. 12-1-94; Administrative correction 8-14-97; PAR 5-1998, f. & cert. ef. 11-9-98; PAR 2-1999, f. & cert. ef. 1-15-99; PAR 6-1999(Temp), f. & cert. ef. 9-15-99 thru 3-12-00; PAR 9-1999, f. & cert. ef. 11-15-99; PAR 5-2000, f. & cert. ef. 5-22-00; PAR 6-2001(Temp), f. 12-10-01, cert. ef. 1-1-02 thru 6-29-02; PAR 3-2001, f. & cert. ef. 2-29-02; PAR 5-2002(Temp), f. & cert. ef. 4-15-02 thru 10-11-02; PAR 8-2002, f. & cert. ef. 6-17-02; PAR 4-2003(Temp), f. & cert. ef. 6-13-03 thru 12-9-03; PAR 6-2003, f. & cert. ef. 10-10-03; PAR 1-2004, f. & cert. ef. 1-14-04; PAR 4-2006, f. & cert. ef. 4-5-06

Bureau of Labor and Industries

## Chapter 839

**Rule Caption:** Amendments clarifying applicability of Administrative Procedures Act and Uniform Rules of Procedure to BOLI.

**Adm. Order No.:** BLI 7-2006

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-20-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 839-002-0002, 839-002-0005, 839-050-0010

**Subject:** The amendment to OAR 839-002-0002 clarifies that the bureau's established procedures for providing notice of intended amendments, adoptions or repeal of administrative rules include notice to the legislature as required by the Oregon Administrative Procedures Act.

The amendment to OAR 839-002-0005(2) clarifies and conforms to the Oregon Administrative Procedures Act the extent to which the Attorney General Model Rules of Procedure are applied to the operations of the Bureau of Labor and Industries.

The amendment to OAR 839-050-0010 corrects an erroneous implication that the Attorney General's Uniform Rules of Procedure may not always apply to the operations of the Bureau of Labor and Industries.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

839-002-0002

## Proposed Rule Notice

Prior to the permanent adoption, amendment or repeal of any rule for the Bureau of Labor and Industries, the bureau shall give notice of intended action:

(1) In the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days prior to the rule's effective date.

(2) To persons on the bureau's mailing list and email list established pursuant to ORS 183.335(8).

(3) To the legislature, by mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

(4) To the general public, by posting the notice to the bureau's Website.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335

Hist.: BLI 1-2000, f. & cert. ef. 1-11-00; BLI 8-2004, f. 7-26-04, cert. ef. 7-27-04; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06

839-002-0005

## Model Rules of Procedure

(1) The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, are hereby adopted to govern the operations of the Bureau of Labor and Industries.

(2) The Model Rules of Procedure shall govern operations of the Contested Case Hearings Unit of the Bureau of Labor and Industries except to the extent they conflict with or are modified by rules in any division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR 839, division 50.

[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 Bureau of Labor and Industries.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: BL 5-1980, f. & ef. 8-4-80; BL 2-1981, f. & ef. 1-8-81; BL 3-1982, f. & ef. 2-9-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 1-2000, f. & cert. ef. 1-11-00; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06

839-050-0010

## Model Rules of Procedure

The Attorney General's Model Rules of Procedure adopted pursuant to OAR 839-002-0005 govern operations of the Hearings Unit of the Bureau of Labor and Industries except to the extent they conflict with or are modified by rules in this division or any other division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR 839, division 50.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0022; BL 12-1996, f. & cert. ef. 12-10-96;



# ADMINISTRATIVE RULES

BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06

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**Rule Caption:** Rule amendment clarifying treatment of unearned income in regard to lost wage damages.

**Adm. Order No.:** BLI 8-2006

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-20-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 839-003-0090

**Subject:** The amendment to 839-003-0090 clarifies section (4)(b) to establish that in most cases unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-003-0090

### Remedy

(1) In cases of employment discrimination remedy includes, but is not limited to:

- (a) Employment or reemployment;
- (b) Wages or other benefits lost due to the practice;
- (c) Out-of-pocket expenses attributable to the practice;
- (d) Compensation for emotional distress and impaired personal dignity; and

(e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

(3) In cases of housing discrimination or discrimination by places of public accommodation remedy includes, but is not limited to:

- (a) Rental, lease or sale of real property;
- (b) Service lost;
- (c) Expenses or lost benefits attributable to the practice;
- (d) Compensation for emotional distress and for impaired personal dignity; and
- (e) Interest.

(4) In order to recover damages for lost wages, the complainant will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(5) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(6) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(7) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(8) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 20-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2006, f. 3-16-06 cert. ef. 3-20-06

**Rule Caption:** Rules amended in Division 3 and Division 6 to provide greater clarity and consistency.

**Adm. Order No.:** BLI 9-2006

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-20-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 839-003-0020, 839-006-0145, 839-006-0205, 839-006-0305, 839-006-0405

**Subject:** The amendment to 839-003-0020 substitutes the term "formal" for "specific" in order to conform the language with ORS 659A.

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

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

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-003-0020

### Civil Suit

(1) A person alleging unlawful discrimination under state law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(b) A person filing a civil suit in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil suit.

(2) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(3) A civil suit alleging a violation of ORS 659A.145 or 659A.421, regarding discrimination in real property transactions, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(4) Notwithstanding OAR 839-003-0020(2), if a complainant files a complaint with the division alleging a violation of ORS 659A.145 or 659A.421 regarding discrimination in real property transactions:

(a) And the complainant also files a civil suit with respect to such allegations, the division will not dismiss the complaint until the civil trial commences;

(b) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under ORS Chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) The commissioner will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275.

(6) A civil suit alleging whistleblowing discrimination by a public employer (659A.203) must be filed within one year after the occurrence of the alleged violation as required by ORS 659A.875. Filing a complaint with the division, under ORS 659A.203, does not toll the one year period allowed for filing a civil suit.

(7) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 - 659A.224 & 659A.800 - 659A.890

# ADMINISTRATIVE RULES

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06

## 839-006-0145

### Suitable Employment

(1) An employer required to return an injured worker to a vacant, suitable position under ORS 659A.043 or an available, suitable position under 659A.046, is not required to offer the worker a selection of suitable positions.

(2) In determining whether a particular position is suitable, the division will consider the employer's size, diversity, nature and pattern of position openings and whether the injured worker is qualified to perform the position.

(3) "Qualified" means:

(a) The injured worker meets minimum standards used by the employer to fill the position;

(b) The injured worker has performed the position in an acceptable manner; or

(c) The injured worker would be qualified for the position with the same training given to another worker newly placed in the position.

(4) For the purposes of ORS 659A.043, a "suitable position" is one that is most similar to the former position in compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent), and shift. For the purposes of ORS 659A.046, a "suitable position" also meets the injured worker's medical restrictions.

(a) "Similar compensation" is the normal compensation the employer pays to others of the same education, skill and seniority employed in that position. This compensation may be greater than, the same as, or less than the rate the injured worker was earning at the time of injury, provided that it is not a subterfuge for the employer to avoid responsibilities;

(b) "Similar location" means that the position is within reasonable commuting distance, except where the former work site is no longer in operation or the nature of the employer's business routinely involves the transfer of employees. A position outside of Oregon is suitable if the worker and employer mutually agree.

(5) An employer is neither required to offer nor prohibited from offering a position that would promote the returning injured worker. A managerial or supervisory position is suitable for a returning injured worker whose former position was managerial or supervisory. Should a returning injured worker compete or bid for a managerial or supervisory position, nothing in this rule allows the employer to use the injury as a reason to discriminate against the worker.

(6) The employer may assign the injured worker to different duties at the worker's regular compensation provided that:

(a) The assignment is temporary and is part of a return-to-work program;

(b) The worker is returned to available and suitable work when the worker is physically capable; and

(c) The assignment is not a subterfuge for the employer to avoid responsibilities.

(7) If an employer offers a position that the injured worker believes the worker is physically unable to perform, the worker is not required to accept the position, but must provide verbal or written notice to the employer that the worker believes the worker is physically unable to perform the duties of the position. The employer may offer a suitable position or may require the worker to provide medical evidence of the worker's inability to perform the duties of the position. If an employer requires medical verification, the employer must give the worker written notice that the worker has 20 calendar days from the receipt of the notice to provide medical evidence of the worker's physical inability to perform the duties of the position.

(8) If an injured worker accepts an offer of suitable work and, after beginning the position, the worker is physically unable to perform the duties of the position, the worker must provide verbal or written notice to the employer that the worker believes the worker is physically unable to perform the duties of the position. The employer may offer a suitable position or may require the worker to provide medical evidence of the worker's inability to perform the duties of the position. If an employer requires medical verification, the employer must give the worker written notice that the worker has 20 calendar days from the receipt of the notice to provide medical evidence of the worker's physical inability to perform the duties of the position.

(9) If an employer offers an injured worker a position that the worker considers not suitable for reasons other than physical ability, the worker must accept the offered position. The worker must then provide verbal or

written notice to the employer that the worker considers the position not suitable. The employer may offer a suitable position or may require the worker to provide the reasons, under the criteria of section (4) of this rule, that the worker considers the position not suitable. If the employer requires such information, the employer must give the worker written notice that the worker has 20 calendar days from the receipt of the notice to provide the reasons in writing.

(10) When an injured worker timely provides the evidence required in sections (7), (8) and (9) of this rule, the position will be considered not suitable and the employer must make a suitable position offer as required under ORS 659A.043 or 659A.046. If the worker fails to timely provide the information requested under sections (7), (8) and (9) of this rule, or the information is not sufficient, the position will be considered suitable.

(11) If the employer and the injured worker disagree about the suitability of an offered position, and the worker files a complaint as provided by statute and these rules, the division will determine the position's suitability.

(12) The Civil Rights Division may accept a complaint where a worker did not object to the position offered by the employer as required in sections (7), (8) and (9) of this rule when the worker had a verifiable, legitimate fear that an objection to the offered position would result in an adverse employment action.

(13) If an injured worker makes a timely demand for reemployment to an available, suitable position under ORS 659A.046, an employer is required to review all position vacancies for three years from the date of injury and to offer the injured worker the first available, suitable position provided no other conditions of OAR 839-006-0136 have occurred.

(14) If the injured worker's former position has been eliminated for bona fide reasons, and the worker makes a timely demand for reinstatement to the worker's former position under ORS 659A.043, an employer is required to review all position vacancies for three years from the date of injury and to offer the injured worker the first vacant, suitable position provided no other conditions of OAR 839-006-0131 have occurred.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.043 & 659A.046

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 14-1999 f. & cert. ef. 10-6-99; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06

## 839-006-0205

### Definitions

(1) "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more major life activities;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

(2) "Employer" means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard, as provided in ORS 659A.106. The "six or more persons" need not be employed within Oregon.

(3) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(4) "Essential functions" are the fundamental duties of a position a disabled person holds or desires.

(a) A job function may be essential for any of several reasons, including but not limited to, the following:

(A) The position exists to perform that function;

(B) A limited number of employees is available to carry out the essential function; or

(C) The function is highly specialized so that the position incumbent was hired for the expertise or ability required to perform the function.

(b) Evidence of whether a particular function is essential includes but is not limited to:

(A) The amount of time spent performing the function;

(B) The consequences of not performing the function;

(C) The terms of a collective bargaining agreement;

(D) The work experience of past incumbents in the job; and

(E) The current work experience of incumbents in similar jobs.

(5) "Labor organization" includes any organization constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(6) "Major life activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

# ADMINISTRATIVE RULES

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(7) "Medical," as used in ORS 659A.133 and 659A.136 and these rules, means any information, whether oral, written or electronic that:

(a) Is created or received by an employer; and

(b) Relates to the past, present, or future physical or mental health status or condition of a person.

(8) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(9) An "otherwise qualified, disabled person" is a person with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position that the person holds or desires, and who can, with or without reasonable accommodation, perform the position's essential functions.

(10) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(11) "Reasonable accommodation" means modifications or adjustments:

(a) To a job application process that enable a qualified disabled applicant to be considered for the position;

(b) To the work environment, or to the manner or circumstances under which a position is customarily performed, that enable a qualified, disabled person to perform the position's essential functions; or

(c) That enable a covered entity's disabled employee to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated, non-disabled employees.

(12) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(c) Factors that could affect whether an impairment "substantially limits a major life activity" include, but are not limited to, the presence of other impairments that combine to make the impairment disabling.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142 & 659A.112 - 659A.139

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06

## 839-006-0305

### Definitions

(1) "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more major life activities;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

(2) "Major life activity" includes, but is not limited to, self care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(3) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(4) "Physical or mental impairment" means any physiological disorder

or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(5) "Places of public accommodation" means any places or services offering the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise. However, places of public accommodation do not include institutions, bona fide clubs or places of accommodation that are in their nature distinctly private.

(6) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.675, 659A.100, 659A.103, 659A.142 & 659A.121

Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06

## 839-006-0405

### Definitions

(1) "Disabled Person" means a person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) "Major life activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(3) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(4) "Person associated with a purchaser, lessee or renter," as used in ORS 659A.145(1), includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy, receivers, public bodies or other entities that have the primary purpose of serving, representing or otherwise benefiting the protected class.

(5) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(6) "Property" and "real property" include property used or intended for commercial, business or residential purposes.

(7) "Purchaser" means an occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

(8) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(4), means actual treatment of a person for a mental condition or an assertion that the person received such treatment.

(9) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) A person having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) A person having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) A person having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate

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broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(10) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or  
(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(11) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142 & 659A.145

Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06

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**Rule Caption:** Amends rule to conform injured workers' reemployment rights with statutes; repeal temporary rule.

**Adm. Order No.:** BLI 10-2006

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-20-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 839-006-0136

**Rules Repealed:** 839-006-0136(T)

**Subject:** OAR 839-006-0136(4), a temporary rule, is repealed and replaced with a permanent amendment conforming the rule with ORS 659A.046, which provides that an injured worker's right to reemployment terminates if the worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-006-0136

### Loss of Reemployment Rights Under ORS 659A.046

An injured worker meeting the requirements for reemployment under ORS 659A.046 loses the right to reemployment to an available, suitable position when any of the following occurs:

(1) The worker's attending physician or a medical arbiter determines, after the worker is medically stationary, that the worker cannot return to reemployment at any position with the employer;

(2) The worker is eligible for and participates in vocational assistance under ORS 656.340;

(3) The worker accepts suitable employment with another employer after becoming medically stationary;

(4) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(5) The worker fails to make demand for reemployment to an available, suitable position within seven days of receiving certified mail notice from the insurer or self-insured employer that the worker's attending physician has released the worker for reemployment to an available, suitable position, as provided in OAR 839-006-0135(8)(d);

(6) Three years have elapsed from the date of injury;

(7) The worker is discharged for bona fide reasons not connected with the injury and for which others are or would be discharged; or

(8) The worker clearly and unequivocally abandons employment with the employer.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.046

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 22-2005(Temp), f. 10-26-05, cert. ef. 10-27-05 thru 4-24-06; BLI 10-2006, f. 3-16-06, cert. ef. 3-20-06

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**Rule Caption:** Amends rule to conform injured workers' reemployment rights with statutes.

**Adm. Order No.:** BLI 11-2006(Temp)

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-17-06 thru 9-8-06

**Notice Publication Date:**

**Rules Amended:** 839-006-0131

**Subject:** OAR 839-006-0131(1)(d) is amended to conform the rule with ORS 659A.043, which provides that an injured worker's right to reinstatement terminates if the worker refuses a bona fide offer

from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-006-0131

### Loss of Reinstatement Rights Under ORS 659A.043

(1) An injured worker meeting the requirements for reinstatement under ORS 659A.043 loses the right to reinstatement to the worker's former position when any of the following occurs:

(a) An attending physician or a medical arbiter determines the injured worker is medically stationary, but not physically able to return to the worker's former position;

(b) The worker is eligible for and participates in vocational assistance under ORS 656.340;

(c) The worker accepts suitable employment with another employer after becoming medically stationary;

(d) The worker refuses a bona fide offer from the employer of light duty of modified employment which is suitable prior to becoming medically stationary;

(e) The worker fails to make demand for reinstatement to the former position within seven days of receiving certified notice from the insurer or self-insured employer that the worker's attending physician has released the worker to the former position, as provided in OAR 839-006-0130(5)(d);

(f) Three years have elapsed from the date of injury;

(g) The worker is discharged for bona fide reasons not connected with the injury and for which others are or would be discharged; or

(h) The worker clearly and unequivocally abandons employment with the employer.

(2) The right to reinstatement does not apply to:

(a) A worker hired on a temporary basis as a replacement for an injured worker;

(b) A seasonal worker hired for and actually employed for less than six months in a calendar year; or

(c) A worker whose employment at the time of injury resulted from referral to short-term employment from a hiring hall operating pursuant to a collective bargaining agreement.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 11-2006(Temp), f. 3-16-06, cert. ef. 3-17-06 thru 9-8-06

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**Rule Caption:** Amending Family Leave rules clarifying disposition of leave time and medical verification requirements.

**Adm. Order No.:** BLI 12-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 3-24-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 839-009-0260, 839-009-0320

**Subject:** OAR 839-009-0260(7) is amended to conform the rule with ORS 659A.168(1), clarifying that when OFLA leave is designated for a serious health condition of an employee's family member, employers are entitled to require medical verification of the family member's serious health condition.

OAR 839-009-0320 is amended pursuant to ORS 659A.186(2), which requires consistency with the federal Family and Medical Leave Act, by adding language clarifying that employee leave time protected by the Oregon Family Leave Act may not be counted for disciplinary purposes or when employers are calculating rates of absenteeism for purposes of awarding certain non-performance-based bonuses.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-009-0260

### Medical Verification and Scheduling of Treatment

(1) When an employee gives 30 days notice for OFLA leave, other than for parental leave, the employer may require the employee to provide medical verification of the need for OFLA leave before the leave starts. Consistent with ORS 659A.306, the employer must pay the cost of the medical verification not covered by insurance or other benefit plan.

(2) If an employee's need for OFLA leave precludes giving 30 days notice, the employee must provide medical verification within 15 days of the employer's request for verification.

(3) The employer must provide the employee with written notice of any requirement to provide medical verification of the need for leave and

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the consequences for failure to do so.

(4) An employer may not delay the taking of an OFLA leave in the event that medical verification is not received prior to the commencement of (a) leave taken for unforeseen circumstances. The employer may designate the leave as provisionally approved subject to medical verification.

(5) If an employee submits medical verification signed by the health care provider, the employer may not directly request additional information from the employee's health care provider. However, a health care provider representing the employer may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical verification. If an employee is on OFLA or FMLA leave running concurrently with a worker's compensation absence, the employer may consult the worker's attending physician in a manner that is consistent with the worker's compensation regulations.

(6) An employer may not request subsequent medical verifications more often than every 30 days and only in connection with an absence by the employee except as stated in the FMLA regulations (see 29 CFR 825.308), including, for example, when:

(a) Circumstances described by the previous medical verification have changed significantly (e.g., the duration or frequency of absences, the severity of conditions, complications); or

(b) The employer receives information that casts doubt upon the employee's stated reason for the absence.

(7) If an employee requests OFLA leave for a purpose described in ORS 659A.159(1)(b) to (d), the employer may require the employee to obtain the opinion of a second health care provider, designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third provider is binding on both the employer and the employee. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present certification from the employee's health care provider that the employee is able to resume work. The employer may not require the employee to obtain a second opinion.

(8) If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may, at its discretion, require medical verification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the verification not covered by insurance or other benefit plan. The opinion of the health care provider is binding. The employer may not require the employee to obtain a second opinion.

(9) Where possible an employee must make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 24-2005, f. 11-15-06, cert. ef. 11-16-05; BLI 12-2006, f. 3-22-06, cert. ef. 3-24-06

## 839-009-0320

### Enforcement and Retaliation

(1) An employer's duties and obligations under OFLA extend to a successor employer as defined in 29 CFR 825.107.

(2) In accordance with the provisions of OFLA an eligible employee claiming a violation of the OFLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) It is an unlawful employment practice for an employer to retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OFLA leave, submitted a request for OFLA leave or invoked any provision of the Oregon Family Leave Act.

(4) It is an unlawful employment practice for an employer to count OFLA leave against an employee in determining the employee's compliance with attendance policies or to count OFLA leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from OFLA leave and may not be disqualified from the bonus as a result of taking OFLA leave.

(5) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with the Oregon Family Leave Act.

(6) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of the Oregon Family Leave Act or to attempt to do so.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 12-2006, f. 3-22-06, cert. ef. 3-24-06

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**Rule Caption:** Amendments clarifying contested case rules regarding interpreters and corporate representatives.

**Adm. Order No.:** BLI 13-2006

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 3-24-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 839-050-0150, 839-050-0300

**Subject:** The amendment to OAR 839-050-0150 conforms the rule with the Oregon Administrative Procedures Act and the Attorney General's Model Rules, clarifying who besides an attorney may be present at hearing to assist a corporation or an unincorporated association in presenting its case.

The amendment to OAR 839-050-0300 conforms the rule with the Oregon Administrative Procedures Act and the Attorney General's Model Rules, clarifying when an interpreter is to be used and under what circumstances the bureau will pay for a foreign language interpreter.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-050-0150

### Motions

Except as otherwise stated in OAR 839-050-0050, all pre-hearing and post-hearing motions will be submitted in writing to the administrative law judge through the Hearings Unit. If the nonmoving participant chooses to respond, the nonmoving participant must file a written response to a written motion within seven days after service of the motion, unless the administrative law judge orders otherwise. Motions include but are not limited to the following:

(1) Motion to dismiss: This motion must be based upon:

- (a) Lack of jurisdiction over the subject matter or person;
- (b) Insufficiency of process or service of process; or
- (c) Failure to state a claim upon which relief can be granted.

(2) Motion to change the place of hearing.

(3) Motion to exclude witnesses:

(a) The motion may be made by any participant at any time prior to or during the hearing.

(b) The administrative law judge may, without a motion being made by a participant, exclude witnesses from the hearing except for a party, counsel, the Agency case presenter, an authorized representative, claimants, complainants and any persons authorized by statute to attend. Notwithstanding this rule, an administrative law judge may expel any person from the hearing if that person engages in conduct that disrupts the hearing.

(4) Motion for summary judgment:

(a) A motion for summary judgment may be made by a participant or by decision of the administrative law judge for an accelerated decision in favor of any participant as to all or part of the issues raised in the pleadings. The motion may be based on any of the following conditions:

(A) Issue or claim preclusion;

(B) No genuine issue as to any material fact exists and the participant is entitled to a judgment as a matter of law, as to all or any part of the proceedings; or

(C) Such other reasons as are just.

(b) When the administrative law judge grants the motion, the decision will be set forth in the Proposed Order.

(5) Motion for a postponement:

(a) Any participant making a request for a postponement of any part of the contested case proceeding must state in detail the reason for the request. The administrative law judge may grant the request for good cause shown. In making this determination, the administrative law judge will consider:

(A) Whether previous postponements have been granted;

(B) The timeliness of the request;

(C) Whether a participant has previously indicated it was prepared to proceed;

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(D) Whether there is a reasonable alternative to postponement; for example, submitting a sworn statement of a witness; and

(E) The date the hearing was originally scheduled to commence.

(b) The administrative law judge will issue a written ruling either granting or denying the motion and will set forth the reasons therefore;

(c) If all participants agree to a postponement, in order for the postponement to be effective, the administrative law judge will approve of this agreement. Whether the administrative law judge grants or denies such a motion for postponement, the administrative law judge will issue a written ruling setting forth the reasons therefore.

(6) Motion for consolidation of hearings: This motion must allege facts sufficient to meet the criteria of OAR 839-050-0190.

(7) Motion for hearing by telephone: Any participant may file a motion to conduct the hearing by telephone. The motion must contain:

(a) A statement setting forth the reason(s) for the request;

(b) A statement explaining why no participant will be substantially prejudiced by having a hearing in this manner;

(c) A statement of the location of the majority of witnesses expected to be called;

(d) A statement estimating the number and/or volume of documents to be introduced into the record;

(e) A statement indicating whether the participant intends to call any expert witness; and

(f) A statement indicating whether an interpreter or an assistive communication device under OAR 839-050-0300 will be required for any witness.

(8) Motion for an earlier hearing date: After issuance of a notice of hearing, a participant may request an earlier hearing date upon a showing that the purposes of the law or the interests of justice would otherwise be frustrated.

(9) Motion for a protective order.

(10) Motion for default when a respondent has failed to timely file an answer within the time specified in the charging document.

(11) Motion to amend.

(12) Motion to make more definite and certain.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0070; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 13-2006, f. 3-23-06, cert. ef. 3-24-06

## 839-050-0300

### Interpreters and Assistive Communication Devices

(1) When a person unable to speak or understand the English language, or having a physical hearing or speaking impairment, is involved in a contested case hearing, such person is entitled to a qualified interpreter or appropriate assistive communication device. All interpreters will be appointed by the administrative law judge. A participant wishing to obtain the services of an interpreter or to obtain an assistive communication device must notify the administrative law judge no later than 20 days before the hearing. Such notification must include:

(a) The name of the person needing a qualified interpreter or assistive communication device;

(b) The person's status as a party or a witness in the proceeding; and

(c) If the request is on behalf of:

(A) A person with a physical hearing or speaking impairment, the nature and extent of the person's impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(B) A person unable to speak or understand the English language, the language spoken by the person unable to speak or understand the English language.

(2) If a person with a physical hearing or speaking impairment is a party or a witness in a hearing:

(a) The administrative law judge will appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the person with a physical hearing or speaking impairment.

(b) No fee will be charged to the person with a physical hearing or speaking impairment for the appointment of an interpreter or use of an assistive communication device. No fee will be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person has a physical hearing or speaking impairment.

(3) If a person unable to speak or understand the English language is

a party or a witness in a hearing:

(a) The administrative law judge will appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a party unable to speak or understand the English language, to interpret the testimony of a party or a witness unable to speak or understand the English language, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) No fee will be charged to any person for the appointment of an interpreter to interpret the testimony of a party or witness unable to speak or understand the English language, or to assist the administrative law judge in performing the duties of the administrative law judge. No fee will be charged to a party unable to speak or understand the English language who is unable to pay for the appointment of an interpreter to interpret the proceedings to the party unable to speak or understand the English language. No fee will be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or is a person unable to speak or understand the English language.

(c) A party unable to speak or understand the English language will be considered unable to pay for a qualified interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The administrative law judge has the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When a participant requests the services of an interpreter, the administrative law judge will appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the administrative law judge will appoint a qualified interpreter. For the purposes of these rules, a "qualified interpreter" means:

(a) For a person with a physical hearing or speaking impairment, a person readily able to communicate with the person with the impairment, interpret the proceedings and accurately repeat and interpret the statements of the person with the impairment to the administrative law judge.

(b) For a person unable to speak or understand the English language, a person readily able to communicate with the person unable to speak or understand the English language and who can orally transfer the meaning of statements to and from English and the language spoken by the person unable to speak or understand the English language. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(5) When the hearing begins, the administrative law judge will require the person serving as an interpreter to state the person's name on the record and whether the person is certified under ORS 45.291. If the interpreter is certified, the interpreter will not be required to make the oath or affirmation required by ORS 40.325 or to submit the interpreter's qualifications on the record. If an interpreter is not certified under ORS 45.291, the administrative law judge will require the interpreter to state or submit the interpreter's qualifications on the record and make an oath or affirmation to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) The administrative law judge will not appoint any person under these rules if:

(a) The person has a conflict of interest with any of the participants or witnesses;

(b) The person is unable to understand the administrative law judge, participants or witnesses or cannot be understood by the administrative law judge, participants or witnesses; or

(c) The person is unable to cooperate with administrative law judge, the person in need of an interpreter, or the counsel for that person.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0145; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 13-2006, f. 3-23-06, cert. ef. 3-24-06

# ADMINISTRATIVE RULES

**Rule Caption:** Amendment to January 1, 2006 state PWR rates.

**Adm. Order No.:** BLI 14-2006

**Filed with Sec. of State:** 3-30-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2006 to include amendments effective April 1, 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).

(d) 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 February 10, 2006).

(e) Amendment to Oregon Determination 2006-01 (effective April 1, 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](http://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, 651.060

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; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06

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**Rule Caption:** Updating Public Records rules with agency's actual costs and clarifying procedures.

**Adm. Order No.:** BLI 15-2006

**Filed with Sec. of State:** 4-6-2006

**Certified to be Effective:** 4-7-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 839-030-0010

**Subject:** The amendments update the actual costs to the agency of producing public records and clarify the agency's procedures regarding public records requests in conformance with statutory requirements.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-030-0010

### Public Records Requests

(1) The bureau will make available any record requested by any person pursuant to ORS 192.420, provided that the request is in writing and the record requested is not exempt from disclosure under the provisions of ORS Chapter 192 or other applicable law. The bureau may take a reasonable period of time to locate and retrieve the requested information.

(2) The bureau may charge a fee reasonably calculated to reimburse the bureau for costs of providing and conveying copies of public records. When the fee is estimated to exceed \$25.00 per public records request, the bureau will provide the requestor with written notice of the estimated amount of the fee and require written confirmation that the requestor intends to proceed with the request.

(3) As used in these rules:

(a) "Page" refers to paper either 8 1/2 x 11 inches or 8 1/2 x 14 inches. Staff will not reduce size, or otherwise manipulate records to fit additional records on a page, unless staff concludes that it will be the most effective use of their time. A double-sided copy is charged as two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per-page fee;

(b) "Normal and reasonable" staff time is 10 minutes or less per request.

(4) Unless otherwise specified in OAR chapter 839 the bureau will charge a minimum fee of \$5.00 per request for records located in the bureau's office facilities, or \$15.00 per request for records located offsite, plus \$.20 per page, as reimbursement for requests requiring normal and reasonable staff time.

(5) If the time required exceeds normal and reasonable staff time, the actual costs of staff or supervisor time necessary for locating, reviewing, separating, photocopying, certifying and preparing records for mailing or other delivery will be charged for each hour or fraction thereof as follows:

(a) Supervisor or administrator time: \$39.00 per hour;

(b) Investigator, compliance specialist or consultant time: \$32.00 per hour;

(c) Clerical time: \$23.00 per hour.

(6) In addition to staff time, the bureau will charge for supplies and use of equipment for producing records as follows:

(a) Twenty cents per page for photocopies.

(b) Actual cost for postage or other delivery costs.

(c) Fifty cents per page for copies by facsimile (fax) machine with a limit of 20 pages.

(7) The bureau will charge \$41.00 per hour, with a \$12.00 minimum, for public record requests that require electronic reproduction. Charges include but are not limited to staff time spent locating, downloading, formatting, copying and transferring records to media, and any charges by a third party vendor.

(8) The bureau will provide blank reproduction media at the following rates:

(a) Diskettes, 3 1/2-inch: \$1.00 each. (Due to possibility of computer viruses, the bureau will not permit requestors to provide diskettes);

(b) Video cassettes, 2 hours: \$3.00 each;

(c) Audio cassettes: \$2.00 each;

(d) Compact discs 1 1/2 hours: \$1.50 each (Due to possibility of computer viruses, the bureau will not permit requestors to provide compact discs).

(9) The costs of any necessary Attorney General review of requested public records will be charged to the requestor at the rate billed by the Department of Justice to the bureau.

(10) The bureau may require that all fees assessed pursuant to this rule be paid in cash, in exact change, prior to furnishing any copies, material or information.

(11) When a request is made to inspect records, the bureau may impose restrictions regarding the location where the requested information will be made available for inspection. When the bureau allows the person requesting the information to search or inspect bureau records, the bureau may, as it deems necessary for the protection of the records, assign an

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employee to supervise the search. The charge for this service will be in accordance with section (5) of this rule.

(12) The bureau may enter into agreements to provide routine, periodic reports in a consistent format for a negotiated price.

(13) The commissioner may waive the requirements to pay the charges described in this rule, or any part thereof, after determining that the waiver is in the public interest because making the record available primarily benefits the general public.

(a) The commissioner may require that a request for a fee waiver be submitted in writing.

(b) In determining whether making the record available primarily benefits the general public, relevant factors include but are not limited to:

- (A) The requestor's identity;
- (B) The intended use of the information;
- (C) The character of the information;
- (D) Whether the requested information is already in the public domain;

(E) Whether the requestor can demonstrate the ability to disseminate the information to the public;

(F) The requestor's inability to pay, although this alone is not sufficient basis to waive a fee.

(c) Even if the commissioner determines that making the record available primarily benefits the general public, the commissioner has discretion whether to grant a fee waiver. Factors relevant to that discretion include but are not limited to, with respect to a particular records request:

- (A) Financial hardship on the agency;
- (B) Impact on the operations of the agency including but not limited to use of staff time, equipment and supplies;
- (C) Extent to which inspection of records would be sufficient for the public interest.

Stat. Auth.: ORS 651.060(4)  
Stats. Implemented: ORS 192.420 - 192.440  
Hist.: BL 4-1986, f. & ef. 6-16-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93; BL 9-1998, f. & cert. ef. 11-2-98; BL 25-2000, f. 11-17-00, cert. ef. 12-1-00; BL 15-2006, f. 4-6-06, cert. ef. 4-7-06

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## Columbia River Gorge Commission Chapter 350

**Rule Caption:** Amendments to Commission Rules for Open Meetings, Public Records, Financial Disclosure, Administrative Procedure, Plan Amendments.

**Adm. Order No.:** CRGC 1-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 5-1-06

**Notice Publication Date:** 2-1-06

**Rules Adopted:** 350-012-0009, 350-050-0035, 350-050-0045

**Rules Amended:** 350-011-0004, 350-012-0006, 350-012-0007, 350-012-0008, 350-013-0001, 350-016-0004, 350-050-0030, 350-050-0040, 350-050-0050, 350-050-0060, 350-050-0070, 350-050-0080, 350-050-0085, 350-050-0090, 350-050-0100

**Rules Repealed:** 350-050-0075, 350-050-0110

**Subject:** The amendments to Commission Rules 350-11, 12, and 16 conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Scenic Area Act. These proposed amendments are necessary due to changes made during the 2005 legislative sessions.

The amendment to Commission Rule 350-13 eases the burden on Gorge Commissioners filing financial disclosure forms, while still complying with the Scenic Area Act's requirement for filing. The amendment requires Gorge Commissioners to file in their respective states only.

The amendments to Commission Rule 350-50 improves the Commission's process for reviewing Plan Amendments. The amendments: allow a finding that conditions in the Scenic Area have changed if there is a demonstrable mistake in the Management Plan; allows typographical and other similar changes without formal amendment of the Management Plan; requires a pre-application conference for every plan amendment, and clarifies what actions the Commission may take on the application.

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

### 350-011-0004

#### Public Notice Required; Special Notice for Executive Sessions, Special or Emergency Meetings

(1) The commission shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by the commission.

(2) The Commission shall file with the Secretary of State in Oregon and the Code Reviser in Washington a schedule of the time and place of such meetings on or before January of each year for publication in the states' registers. Notice of any change from such meeting schedule shall be published in the states' registers for distribution at least twenty days prior to the rescheduled meeting date. For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule.

(3) The commission shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of the commission to consider additional subjects.

(4) If an executive session only will be held, the notice shall be given to the members of the commission, the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(5) No special meeting shall be held without at least 24 hours' notice to the members of the commission, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. The call and notice of the meeting shall specify the time and place of the meeting and the business to be transacted. Notice of a special meeting may be given by delivering written notice personally, by mail, by fax, or by electronic mail. Final disposition shall not be taken on any other matter at a special meeting of the Commission.

(6) The commission shall not adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(7) The commission may adjourn or continue a meeting to a time and place specified in an order of adjournment or continuance. Written notice of the adjournment or continuance shall be provided in accordance with subsection (3) above. A copy of the order of adjournment or continuance shall be conspicuously posted immediately after adjournment or continuance on the door where the meeting was held.

Stat. Auth.: ORS 196.160 & RCW 43.97.015  
Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.  
Hist.: CRGC 1-1987 (Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

### 350-012-0006

#### Fees

(1) The Commission will establish a schedule of fees to reimburse it for its actual costs in making such records available except for requests from government agencies and the media, and for routine notices and agendas. This applies to both regular and certified copies of records.

(2) If the Commission makes a request available on a partial or installment basis, the Commission may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the Commission is not obligated to fulfill the balance of the request.

Stat. Auth.: ORS 197.150 & RCW 43.97  
Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.  
Hist.: CRGC 1-1987 (Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 3-2004, f. 4-28-04 cert. ef. 6-1-04; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

### 350-012-0007

#### Fulfilling Requests

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by:

- (a) Providing the record;
- (b) Acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond; or



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(c) Denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-012-0008

### Public Records Exempt From Disclosure

(1) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data obtained by or created by the Gorge Commission. However, sensitive fish, wildlife and plant data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:

(A) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(B) Radio frequencies used in or locational data generated by telemetry studies;

(C) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species; or

(iii) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(l) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(A) An individual;

(B) Buildings or other property; or

(C) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(g) Information about review or approval of programs relating to the security of:

(A) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined by Oregon or Washington state law;

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

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(B) Telecommunications systems, including cellular, wireless or radio systems.

(C) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-012-0008(1) and (2), public records that are more than 25 years old shall be available for inspection.

(6) Notwithstanding 350-012-0001 through 350-012-0008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-012-0006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-030 et seq.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-012-0009

### Public Records Officer

The Commission's Executive Director or her appointee shall serve as the Commission's public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the Commission's compliance with the public records disclosure requirement of this division.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-013-0001

### Financial Disclosure

The members of the commission shall file annual financial disclosure forms with their respective state.

Stat. Auth.:

Stats. Implemented:

Hist.: CRGC 1-1987 (Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-016-0004

### Notice Requirements for Rule Adoption; Temporary Rule Adoption, or Amendment; Substantial Compliance Required

(1) The commission shall prepare a semiannual agenda for rules under development. The commission shall file the agenda with the Oregon Secretary of State and Washington Code Reviser for publication in the states' registers not later than January 31st and July 31st of each year. Not later than three days after its publication in the states' registers, the commission shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda.

(2) When applicable under Washington law, the commission shall prepare a statement of inquiry on the form provided by the Washington Code Reviser, that shall be: filed with the Washington Code Reviser for publication in the state's register at least thirty days before the date the agency files

notice of proposed rule making, sent to any party that has requested receipt of the agency's statements of inquiry, and published on the Commission's website or other similar means of electronic communication.

(3) Prior to the adoption, amendment or repeal of any rule, the commission shall give notice of its intended action:

(a) In the manner established by rule adopted by the commission, which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the Oregon bulletin and Washington register at least 21 days prior to the commencement of any commission action;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (9) of this section; and

(d) On its website or other similar means of electronic communication.

(e) Notice of an intended action under subsection (1)(a), (c) and (d) of this section may be given by regular mail or by electronic mail.

(4)(a) The notice required by subsection (3) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The commission shall include with the notice of intended action given under subsection (3) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(C) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(D) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected;

(E) A statement of the anticipated effects of the proposed rule;

(F) A statement whether the rule is necessary as a result of federal law or a court decision;

(G) An indication of the person or persons proposing the rule;

(H) The date on which the commission intends to adopt the rule; and

(I) The commission personnel responsible for implementation and enforcement of the rule, with office location and telephone number;

(J) If an advisory committee is not appointed, or an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided, an explanation as to why no advisory committee or participation by interested persons was used to assist the agency in drafting the rule.

(5) When the commission proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views at a public hearing. The commission shall consider fully any written or oral submissions, including all submissions received by facsimile, telephonic communication, or electronic mail.

(6) Upon request of an interested person received within 15 days after commission notice pursuant to subsection (2) of this section, the commission shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude the commission from adopting a temporary rule pursuant to subsection (7) of this section.

(7) Notwithstanding subsections (1) to (6) of this section, the commission may adopt or amend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the commission prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned and the specific reasons of its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

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(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the commission in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspections.

(8) A rule adopted or amended under subsection (7) of this section is temporary and may be effective for a period of not longer than 120 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (6) of this section.

(9) Any person may request in writing that the commission mail to the person copies of its notice of intended action given pursuant to subsection (3) of this section. Upon receipt of any request the commission shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. The commission may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(10) This section does not apply to public contracts and purchasing.

(11) A rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection 3 of this section is delivered to the Oregon Secretary of State and the Washington Code Reviser for the purpose of publication.

(12) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(13) The commission may correct its failure to substantially comply with the requirements of subsections (4) and (7) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (3)(b)(D) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(14) When the commission establishes a deadline for comment on a proposed rule under the provisions of subsection (4) of this section, the commission may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

Stat. Auth.: ORS 197.150 & RCW 43.97  
Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.  
Hist.: CRGC 1-1987 (Temp), f. & cert. ef. 9-10-87; CRGC 2-1987, f. 12-7-87, cert. ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0030 Criteria for Plan Amendment Approval

The Commission must find the following criteria are satisfied before it approves an amendment to the Management Plan:

(1) Conditions in the Scenic Area have significantly changed. This means:

(a) Physical changes that have widespread or major impacts to the landforms, resources, or land use patterns in the Scenic Area;

(b) New information or inventory data regarding land uses or resources that could result in a change of a plan designation, classification, or other plan provision;

(c) Changes in legal, social, or economic conditions, including those that affect public health, safety, or welfare, not anticipated in the Management Plan; or

(d) A demonstrable mistake in the Management Plan that has resulted in significant impacts or that involves significant issues, such as, but not limited to, a land use guideline that is less protective of Gorge resources than the policies the guideline was intended to implement; a land use designation that does not conform to the corresponding designation policies; or two or more guidelines that cannot be reasonably reconciled.

(2) The proposed amendment is consistent with the purposes and standards of the Scenic Area Act; and

(3) No practicable alternative to the proposed amendment more consistent with the purposes and standards of the Scenic Area Act exists.

Stat. Auth.: ORS 196.150 & RCW 43.97.015  
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.  
Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0035 Matters Not Constituting a Plan Amendment

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)  
Stats. Implemented: ORS 196.150  
Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0040 Origin of Applications

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may submit an application for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

Stat. Auth.: ORS 196.150 & RCW 43.97.015  
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.  
Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0045 Pre-Application Conference

(1) Prior to submitting any application for an amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall hold a pre-application conference within 30 days after an applicant requests a pre-application conference. The Executive Director shall notify the following persons of the pre-application conference:

(a) The applicant;

(b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;

(c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies;

(d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference; and

(e) For legislative amendments, the person who submitted the original request.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, determine the nature of the proposal as quasi-judicial or legislative, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information will be necessary for the Executive Director to review the

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application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) Within 14 days after a pre-application conference, the Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the application. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different than the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0050

### Application for Quasi-Judicial Plan Amendments

(1) Applications for quasi-judicial plan amendments shall contain the following:

(a) The land use designation, landscape setting, or recreation intensity class the applicant proposes for the subject parcels;

(b) A statement of the applicant's ultimate development proposal;

(c) An explanation why the proposed change to the land use designation, landscape setting, or recreation intensity class is more appropriate for the parcels than the existing designation, and why the proposed change is necessary to accomplish the applicant's ultimate development proposal;

(d) Information identified at the pre-application conference necessary to demonstrate that the proposed plan amendment complies with the purposes and standards of the Act, the provisions in Section 6(h), and this rule;

(e) The names and addresses of all landowners for parcels that are within 200 feet of the boundaries of all parcels to which the proposal applies;

(f) Other information not identified at the pre-application conference, based on content of information already submitted or changes to the proposal; and

(g) The signature of all owners of the parcels to which the proposal applies, or the owners' representatives.

(2) The Commission may charge a fee for review of quasi-judicial plan amendment applications. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for review of quasi-judicial plan amendment applications.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0060

### Processing of Application

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process. Applications shall be reviewed pursuant to sections 0070 through 0120 of this division.

(2) The Executive Director shall maintain requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) For legislative amendments, the Executive Director shall hold a pre-application conference as provided in 350-050-0045. Following the pre-application conference, the Executive Director shall process a legislative amendment pursuant to sections 0080 through 0120 of this division.

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

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0070

### Acceptance of Quasi-Judicial Plan Amendment Application

(1) Within 14 days of receiving an application, the Executive Director shall review the application for completeness and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-050-0050(1)(f).

(2) The Executive Director shall not accept an application as complete until the applicant corrects all deficiencies and submits all additional information noted by the Executive Director.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0080

### Notice of Application

(1) The Executive Director shall send public notice of the completed application to the U.S. Forest Service — National Scenic Area Office, appropriate state agencies, all four Indian tribal governments, the six Gorge county planning offices, interested parties who have requested notice, and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies.

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located.

(3) The Executive Director shall publish notice of a legislative plan amendment application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(4) The Executive Director shall make copies of the complete application available for inspection at the Commission office during normal office hours.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0085

### Public Comment

(1) Interested persons shall have 30 days from the date the notice is posted to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0090

### Report of the Executive Director

(1) Unless otherwise specified in the pre-application conference, within 60 days following the end of the public comment period, the Executive Director shall prepare a staff report, which may include recommendations. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-050-0030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

## 350-050-0100

### Hearing

(1) The Commission shall conduct a hearing on every plan amendment application.

(2) The Commission shall provide 20 days notice of the hearing to all persons who received the notice of application, and any other person who submitted comment on the application. The notice of the application may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

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(b) The applicant shall present the proposed plan amendment.

(c) Interested persons may present oral or written comments.

(d) Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Chair shall close the public hearing, and the Commission shall deliberate on the proposed plan amendment.

(f) For quasi-judicial plan amendment applications, the Commission may proceed to vote on the application as submitted or attach conditions of approval necessary to ensure the proposal complies with the criteria for approval. The Commission shall allow the applicant to comment on proposed conditions of approval prior to voting on the application. If the Commission proposes a condition different than recommended by the applicant or by the staff, or discussed during the hearing, the Commission shall allow the applicant to comment on the proposed condition of approval prior to voting on the application. The Commission shall deny the proposed plan amendment if any of the criteria in 350-050-0030 are not satisfied by the application as submitted and cannot be satisfied through imposing reasonable conditions of approval.

(g) For legislative amendments, the Commission may modify the recommended language in any manner.

(A) If the Commission makes clarifying changes to the recommended language, then it may proceed to vote on whether to adopt the recommended language, as clarified after providing an opportunity for public comment during the hearing.

(B) If the Commission makes substantive changes, i.e. those not covered by subparagraph (A) immediately above, to the recommended language, the Commission shall:

(i) Provide an opportunity for additional public comment during the hearing on the new language, and then proceed to vote on whether to adopt the amendment; or

(ii) Continue the hearing to a new date to allow for adequate public notice of the content of the language and for further consideration of the issues. When the hearing is resumed, the Commission shall provide a reasonable opportunity for the applicant and members of the public to respond to the proposed language, and then proceed to vote on whether to adopt the amendment.

(h) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992 (Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06

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## Construction Contractors Board Chapter 812

**Rule Caption:** Adopt Amended Forms and Revised Attorney General Model Rules.

**Adm. Order No.:** CCB 5-2006

**Filed with Sec. of State:** 3-30-2006

**Certified to be Effective:** 3-30-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 812-001-0120, 812-001-0200, 812-003-0240

**Rules Repealed:** 812-001-0200(T), 812-003-0240(T)

**Subject:** 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.

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

### 812-001-0120

#### Uniform and Model Rules

The Construction Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 to 137-005-0070, revised January 1, 2006, with the following exceptions: OAR 137-003-0015, 137-005-0060, and 137-005-0070.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.341

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 1-1986, f. & ef. 5-30-86; BB 3-1988, f. 11-23-88, cert. ef. 12-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 3-1992(Temp), f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1995, f. 6-6-95 cert. ef. 6-15-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0003, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 5-2006, f. & cert. ef. 3-30-06

### 812-001-0200

#### Consumer Protection Notices

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised February 3, 2006. This form may be obtained from the agency. Previously adopted versions of the Information Notice may also be used.

(2) The Construction Contractors Board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised June 1, 2004.

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

(4) The Construction Contractors Board adopts the form "Model Features for Accessible Homes" dated December 6, 2005.

Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 & 701.530

Stats. Implemented: ORS 87.093, 701.055, 701.235 & 701.530

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06

### 812-003-0240

#### Independent Contractor

(1) As used in ORS Chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(2) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(3) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.075(1)(j).

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Stats. Implemented: ORS 670.600, 670.605 & 701.075

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06

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## Department of Agriculture Chapter 603

**Rule Caption:** Amends rules related to nurseries; creates emergency response fund, repeals apple ermine moth quarantine, etc.

**Adm. Order No.:** DOA 9-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 3-22-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 603-052-0127, 603-054-0016, 603-054-0017, 603-054-0018, 603-054-0024

**Rules Repealed:** 603-052-0146

**Subject:** Oregon Laws Chapter 540 (2005) created a plant pest & disease emergency response fund. A surcharge on nursery license fees will be used to maintain a \$250,000 balance. Amendments to: 603-054-0016, 603-054-0017, 603-054-0018 will implement this statute by adding a surcharge to nursery license fees. Additional amendments will: add European chafer and Oriental beetle to the Japanese beetle quarantine (603-052-0127); change the fee schedule for phytosanitary

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certificates from \$20 for the first and \$10 each for subsequent certificates issued in the same billing period to a flat \$10 each. The Department is repealing Oregon's apple ermine moth quarantine. No other state quarantines this insect and biological controls have been introduced to keep populations below economic thresholds.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

### 603-052-0127

#### **Quarantine; Japanese Beetle, European Chafer and Oriental Beetle**

(1) Establishing a Quarantine. A quarantine is established against the pest known as Japanese beetle (*Popillia japonica*) European chafer (*Rhizotrogus majalis*), and Oriental beetle (*Anomala orientalis*), a member of the family Scarabaeidae, which in the larval stage feed on the roots of many plants and in the adult stage feed on the flowers, foliage and fruit of many plants.

(2) Areas Under Quarantine. The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario and Quebec, Canada, and any other state, territory or province where the presence of an established population of any of these insects is confirmed and effective eradication procedures have not been implemented.

(3) Commodities Covered. All life stages of the Japanese beetle, European chafer, and Oriental beetle, including eggs, larvae, pupae, and adults; and the following hosts or possible carriers of Japanese beetle:

(a) Soil, growing media, humus, compost, and manure (except when commercially packaged, and except soil samples under a federal Compliance Agreement);

(b) All plants with roots;

(c) Grass sod;

(d) Plant crowns or roots for propagation (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection);

(e) Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection); and

(f) Any other plant, plant part, article or means of conveyance when it is determined by the department to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation, by Japanese beetle.

(4) Restrictions. All commodities covered are prohibited entry into Oregon from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Oregon provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Oregon. Advance notification of regulated commodity shipment is required. The certifying official shall mail, FAX or e-mail a copy of the certificate to: Administrator, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97310, FAX: 503/986-4786, e-mail: quarantine@oda.state.or.us. The shipper shall notify the receiver to hold such commodities for inspection by the Oregon Department of Agriculture. The receiver must notify the Oregon Department of Agriculture of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d), (e) or (f) below:

(a) Bareroot Plants. Plants with roots are acceptable if they are bare-root, free from soil and growing media (clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection). The certificate accompanying the plants shall bear the following additional declaration: "Plants are bareroot, attached clumps of soil or growing media are less than 1/2 inch in diameter." Advance notification required (see section 4 above).

(b) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply. All media must be sterilized and free of soil. All stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period. During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles can not gain entry. Security will be documented by the appropriate phytosanitary official. No Japanese beetle contaminated material shall be allowed into the secured area at any time.

The greenhouse/screenhouse will be officially inspected by phytosanitary officials and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media." Advance notification required (see section 4 above).

(c) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through September. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plant were produced outside the Japanese beetle flight season and were grown in sterile, soilless media." Advance notification required (see section 4 above).

(d) Application of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official or under compliance agreement. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to Oregon via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Oregon. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Oregon's Japanese beetle quarantine." Advance notification required (see section 4 above).

(A) Dip Treatment — B&B and Container Plants. Not approved.

(B) Drench Treatments — Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Containers must be one gallon or smaller in size. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(i) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(ii) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation — Container Plants Only. Containers must be one gallon or smaller in size. Not approved for ornamental grasses or sedges. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be retreated with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(i) Imidacloprid (Marathon 1 G). Mix at the rate of five (5) pounds per cubic yard.

(ii) Bifenthrin (Talstar Nursery Granular or Talstar T&O Granular (0.2G)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(iii) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

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(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(e) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Oregon Department of Agriculture. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

- (A) Areas surveyed;
- (B) How survey was carried out;
- (C) Number of traps;
- (D) Results of survey;
- (E) History of survey;

(F) If county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reappraised every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Oregon if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Oregon. The certificate must have the following additional declaration: "The plants in this consignment were produced in sterile, soilless media in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle." Advance notification required (see section 4 above).

(f) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Oregon Department of Agriculture for requirements: Administrator, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301, telephone: 503/986-4644, FAX: 503/986-4786, e-mail: dhilburn@oda.state.or.us.

(5) Exceptions. Upon written request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of commodities covered without meeting the requirements of section (4). However, all conditions specified in the permit shall be met before such permit will be recognized.

(6) Violation of Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305  
Stats. Implemented: ORS 561.510  
Hist.: AD 12-1977, f. 6-6-77, ef. 6-20-77; AD 7-1988(Temp), f. & cert. ef. 8-2-88; DOA 10-1998, f. & cert. ef. 12-30-98; DOA 27-2000, f. & cert. ef. 10-13-00; DOA 9-2006, f. & cert. ef. 3-22-06

## 603-054-0016

### License Fees: Growers and Collectors

(1) The license fee for nursery growers, other than greenhouse growers of herbaceous plants, and for collectors of native plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .0031 over \$20,000;
- (c) \$100,001–\$200,000 = \$348 plus .0029 over \$100,000;
- (d) \$200,001–\$500,000 = \$638 plus .0023 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$1,328 plus .0014 over \$500,000;
- (f) \$2,000,001 & above = \$3,428 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to

maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales. The minimum Emergency Response Fund assessment is \$10.

Stat. Auth.: ORS 561 & 571  
Stats. Implemented: ORS 571.057  
Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06

## 603-054-0017

### License Fees: Greenhouse Growers of Herbaceous Plants

(1) The license fee for greenhouse growers of herbaceous plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .00125 over \$20,000;
- (c) \$100,001–\$200,000 = \$200 plus .001 over \$100,000;
- (d) \$200,001–\$500,000 = \$300 plus .0005 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$450 plus .00025 over \$500,000;
- (f) \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales. The minimum Emergency Response Fund assessment is \$10.

Stat. Auth.: ORS 561 & 571  
Stats. Implemented: ORS 571.057  
Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06

## 603-054-0018

### License Fees: Dealers, Florist and Landscape Contractors

(1) The license fee for dealers, florist, and landscape contractors shall be as follows: If annual purchases (live plant material only, cut flowers are exempt) are — The license fee is:

- (a) Up to \$20,000 = \$100;
- (b) \$20,001–\$100,000 = \$100 plus .00125 over \$20,000;
- (c) \$100,001–\$200,000 = \$200 plus .001 over \$100,000;
- (d) \$200,001–\$500,000 = \$300 plus .0005 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$450 plus .00025 over \$500,000;
- (f) \$2,000,001 & above = \$825 plus .0004 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual purchases. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual purchases. The minimum Emergency Response Fund assessment is \$10.

Stat. Auth.: ORS 561 & 571  
Stats. Implemented: ORS 571.057  
Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06

## 603-054-0024

### Fees for Issuance of Phytosanitary and Other Certificates

The following fees and charges are established for inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. The charge for certificates will be \$10 each.

Stat. Auth.: ORS 561 & 571  
Stats. Implemented: ORS 571.145  
Hist.: DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06

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**Rule Caption:** Sets fees for four new laboratory tests available to seed exporters.

**Adm. Order No.:** DOA 10-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 3-22-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 603-052-1150

**Subject:** The amendment will add fees for four new laboratory tests. Visual exam for pesticide-treated seed (\$60), Visual exam for regu-

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lated pests and regulated contaminants (\$70), seed grow out for bacteria (\$140), and ELISA for virus detection in seed (\$140). These new tests are being requested by seed exporters to meet market requirements. Currently they are offered at \$70/hour. There will be no net change in cost to the customer. New technologies make it possible for the Oregon Department of Agriculture Laboratory to offer some of these tests.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-052-1150

(1) The following fees and charges are established for laboratory or other testing services including sample processing, analysis and issuance of certificates or official reports. The basic fee for official, regulatory and service samples is established at \$70.00 per hour, with a minimum fee of \$35.00.

(2) The fees and charges for specific routine tests are:

(a) Spore wash and microscopic examination per fungal species — \$50;

(b) Fifty-seed stain and immunoblot for endophyte — \$85;

(c) Seed, soil or tissue test for nematodes — \$35;

(d) Visual exam for regulated pests — \$60 for pesticide treated seed and \$50 for untreated seed;

(e) Visual exam for regulated contaminants — \$45;

(f) Visual exam for regulated pests and regulated contaminants — \$70;

(g) Isolation on standard media — \$35;

(h) Growing media pH and conductivity — \$35;

(i) Seed grow out for bacteria — \$140;

(j) ELISA for virus detection in seed — \$140.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561.190, 571.145 & 632.940

Hist.: DOA 9-2003, f. & cert. ef. 1-14-03; DOA 10-2006, f. & cert. ef. 3-22-06

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**Rule Caption:** Changes requirements of pesticides use reporting system to be consistent with amendments to enabling statutes.

**Adm. Order No.:** DOA 11-2006

**Filed with Sec. of State:** 4-12-2006

**Certified to be Effective:** 4-12-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 603-057-0405, 603-057-0410, 603-057-0411, 603-057-0412, 603-057-0413, 603-057-0415, 603-057-0416, 603-057-0417, 603-057-0425

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

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0405

### General Requirements

As specified by Oregon Laws 1999, Chapter 1059, Sections 2 to 11, 15, 20, 21 and 22, each pesticide user must report to the Oregon Department of Agriculture the use of any pesticide product, as defined by ORS 634.006(8) except antimicrobial pesticide products.

(1) "Pesticide user" means any person who uses or applies a pesticide in the course of business or any other for-profit enterprise, or for a governmental entity, or in a location that is intended for public use or access (Chapter 1059, Oregon Laws 1999, Section 2).

(2) The Oregon Department of Agriculture shall determine which pesticide products are antimicrobial, according to the Federal Insecticide, Fungicide and Rodenticide Act, 7 U. S. C. 136(1) (P.L. 92-516, as amended). Antimicrobial products are substances or mixtures of substances used to destroy or suppress the growth of harmful microorganisms, whether bacteria, viruses, or fungi, on inanimate objects and surfaces. Types of antimicrobial pesticides include disinfectants and sanitizers. These products are exempt from reporting.

(3) Pesticide use reporting shall be subject to the conditions set forth in OAR 603-057-0410. Failure to comply with these conditions may be used as a basis for one or more of the following actions:

(a) Revoke, suspend, or refuse to renew the license or certificate of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Initiate and pursue any other action of an enforcement nature available through ORS 634.

(4) "Accredited University" as used in Oregon Laws 1999, Chapter 1059 and these rules means a privately or publicly operated institution of higher education accredited by a nationally recognized accrediting agency or association as determined by the U.S. Commissioner of Education.

(5) "Accepted Research Institute" means an institution of higher learning and applied science accepted by the Department.

(6) "Principal Investigator" means a person who leads the activities of a particular research project. In a university setting, this person is a member of the university faculty, and holds, at a minimum, the title or rank of assistant professor or equivalent.

(7) "Ready to Use" pesticide product means a pesticide product used directly from its original container, consistent with labeling, and without dilution or mixing prior to application.

(8) "Researcher" has the same meaning as "Principal Investigator". In a university setting, researcher refers to faculty scientists concentrating on certain areas of applied science or basic research.

(9) "Urban area" means a site that is 'urban, general indoor' as specified in OAR 603-057-0413(7), or a site that is "urban, general outdoor" as specified in OAR 603-057-0413(8).

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0410

### Pesticide Users Required to Report

(1) All pesticide products used by each pesticide user shall be reported at least once yearly to the Department. All pesticide use in a given calendar year shall be reported no later than January 31 of the following calendar year. A pesticide user may report the use of pesticide products on a more frequent basis if so selected by the pesticide user. Each report will include the required pesticide use information for the preceding specified period, or since the most recent filing of a pesticide use report, whichever time period is shorter.

(2) No action specified in OAR 603-057-0405(3) shall be taken for failure to report pesticide use for calendar year 2002, 2003, 2004, 2005, or 2006, or for any calendar year in which the Department does not provide a fully effective means for pesticide users to report pesticide use. Any pesticide use information obtained from pesticide users by the Department, by any means, for calendar year 2002, 2003, 2004, 2005 or 2006 will not be maintained by the Department and will not be made available to any person.

(3) Commercial pesticide operators are required to file the pesticide use report when a commercial pesticide operator uses a pesticide product in the course of business.

(4) All agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies, schools and utilities are required to file the pesticide use report when a pesticide product is used by their employees.

(5) Employers are required to file the pesticide use report when an employee uses a pesticide product as an employee in the scope of his or her employment.

(6) All other pesticide users, other than as described in subsection (3), (4) or (5) of this section, using a pesticide product, are required to file the pesticide use report.

(7) Reports of pesticide use shall be made to the Department using forms or methods specified by the Department.

(8) A pesticide user may authorize another person, or persons, to serve as his/her agent(s) or proxy(ies) in filing pesticide use information with the Department.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 23-2002(Temp), f. 12-2-02, cert. ef. 12-4-02 thru 6-1-03; DOA 16-2003(Temp), f. & cert. ef. 4-22-03 thru 10-18-03; DOA 37-2003, f. & cert. ef. 10-15-03; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0411

### Pesticide User Information

(1) Before filing pesticides use reports with the Department, each pesticide user shall register with the Department. The Department will record the pesticide user identification information identified below in a database separate from the database used to record reported pesticides use information. The Department will assign to each registered pesticide user a unique identification number. The pesticide user shall use the assigned identification number when filing pesticides use reports with the department.

(2) The following information regarding identification of a pesticide user shall be provided to the Department for the purpose of registering each



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pesticide user and assigning a unique identification number to each pesticide user.

(a) Identification of the pesticide user required to file the report, which shall be either:

(A) The name of the pesticide user; or

(B) The name of the agency, instrumentality, subdivision, county, city, town, municipal corporation, district, governmental body, school or utility; or

(C) The name of the employer; or

(D) The name of the person using the pesticide.

(b) The mailing address of the pesticide user named, including street or postal address, city, state and five-digit ZIP code.

(c) The telephone number of the pesticide user named.

(d) The facsimile (fax) number of the pesticide user named, if available.

(e) The electronic mail (e-mail) address of the pesticide user named, if available.

(f) The name of the responsible person filing the report for the pesticide user named, if different from the pesticide user named.

(g) The telephone number of the responsible person filing the report for the pesticide user named, if different from the telephone number already provided.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0412

### Pesticide Product Identification; Date of Use; Amount

Each report of pesticide use shall include the following information regarding the identification and amount of pesticide product used:

(1) The name of the specific pesticide product used.

(2) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department.

(3) The date the pesticide product was used. If the product was used at a single site or type of site having the same five digit zip code or third-level hydrologic unit location on multiple days in a calendar month, only the date for the last day of the use is to be reported.

(4) The amount of the undiluted pesticide product used, including the appropriate units of measure.

(5) If the product is a "Ready to Use" product then the date of use is the day when the product container is emptied or disposed, and the amount used is the total amount stated on the label.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0413

### Description of the Type of Site Where the Pesticide Was Used

Each report of pesticide use shall include a general description of the type of site where the pesticide was used. Site descriptions must be chosen from the list of options developed by the Department. Site descriptions, at a minimum, will identify the major site at which the pesticide was applied. Major categories shall include, but not be limited to, the following:

(1) Agriculture. This shall include the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural commodities before movement into channels of commerce, or on agricultural lands, grasslands, or non-crop agricultural lands

(2) Aquatic. This shall include the use of pesticides in treating standing or running water. Examples of sites include irrigation ditch, lake, or river.

(3) Forestry. This shall include the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).

(4) Public health and regulatory pest control. This shall include the use of pesticides for the control of any pest that may be deleterious to the public health, including mosquito and other vector and regulatory pest control.

(5) Right-of-Way. This shall include the use of pesticides in right-of-way areas. Examples of sites include irrigation ditch banks, railroads, road shoulders, or utility lines.

(6) Research. This shall include the use of one or more specific pesticides with the intent of gathering data needed to satisfy registration requirements of the United States Environmental Protection Agency. If the research is not conducted by a government agency, the pesticide use shall

be under the authority of an "experimental use permit" issued by the United States Environmental Protection Agency or issued by the Department.

(7) Urban, general indoor sites. This shall include the use of pesticides inside dwellings, non-agricultural buildings, establishments, institutions, schools and commercial transportation vehicles. This shall also include the use of pesticides on commodities, including agricultural commodities stored indoors that have entered into channels of commerce, including commercial warehouses and commercial grain elevators.

(8) Urban, general outdoor sites. This shall include the use of pesticides outside dwellings, non-agricultural buildings, establishments, institutions, or schools for ornamental and turf pest control, including parks, rest areas, and golf courses. This shall also include the use of pesticides on commodities, including agricultural commodities stored outdoors that have entered into channels of commerce.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0415

### Location of Pesticide Use; Aggregation of Information

Each report of pesticide use shall include the following information regarding the location of a pesticide use made by the pesticide user:

(1) For uses made to a site in an urban area as defined in OAR603-057-0405(9), the location shall be reported by identifying the five-digit zip code for the site.

(2) For uses made to any site not in an urban area as defined in OAR 603-057-0405(9), the location shall be reported by identifying the third-level hydrologic unit for the site.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0416

### Reports of Pesticide Use for Research

If the description of pesticide use is "Research" as specified in OAR 603-057-0413(6), then each report of pesticide use shall include the following information:

(1) Identification of the pesticide user filing the report, including the information required in OAR 603-057-0411.

(2) The name of the specific pesticide product used.

(3) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department or the identification number of the product recognized by the Department.

(4) The identification of the purpose of the pesticide use shall be reported as research.

(5) The description of the site at which the pesticide product was used shall be reported as research.

(6) The location at which the pesticide product was used shall be reported by identifying the third-level hydrologic unit for the site.

(7) The date the pesticide product was used shall be reported as the last day of the calendar month of the use.

(8) The amount of the undiluted pesticide product used in the calendar month, including the appropriate units of measure.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0417

### Access to Reported Information

(1) Some information reported to the Department by pesticide users is prohibited from release to the public according to Oregon Laws 1999, Chapter 1059. Information that would reveal the identity of the owner or lessee or the specific location of property where a person has applied a pesticide is prohibited from public release.

(2) Pesticide use information reported under Oregon Laws 1999, Chapter 1059 may be released to certain persons, provided those persons maintain the confidentiality of any information that is required to be treated as confidential. Persons who may receive this information are limited to the following:

(a) Staff of the Department or other federal or state agency which require the information as part of an investigation conducted under provision of law; or

(b) A federal, state or local agency; or

(c) A health or environmental researcher, acting in an official capacity from an accredited university or accepted research institute.

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(3) A federal, state or local agency must agree to maintain the confidentiality of the information identified in subsection (1) of this section, unless the public interest, by clear and convincing evidence, requires disclosure in the particular instance.

(4) Any person that releases, or causes to be released, to the public information made confidential by Oregon Laws 1999, Chapter 1059 may be subject to civil penalty as described in OAR 603-057-0420. The agency, university, or research institute employing or retaining such person or for which such person is acting in an official capacity, may also be subject to civil penalty as described in 603-057-0420.

(5) In addition, if a person causes information identified as confidential to be released or who fails to preserve the confidentiality shall be denied all future access to confidential data collected under 603-057-0410 through 603-057-0416.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999  
Stats. Implemented: Ch. 1059 OL 1999  
Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

## 603-057-0425

### Household Pesticide Use Information

According to Chapter 1059, Oregon Laws 1999, Section 4 (5), the Department is to develop a mechanism(s) to identify the use of pesticides by households. The following rules shall apply:

(1) The Department shall utilize a survey. Such a survey shall have the following characteristics:

(a) Be statistically valid such that information obtained from participating households can be used to accurately estimate pesticide use by all households;

(b) Gathers information similar in content to information reported by pesticide users; and

(c) Includes the entire state.

(2) The Department may utilize the assistance of other agencies, including federal, state and local, and of private entities in developing, implementing and maintaining a mechanism to identify pesticide use by households.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999  
Stats. Implemented: Ch. 1059 OL 1999  
Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

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

**Rule Caption:** Amendments to Certification Rules.

**Adm. Order No.:** BCD 4-2006

**Filed with Sec. of State:** 3-31-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 918-098-1000, 918-098-1005, 918-098-1010, 918-098-1012, 918-098-1015, 918-098-1025, 918-098-1210, 918-098-1215, 918-098-1300, 918-098-1410, 918-098-1450, 918-098-1470, 918-098-1600, 918-098-1620, 918-098-1630, 918-281-0000, 918-281-0010, 918-281-0020, 918-695-0400

**Subject:** These proposed rules eliminate the re-testing and application waiting period for Oregon Inspector Certification (OIC) exams. Additionally, the rules clarify and standardize requirements such as continuing education for inspector certifications.

**Rules Coordinator:** Nicole M. Jantz—(503) 378-4130

## 918-098-1000

### Purpose and Scope

(1) These rules establish minimum training, experience and certification requirements for building officials and persons who perform specialty code plan review and inspections in this state. The certification requirements for commercial plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0020. The rules also provide a transitional period for persons in an in-training, cross-training or approved educational program allowing them to apply for an Oregon Inspector Certification and an ICC certification or to apply for an Oregon Code Certification.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the administrator from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 446.250, 455.622 & 455.720  
Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1005

### Definitions

As used in OAR chapter 918, division 098, unless the context requires otherwise:

(1) "A-level Structures" means structures regulated by the **Oregon Structural Specialty Code** that require a state fire and life safety plan review or are required to be designed by an Oregon licensed architect or engineer pursuant to ORS Chapter 671.

(2) "B-level Structures" means structures regulated by the **Oregon Structural Specialty Code** that do not require a state fire and life safety plan review and are not required to be designed by an Oregon licensed architect or engineer pursuant to ORS Chapter 671.

(3) "Building Inspection Technology" means an approved curriculum meeting the requirements of OAR 918-098-1420.

(4) "Classroom" means an instructional environment the instructor believes is most conducive for the student to learn the material in a specific unit.

(5) "Code-Change Course" means a continuing education course that addresses changes to specialty codes, code standards, interpretations and alternate methods or administrative rules addressing code.

(6) "Commercial Structures" means structures regulated by the **Oregon Structural Specialty Code**.

(7) "Cross-Training Program" means a division approved residential, electrical or plumbing inspector on-the-job cross-training program and practical evaluation, established by the building official of a local jurisdiction, that meets the minimum training and education requirements established by the division.

(8) "Design" means professional, engineering or technical design of systems or components that requires computations, research or special knowledge.

(9) "Diversified" means varied experience in structural steel, complex wood framing and concrete or masonry construction.

(10) "Division" means the Building Codes Division.

(11) "Education Institution" is an institution accredited through a nationally recognized body and is usually governed by a local board and receives a state recognition.

(12) "Education Program" is a minimum two-year diversified or one-year focused building inspection technology program administered by an education institution.

(13) "International Code Council certification" means a certification issued by the International Code Council demonstrating that an individual has passed a specific International Code Council certification examination.

(14) "In-Training Program" means a division-approved on-the-job training and practical evaluation program designed to train a person to qualify to sit for examination in a particular code.

(15) "Nationally Recognized Certification Body" means a body or organization that provides formal recognition that a person possesses minimum knowledge of a recognized code.

(16) "High Priority Training" means periodic continuing education training identified by the division that addresses new technologies or specific problem areas identified by the division.

(17) "Oregon Code Certification" means a certification issued by the division for:

- (a) Building Official;
- (b) Fire and Life Safety Plans Examiner;
- (c) A-Level Structural Plans Examiner;
- (d) B-Level Structural Plans Examiner;
- (e) Residential or One-and-Two Family Dwelling Plans Examiner;
- (f) Residential or One-and-Two Family Dwelling Structural Inspector;
- (g) A-Level Structural Inspector;
- (h) A-Level Mechanical Inspector;
- (i) B-Level Structural Inspector;
- (j) B-Level Mechanical Inspector;
- (k) Residential or One-and-Two Family Dwelling Mechanical Inspector;
- (l) Electrical Specialty Code Inspector;

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- (m) Residential or One-and-Two Family Dwelling Electrical Inspector;
- (n) Plumbing Specialty Code Inspector;
- (o) Residential or One-and-Two Family Dwelling Plumbing Inspector;
- (p) Limited Plumbing Inspector — Building Sewers;
- (q) Residential or One-and-Two Family Dwelling Plans Examiner;
- (r) Manufactured Structure Construction Inspector;
- (s) Manufactured Structure Installation Inspector;
- (t) Recreational Vehicle Inspector Certification; and
- (u) Park and Camp Inspector.

(18) "Oregon Inspector Certification" means a certification issued by the division demonstrating that a person has passed a division-approved examination that covers Oregon laws and regulations relating to state building codes including, but not limited to, architectural barrier laws governing accessibility to buildings by disabled persons.

(19) "Practical Experience Evaluation" means a division-approved evaluation to determine if a person meets the practical experience equivalent of 50 percent of the required work experience listed in the appropriate certification categories defined in OAR 918-098-1030.

(20) "Recognized Code" means a regulatory document enforced by one or more state or local governments that prescribes minimum standards for building materials and construction methods of buildings or structures and building service equipment including plumbing, mechanical and electrical systems.

(21) "Residential Structures" means one-and two-family dwellings, townhouses and rowhouses regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings.

(22) "Year of Experience" means 2,000 hours of documented experience.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 23-1996(Temp), f. & cert. ef. 10-21-96; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0220; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0010, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1010

### Certification Requirements

(1) Unless otherwise stated in this rule, every person who performs building official duties building code inspections, or plan reviews must possess either:

- (a) An Oregon Code Certification issued prior to October 1, 2005; or
- (b) An Oregon Inspector Certification and an Oregon Code Certification issued after October 1, 2005; or

(c) An Oregon Inspector Certification and the current appropriate International Code Council certification for the work being performed and the minimum level of experience as follows:

(A) Two years of construction or inspection related experience or its equivalent; or

(B) An approved one year inspection-related education program and one year of construction or inspection-related experience; or

(C) A degree from an approved two year inspection related education program or its equivalent; or

(D) Be a registered Oregon architect, a certified Oregon professional engineer, or have a bachelor or master degree in architecture or civil or structural engineering.

(2) Notwithstanding (1)(b) a person may perform the duties of a building official with only the Oregon Inspector Certification providing the person passes the International Code Council Certified Building Official Legal Management examination within six months of hire.

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

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1012

### Scope Of Work Allowed For Persons With An Oregon Inspector Certification and an International Code Council Certification

(1) Individuals meeting the experience requirement in OAR 918-098-1010 who possess a valid Oregon Inspector Certification and a current International Code Council certification may perform work based on the type of International Code Council Certification they possess.

(2) A Certified Building Official Legal/Management may oversee a jurisdiction's administration and enforcement of the state building code for those specialty codes assumed by the jurisdictions pursuant to ORS

455.148 or 455.150. Building officials may not perform plan-reviews or inspections unless they possess the appropriate certification for the type of plan review or inspection being performed.

(a) Commercial Building Inspector certificate holders may conduct construction inspections for:

(A) All work regulated by the **Oregon Structural Specialty Code**; and

(B) Structural work on townhouse structures, rowhouse structures, and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(b) Commercial Building Plans Examiner certificate holders may review construction plans for:

(A) Compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Fire and life safety construction on townhouse structures, rowhouse structures, and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(c) Commercial Fire Plans Examiner certificate holders who also have the Commercial Building Plans Examiner Certificate may review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code** and the **Oregon Fire Code**.

(d) A Commercial Mechanical Inspector certificate holder may conduct construction inspections and may review construction plans for:

(A) All work regulated by the **Oregon Mechanical Specialty Code**; and

(B) Mechanical work on townhouse structures, rowhouse structures and apartment buildings regulated by the **Oregon Residential Specialty Code**.

(e) A Residential Building Inspector certificate holder may conduct construction inspections and plan reviews for:

(A) Structural work regulated by the **Oregon Residential Specialty Code**, except apartment buildings; and

(B) Structural work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(f) A Residential Mechanical Inspector certificate holder may conduct inspections and plan reviews for:

(A) Mechanical work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings; and

(B) Mechanical work on manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**.

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

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1015

### Scope of Work for Persons Holding Oregon Code Certifications

Persons who possess a current Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) Building Official. Persons certified as a Building Official legal management certification may oversee jurisdictions' administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction(s) pursuant to ORS 455.148 or 455.150. Building officials may not perform plan-reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) Fire and Life Safety. Persons certified as fire and life safety plans examiners review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code** and the **Oregon Fire Code** for any structure regulated by the **Oregon Structural Specialty Code**.

(3) A-Level.

(a) Persons certified as A-level structural plans examiners:

(A) May review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for all work regulated by the **Oregon Structural Specialty Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) May review construction plans for work that falls within the B-level structural plans examiner classification.

(b) Persons certified as A-level structural inspectors:

# ADMINISTRATIVE RULES

(A) May conduct construction inspections of all work regulated by the Oregon Structural Specialty Code; and

(B) May conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors:

(A) May conduct construction inspections and may review construction plans for all work regulated by the **Oregon Mechanical Specialty Code**; and

(B) May conduct inspections and may review construction plans for work that falls within the B-level mechanical inspector classification.

(4) B-Level.

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code** for work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the **Oregon Mechanical Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS Chapter 671.

(d) Persons certified as B-level structural plans examiners, B-level structural inspectors or B-level mechanical inspectors:

(A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the **Oregon Residential Specialty Code**; and

(B) Shall not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.

(5) One and two family dwelling or residential.

(a) Persons certified as one and two family dwelling or residential:

(A) Structural inspectors may conduct construction inspections of structural work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**;

(B) Mechanical inspectors may conduct inspections of mechanical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations under the **Oregon Manufactured Dwelling and Park Specialty Code**;

(C) Plumbing inspectors may conduct inspections of plumbing work regulated by the Oregon Residential Specialty Code, excluding apartment buildings; and

(D) Electrical inspectors conduct inspections of electrical work regulated by the Oregon Residential Specialty Code, excluding apartment buildings.

(b) Persons certified as a one-and-two family dwelling plans examiners review construction plans for compliance with provisions of the **Oregon Residential Specialty Code**, excluding apartment buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners shall not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.

(d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.

(e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0065; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0065; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; Renumbered from 918-098-0060, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1025

### Oregon Inspector Certification Application Process; Testing Procedures

(1) Unless a person is qualified to apply under 918-098-1040 or 918-098-1042 all persons who seek certification to perform the duties of a building official, inspector or plans examiner must apply for the Oregon Inspector Certification as follows:

(a) Submit a division-approved application with a payment of \$22.00; and

(b) Successfully pass the Oregon Inspector Certification examination.

(2) Persons applying for an Oregon Code Certification under these rules, or under OAR 918-281-0020 and 918-695-0400 must:

(a) Submit a division-approved application demonstrating appropriate experience, as defined in chapter 918, division 281, 695, or these rules; and

(b) A payment of \$22.00; and

(c) Successfully pass the appropriate Oregon Code Certification exam.

(3) Applicants for an Oregon Inspector Certification who fail the examination may reapply under subsection (1) of this rule to retest.

(4) Applicants for an Oregon Code Certification who fail the examination may reapply under subsection (2) of this rule to retest. Applicants may not retake the test for 30 days after each failed attempt.

(5) If an applicant fails to take the Oregon Inspector Certification exam or the Oregon Code Certification exam within 60 days of being approved to do so, the applicant must re-apply under subsection (1) or (2) of this rule.

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1210

### Residential Plumbing Inspectors

(1) A person possessing a "One and Two Family Dwelling Plumbing Inspector" certification prior to July 1, 2005, shall be considered a "Residential Plumbing Inspector" for the purpose of these rules.

(2) A person issued a residential plumbing inspector certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential plumbing inspections.

(3) A residential plumbing inspector may conduct inspections for:

(a) Plumbing work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings; and where connection to the building is not a separate plumbing system.

(b) Plumbing work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(4) To qualify to perform work as a residential plumbing inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an **Oregon Plumbing Specialty Code** inspector; or

(b) Two years of experience designing or installing plumbing systems as a journeyman plumber or its equivalent; or

(c) 2 years of experience as a plumbing inspector in another jurisdiction inspecting plumbing systems in commercial or residential structures for compliance with a recognized code for plumbing installations; or

(d) 90 quarter hours or 60 semester hours education and training in mechanical engineering which includes designing and installing plumbing systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code** and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a one and two family dwelling or residential plumbing inspector cross-training program that meets the minimum requirements established by the division.

# ADMINISTRATIVE RULES

(f) Any combination of experience designing, installing or inspecting plumbing systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect plumbing systems in commercial or residential structures according to a recognized code in plumbing installations shall be granted 1 year of credit toward the experience requirements listed in subsections (4)(b) and (c) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0220, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1215

### Residential Electrical Inspectors

(1) A person possessing a "One and Two Family Dwelling Electrical Inspector" certification prior to July 1, 2005, shall be considered a "Residential Electrical Inspector" for the purpose of these rules.

(2) A person issued a residential electrical inspector certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential electrical inspections.

(3) Residential electrical inspectors may conduct inspections for:

(a) Electrical work regulated by the **Oregon Residential Specialty Code**, excluding for apartment buildings; and

(b) Electrical work on manufactured dwelling alternations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling and Park Specialty Code**.

(4) To qualify to perform work as a residential electrical inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education or training requirements:

(a) A current division certification as an Oregon Electrical Specialty Code inspector; or

(b) 2 years of Experience installing electrical systems as a limited residential journeyman electrician or a general journeyman electricians license or their respective equivalents; or

(c) 2 years of experience as an electrical inspector in another jurisdiction inspecting electrical installations in commercial or residential structures for compliance with a recognized code for electrical installations; or

(d) 90 quarter hours or 60 semester hours education and training in electrical engineering which includes designing and installing electrical systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code**, and;

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the Division that an applicant has completed a one and two family dwelling or residential electrical inspector cross-training program that meets the minimum requirements established by the division.

(f) Any combination of experience or education listed in subsections (a) through (d) of this section designing, installing or inspecting electrical systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect electrical installations in commercial or residential structures according to a recognized code in electrical installations may be granted 1 year of credit toward the experience requirements and may be considered as meeting some requirements of a division approved cross-training program, except the experience listed subsections (4)(b) and (c) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0230, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1300

### Certifications Related to Manufactured Structures and Parks

References and Undertakings.

(1) Scope. The rules in OAR 918-098-1300 to 918-098-1330 relate to certifications for inspectors and plans examiners dealing with manufactured dwellings, recreational vehicles, manufactured dwelling parks, organizational camps, recreation parks and picnic parks.

(2) A person issued a manufactured structure installation inspector, recreational vehicle inspector certification, manufactured structure construction inspector, or park and camp inspector certification after October

1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(3) Hiring Non-Certified Persons. The division or a jurisdiction may employ a person not meeting the minimum requirements of OAR 918-098-1305 through 918-098-1320 while the person is being trained or waiting to qualify to take the division examination. During this period the person may only perform inspections or plan reviews under the direct supervision of appropriately certified trainers. Training must be provided by an inspector or plans examiner having a minimum of three years experience in the same certification or a person approved by the board. This rule does not waive the requirements of ORS 455.730 or permit the division or jurisdiction to hire or use persons whose certifications have lapsed or been revoked.

(4) Inspectors and plans examiners of prefabricated structures do not require special certifications but shall have the appropriate certifications required for performing inspections or plan reviews under the specific specialty code being used.

(5) The following definitions apply to OAR 918-098-1300 through 918-098-1330 only. Also, see applicable definitions in OAR 918-098-1005:

(a) "Board" means the Manufactured Structures and Parks Advisory Board.

(b) "Building Construction," relating to experience qualifications, means site-built construction, prefabricated construction or manufactured structure construction.

(c) "One Year," relating to experience qualifications, means 2,000 hours of work experience, 45 or more credit hours of schooling in the quarter system or 30 or more credit hours of schooling in the semester system.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0130; Renumbered from 918-098-0300, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1410

### Cross-Training Programs for Residential Certifications

(1) A building inspection program that elects to administer, use or participate in a cross-training program for residential inspectors shall follow a division approved standardized cross-training program that can be used in any jurisdiction or submit the following information to the division:

(a) The names and copy of the certifications of the cross-training program supervisor and instructors;

(b) A description of the purpose and scope of the cross-training program;

(c) A description of the various training methods covering the **Oregon Residential Specialty Code**; and

(d) The method of evaluating whether a trainee has satisfactorily completed the cross-training program.

(2) The cross-training program supervisor or instructors shall:

(a) Possess an A-level or commercial certification and an Oregon Inspector certification in the program area the individual is responsible for supervising; and

(b) Shall maintain records of all trainees who participate in the residential plans examiner or inspector cross-training program.

(3) The division may monitor or inspect the records of residential cross-training programs on a periodic basis.

(4) A municipality may enroll its trainees in a division approved program sponsored by another jurisdiction or provided by a private entity or school. The jurisdiction, private entity, or school shall maintain records of all trainees who participate in the cross-training program.

(5) Cross-training programs must follow all applicable code-change cycles and the programs must be amended accordingly. Amendments shall be submitted in writing to the division for approval.

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

Stat. Auth.: ORS 455.622

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; Renumbered from 918-098-0410, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1450

### Continuing Education Requirements

(1) Persons performing inspections and plan review in Oregon are required to obtain at least 16 hours of continuing education every three years, beginning January 1, 2006.

(2) At least one course during each three-year cycle shall be a division-approved code-change course related to the scope of work allowed under each certification, if the code related to that specific certification changed during the cycle.

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(3) In addition to the minimum hours in section (1), if a person has more than one Oregon Code Certification or ICC certification, the person shall take at least one division-approved code-change course for each specialty code for which certification is obtained.

(4) Building officials shall be required to obtain six hours continuing education credits every other year in classes related to the duties of a building official. The classes must also include at least one division approved class covering new legislation relating to the administration and enforcement of building inspection programs within one year after the legislature adjourns.

(5) The division may periodically verify that a person is maintaining and recording their continuing education.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1470

### Duties and Responsibilities of Certified Building Officials, Inspectors, and Plans Examiners

(1) Persons who hold an Oregon Inspector Certification or an Oregon Code Certification must act in the public interest in performing their duties as a building official, inspector, or plans examiner, including but not limited to:

(a) Obtaining and maintaining any appropriate national or Oregon Code Certification prior to performing their duties;

(b) Completing all required continuing education requirements and maintaining records of completion of continuing education courses required for each national and Oregon certification sufficient to demonstrate compliance with OAR 918-098-1450;

(c) Enforcing all appropriate building code statutes, and rules adopted thereunder, including but not limited to specialty codes, including statewide code interpretations, directives, orders, or other building program requirements and allowing the use of alternate method rulings;

(d) Adhering to all applicable building code statutes and rules adopted thereunder; and

(e) Notifying the division of any changes of name or address in a manner prescribed by the division within 10 business days; and

(f) Implementing a division approved cross-training program for residential electrical inspectors, and residential plumbing inspectors under OAR 918-098-1410.

(2) After a code or code edition is adopted by the division, persons who hold an Oregon Inspector Certificate and hold the national certification for that specialty code must re-certify their national certification to the new code or code edition at the next available renewal cycle of the national certification. If an inspector re-certifies a national certification to the newest edition of the national code(s) before that code edition is adopted in Oregon, such re-certification shall be considered as a current national certification for the purposes of these rules.

(3) If an inspector fails to maintain or does not possess a current national certification, the inspector shall not perform inspections or plan review for that particular specialty code.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1600

### Purpose and Scope

The provisions of OAR 918-098-1600 to 918-098-1630 establish the background qualifications and the evaluation and testing criteria to be registered as a post-earthquake structural damage inspector.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0600, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1620

### Post Earthquake Damage Inspector Registration Requirements

All persons seeking registration as a post-earthquake inspector shall complete a division application form and complete a division approved Applied Technology Council (ATC) training course within three years of application.

(1) To be registered as a general post-earthquake damage inspector, an applicant must:

(a) Be registered in any state as an architect, or be qualified by training and experience to take the Oregon examination for registration as an architect; or

(b) Be certified in the state of Oregon as an A-level, B-level commercial, or fire and life safety plans examiner or inspector, or be qualified to take the Oregon A-level, B-level commercial or fire and life safety plans examiner or inspector certification examination; or

(c) Possess a current ICC Commercial Building Inspector, Commercial Building Plans Examiner or Commercial Fire Plans Examiner certificate; or

(d) Be registered in any state as a certified professional engineer in civil or structural engineering, or be qualified by education and experience to take the Oregon certified professional engineer examination in civil or structural engineering, even though the applicant has not taken the Fundamentals of Engineering examination.

(2) To be registered as a limited post-earthquake damage inspector, an applicant must:

(a) Meet any of the qualifications listed in subsection (1) of this rule;

(b) Be certified in the State of Oregon as a residential building inspector; or

(c) Be certified in the State of Oregon as a residential plans examiner; or

(d) Possess a current ICC Residential Building Inspector certificate.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0620, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-098-1630

### Post Earthquake Damage Inspector Registration Requirements

#### Post earthquake inspectors shall:

(1) Complete a division approved Applied Technology Council (ATC) training course within three years of application.

(2) Complete at least one emergency management drill or event every three years.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-098-0630, BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-281-0000

### Scope

The rules in OAR 918-281-0000 to 918-281-0020 establish requirements for certification of electrical inspectors. OAR 918-281-0070 provides a certification endorsement for manufactured home electrical inspectors.

Stat. Auth.: ORS 455.720 & 479.810

Stats. Implemented: ORS 455.720 & 479.810

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0010; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; Administrative correction 1-20-06; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-281-0010

### Continuing Education

Electrical inspectors must obtain continuing education as outlined in OAR 918-098-1450. Those with electrical licenses shall maintain their license. During electrical code-change years, the code-change credits shall be obtained prior to or no later than six months after the effective date of the applicable code.

Stat. Auth.: ORS 479.650

Stats. Implemented: ORS 455.720 & 479.810

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; Administrative correction 1-20-06; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-281-0020

### Electrical Specialty Code Inspector Certification

(1) An Electrical Specialty Code inspector:

(a) Inspects electrical installations regulated by the **Oregon Electrical Specialty Code**;

(b) Inspects electrical installations regulated by the **Oregon Residential Specialty Code**; and

(c) May do electrical plan reviews as provided in OAR 918-311-0040.

(2) To qualify for the certification, the individual shall have the following training or experience or both:

(a) Four years experience as a licensed general journeyman electrician and a current valid Oregon general supervising electrician license;

(b) A four-year Bachelor of Science degree in electrical engineering, plus three years approved experience in design, inspection or supervision of installations covered by the **National Electrical Code** or **Oregon Electrical Specialty Code**; or

# ADMINISTRATIVE RULES

- (c) Equivalent experience or qualifications approved by the board.
- (3) A person who is certified after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing electrical inspections or plan reviews.
- (4) All applicants shall pass a board-approved examination with a minimum grade of 75 percent covering:
  - (a) The Oregon Electrical Specialty Code and electrical provisions of the Oregon Residential Specialty Code; and
  - (b) Electrical theory, design, installation and materials.
- (5) Persons qualifying under subsection (2)(b) or (2)(c) of this rule shall pass the Oregon general supervising electrician license examination with a minimum grade of 75 percent. An Oregon general supervising electrician license shall not be issued to applicants under these subsections.
- (6) For purposes of this rule, one year of experience equals 2,000 hours.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 455.720  
Stats. Implemented: ORS 455.720  
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

## 918-695-0400

### Rules Establishing Certification for Plumbing Inspectors

(1) Scope: To promote effective and uniform enforcement of the **Oregon Plumbing Specialty Code** by improving the competence of plumbing inspectors, this rule establishes minimum training and experience qualifications to make inspections for compliance with the Oregon Plumbing Specialty Code.

(2) A Plumbing inspector:

(a) Inspects plumbing installations regulated by the **Oregon Plumbing Specialty Code**;

(b) Inspects plumbing installations regulated by the **Oregon Residential Specialty Code**; and

(c) May do plumbing plan reviews as provided in OAR 918-780-0040.

(3) Limits on Municipalities: Nothing in the rules prohibits a local government from establishing additional requirements in the selection and hiring of plumbing inspectors. Nothing in OAR chapter 918, divisions 750 to 785 is intended to dictate the internal administrative organization of a city or county or to limit or otherwise affect the authority of a municipality to dismiss or suspend an inspector.

(4) Plumbing inspectors must meet continuing education requirements established by the division under OAR 918-098-1450.

(5) Application for Certification or Appeals: A person seeking certification under this rule shall submit a division application form and provide sufficient information to establish qualification for the desired certification. A certification fee shall be submitted with the application as listed in ORS 455.735.

(6) Qualifications: An applicant will be certified as a plumbing inspector under this rule if the following minimum qualifications are met:

(a) Experience and Training:

(A) 3 years of employment and experience as a Journeyman Plumber, with an Oregon Journeyman Plumber's Certificate of Competency or its equivalent;

(B) A degree in mechanical engineering or certified professional registration with 2 years of work experience in plumbing design, installation or inspection;

(C) 4 years of work experience in the inspection of plumbing installations of which at least 2 years is of commercial, industrial and multi-family structures, or if the 4 years of work experience is in the inspection of one- and two-family dwelling installations, the completion of a division-approved plumbing inspector in-training program; or

(D) Equivalent experience and training of paragraphs (A), (B) and (C) of this subsection; or

(E) Persons certified as Oregon one and two family dwelling plumbing inspectors as of April 1, 1998 and completing five years of plumbing inspection experience shall be considered qualified to sit for examinations as a plumbing inspector.

(b) Examination: Passing a board-approved examination on the **Oregon Plumbing Specialty Code** covering plumbing theory, inspection techniques, communication skills, public relations, design, installation, statutory rules, authority and materials.

(7) A person issued a plumbing inspector certification or a limited plumbing inspector — building sewers certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing plumbing inspections or plan reviews.

(8) Special Certification:

(a) Limited Certification: The division, with board approval, may issue a limited certification for special types of inspections. Such limited certification will only be issued after the applicant passes an appropriate test of knowledge and ability;

(b) Limited Plumbing Inspector — Building Sewers. Limited certification for plumbing inspection of building sewers from five feet outside the building to the disposal terminal or connection with a main sewer line may be issued. To be certified, an applicant must have the following qualifications:

(A) A Journeyman Plumber License;

(B) Two years' experience in sewer design, installation, or inspection;

or

(C) Experience and training equivalent to paragraph (A) or (B) of this subsection approved by the board; and

(D) Passing a board-approved examination on code, materials and installation practices for building sewers and sewers.

(9) For purposes of this rule, one year of experience is equal to 2,000 hours.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 39, f. 1-6-75, ef. 2-1-75; DC 79, f. 6-16-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 9-1979, f. & ef. 6-8-79; DC 1-1983, f. & ef. 1-3-83; DC 6-1985, f. & ef. 2-8-85; Renumbered from 814-021-0109; BCA 14-1992, f. 6-29-92, cert. ef. 7-1-92; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0050; BCD 21-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06

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**Rule Caption:** Allows Electrical Licensees to complete code-change continuing education anytime in license cycle.

**Adm. Order No.:** BCD 5-2006(Temp)

**Filed with Sec. of State:** 4-3-2006

**Certified to be Effective:** 4-3-06 thru 9-29-06

**Notice Publication Date:**

**Rules Amended:** 918-283-0010

**Subject:** This rulemaking removes specific timeline requirements for code change continuing education for electrical licensees. This rule allows Continuing Education on Code Changes to be completed anytime during each three-year license period.

**Rules Coordinator:** Nicole M. Jantz—(503) 378-4130

## 918-283-0010

### Continuing Education Required; Exemptions

(1) During each three-year license period, all licensees, except those categories listed in sections (2) and (3) of this rule shall complete a minimum of 24 class or correspondence course hours of approved continuing education. At least eight of the 24 hours shall be code-change.

(2) The following licensees shall have at least four, but not more than eight, hours code-change continuing education obtained during each three year license period:

(a) Limited Journeyman Sign;

(b) Limited Journeyman Stage;

(c) Limited Building Maintenance;

(d) Limited Pump Installation Specialty Contractor;

(e) Limited Maintenance Specialty Contractor HVAC/R;

(f) Limited Energy Contractor;

(g) Restricted Energy Contractor;

(h) Limited Sign Contractor;

(i) Limited Maintenance Specialty Contractor;

(j) Limited Renewable Energy Contractor; and

(k) Limited Renewable Energy Technician.

(3) Exemptions. General electrical contractors, apprentices in approved programs and Class II oil module electricians are exempt from continuing education.

(4) Continuing education requirements may be prorated for those who obtain licenses during any three-year renewal cycle. The continuing education requirement for the licensing period is waived for those who obtain licenses within 90 days or less of a three-year renewal date.

(5) Continuing education instructors shall receive credit for type of courses taught.

(6) Upon receipt of documentation acceptable to the division, individuals ordered to active military duty for other than training, for a period exceeding 60 consecutive days, shall not be required to comply with the provisions of this rule during the period of active duty. Following release

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from active duty, individuals shall complete continuing education requirements acceptable to the division. Other licensing requirements shall not be waived under this exemption.

(7) The board may waive, on a case by case basis, the provisions of this rule in the event of catastrophic illness or circumstance.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 479.650 & 479.680  
Stats. Implemented: ORS 479.650 & 479.680  
Hist.: DC 16-1986, f. & ef. 10-14-86; Renumbered from 814-022-0450; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-280-0020; BCD 19-1997(Temp), f. & cert. ef. 10-3-97 thru 5-31-98; BCD 13-1998(Temp), f. & cert. ef. 7-31-98 thru 1-26-99; BCD 17-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02, cert. ef. 10-1-02; BCD 25-2002, f. & cert. ef. 10-1-02; BCD 17-2003(Temp), f. & cert. ef. 10-29-03 thru 4-25-04; Administrative correction 8-5-04; BCD 19-2005(Temp), f. & cert. ef. 8-15-05 thru 2-1-06; Administrative correction 2-21-06; BCD 5-2006(Temp), f. & cert. ef. 4-3-06 thru 9-29-06

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**Rule Caption:** Expands permit exemption for ordinary minor plumbing repairs.

**Adm. Order No.:** BCD 6-2006

**Filed with Sec. of State:** 4-4-2006

**Certified to be Effective:** 4-4-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 918-780-0035

**Subject:** This rule expands current permit exemptions for ordinary minor plumbing repairs in residential dwellings and commercial structures.

**Rules Coordinator:** Nicole M. Jantz—(503) 378-4130

## 918-780-0035

### Exempt Ordinary Minor Plumbing Repairs

(1) Effective April 1, 2006, state building code provisions for permit or inspection of ordinary minor plumbing repairs follow:

(a) A registered plumbing contractor and any person exempt from licensing under ORS 693.020 are exempted from permit or inspection for ordinary minor plumbing repairs as defined in section (2) for residential and commercial structures;

(b) The term "any person" is defined by ORS 693.020 and includes but is not limited to individuals, corporations, partnerships, public and municipal corporations, political subdivisions, any Oregon state and federal government agencies.

(2) The term "ordinary minor plumbing repairs" is defined as follows:

(a) Includes repair, replacement or maintenance of existing plumbing fixtures, appliances, appurtenances and related water supply and drain attachments for the purpose of restoring a plumbing installation to a safe and sanitary operating condition.

(b) Does not include new construction, replacement of water heaters, or underground plumbing.

(3) In addition to the exemption in section (1), a registered plumbing contractor does not need a permit or inspection for emergency repair or replacement of the following: freeze-damaged, leaking-exposed, or concealed piping not exceeding five feet of new piping per structure for a period of 180 days, provided the repair or replacement does not involve any changes or alterations to the existing plumbing system.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 447.072 & 447.076  
Stats. Implemented: ORS 447.072 & 447.076  
Hist.: BCD 21-2003, f. 12-31-03, cert. ef. 1-1-04; BCD 6-2006, f. & cert. ef. 4-4-06

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

**Rule Caption:** Change of billing date for DCBS assessment of insurers to support insurance regulation.

**Adm. Order No.:** ID 6-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 836-009-0011

**Subject:** This rulemaking moves from September 1 to October 1 the date for billing insurers for the annual assessment that DCBS imposes pursuant to ORS 731.804 to pay for support of the insurance regulatory program of the Insurance Division.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-009-0011

### Assessments Against Insurers

(1) The percentage rates for assessments authorized under ORS 731.804 against authorized insurers shall be established as provided in this rule. An authorized insurer shall pay an assessment on each line of insurance transacted by the insurer in this state that is subject to assessment under ORS 731.804. This rule provides for establishment of a percentage rate for each of the following lines of insurance:

(a) Life insurance, not including annuities;

(b) Health insurance;

(c) Property and casualty insurance. For purposes of this rule, this line includes title insurance but does not include workers' compensation insurance.

(2) For each line of insurance in section (1) of this rule, the percentage rate for the assessment against each authorized insurer transacting the line of insurance shall be the rate established by dividing the amount of revenue needed to cover expenses to be incurred by the Department in administering the Insurance Code for a fiscal year with respect to the line of insurance by the gross amount of premiums received by all insurers or their agents from and under their policies covering direct domestic risks for that line of insurance, after deductions specified in ORS 731.804. The following is the formula for calculating the assessment rate for each line:

Total Amount to be derived from  
assessment with respect to the line = Assessment  
Total assessable premium from the line, rate (0.xxxx%)  
for all insurers

(3) For a specific insurer:

(a) The assessment billed with respect to a line of insurance shall be determined by finding 0.xxxx% of the insurer's assessable premium for the line for the appropriate calendar year;

(b) The finance charge of charges imposed by the insurer shall be assessed at the lowest assessment rate established pursuant to this rule.

(4) The Director shall determine the amount of revenue needed by considering the legislatively approved expenditures for administration of the Insurance Code and the timing of cash revenues and expenditures, and subtracting therefrom other available revenue sources.

(5) The amount of premiums for all lines of insurance to be assessed against an insurer under sections (1) to (3) of this rule shall not exceed nine hundredths of one percent of the gross amount of premiums received by an insurer or its agents from and under its policies covering direct domestic risks, after deductions specified under ORS 731.804.

(6) Assessments under this rule shall be imposed and collected annually unless the Director determines that additional amounts need to be assessed and collected in order to support the legislatively authorized budget of the Department with respect to its functions under the Insurance Code or in order to support changes in the budget authorized by the Emergency Board. The additional amounts shall be assessed as provided in sections (1) to (3) of this rule, except that the numerator shall be the additional amounts so needed.

(7) The Director shall assess an insurer only if the insurer is authorized to transact insurance at the time of billing.

(8) Billings of annual assessments shall be issued not later than October 1 of each year.

(9) An insurer must pay each assessment imposed under this rule not later than the 30th day after the date of the billing of the assessment by the Department. An insurer shall pay interest at nine percent per annum on any assessment that is not paid when due.

(10) When the Director determines that an assessment or a part thereof paid by an insurer is in excess of the amount legally due and payable to the Department, if the amount of the refund owed by the Department is less than \$50, the Department shall pay the refund only upon receipt of a written request from the insurer that paid the assessment. The written request must be received by the Department not later than three years from the date the assessment was paid to the Department.

(11) The Director shall not bill an assessment or an adjustment to an assessment of \$25 or less.

Stat. Auth.: ORS 293, 731.244, 731.804  
Stats. Implemented: ORS 731.804(1)  
Hist.: ID 8-1989, f. & cert. ef. 8-11-89; ID 8-1991, f. & cert. ef. 10-21-91; ID 6-2006, f. & cert. ef. 4-14-06

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

**Adm. Order No.:** ID 7-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06



# ADMINISTRATIVE RULES

**Notice Publication Date:** 3-1-06

**Rules Adopted:** 836-053-1400

**Subject:** This rulemaking prescribes the format for annual reports required by 2005 legislation to be filed by carriers offering health benefit plans, and related instructions. The legislation specifies the information that the annual reports are required to contain.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-053-1400

### Format and Instructions for Report Required by ch. 765, Oregon Laws 2005

(1) A carrier shall submit the information required by section 2(1), chapter 765, Oregon Laws 2005 electronically in the format and according to the directions established by the Director of the Department of Consumer and Business Services and made available on the website of the Insurance Division, and according to the provisions of this rule.

(2) The following terms used in section 2(1)(a), chapter 765, Oregon Laws 2005 have the following meanings for the purpose of the information required thereunder. References in this section to specific schedules and instructions are to schedules and instructions for the NAIC health annual statement blank. The terms are defined as follows:

(a) "Average amount of premiums per member per month" means total earned premiums as reported on the exhibit of premiums, enrollment and utilization divided by the total member months for the required reporting year.

(b) "Carrier's annual report" is the carrier's annual statement submitted as required by ORS 731.574.

(c) "Medical loss ratio" means the total medical claims cost divided by the total premiums earned, both as reported on the exhibit of premiums, enrollment and utilization.

(d) "Percentage change in the average premium per member per month" means the average amount of premiums per member per month for the reporting year less the average premium per member per month for the preceding reporting year divided by the average premium per member per month for the preceding reporting year.

(e) "Total amount of costs for claims" means incurred claims as reported by the carrier on the exhibit of premiums, enrollment and utilization in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, the carrier shall derive the answer from its records, using the instructions for the exhibit of premiums, enrollment and utilization for reporting the information.

(f) "Total amount of premiums" means earned premium as reported by the carrier on the exhibit of premiums, enrollment and utilization in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, the carrier shall derive the answer from its records, using the instructions for the exhibit of premiums, enrollment and utilization for reporting the information.

(g) "Total number of members" means total number of members as of December 31 of the reporting year, as reported by the carrier in its annual statement. If the annual statement blank used by a carrier does not include an exhibit of premiums, enrollment and utilization, the carrier shall derive the answer from its records, using the instructions for the exhibit of premiums, enrollment and utilization for reporting the information.

(3) A carrier shall submit the following information by total for all comprehensive hospital and medical products nationwide and by total for all such products in each Oregon market segment:

(a) Number of members.

(b) Number of member months.

(c) Premiums earned.

(d) Medical claims costs.

(e) Medical loss ratio.

(f) Average premium per member per month for the reporting year.

(g) Average premium per member per month for the preceding reporting year.

(h) Percentage change in premium per member per month from the preceding reporting year.

Stat. Auth.: ORS 731.244, Sec. 2, Ch. 765, OL 2005

Stats. Implemented: Sec. 2, 3, 4, Ch. 765, OL 2005

Hist.: ID 7-2006, f. & cert. ef. 4-14-06

**Department of Energy**

**Chapter 330**

**Rule Caption:** Authorizes loans for renewable energy projects located partially inside and outside Oregon and intergovernmental agencies.

**Adm. Order No.:** DOE 1-2006

**Filed with Sec. of State:** 4-3-2006

**Certified to be Effective:** 4-3-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 330-110-0010, 330-110-0016, 330-110-0042, 330-110-0050, 330-110-0055

**Subject:** The changes to the rules reflect changes to statute enacted by SB 735 and include the following: clarify definitions of recycling project, and small scale local energy project; clarify borrower response to refunding of bonds; clarify ineligible costs, add an applicant's proprietary technical data to the list of confidential records; and clarify fee structure language.

**Rules Coordinator:** Kathy Stuttaford—(503) 378-4128

## 330-110-0010

### Definitions

As used in ORS Chapter 470 and in these rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Adequate security" means the pledge of real or personal property or a credit enhancement or other security of value authorized by ORS 470.170 to secure a loan against default.

(2) "Alternative fuel project" means:

(a) A fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, ethanol, gasohol with at least ten percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane, biodiesel or any other fuel approved by the Director; and

(B) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline; and

(b) A facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

(3) "Applicant" means a loan program applicant or borrower.

(4) "Biomass" means plant and animal matter, but not fossil fuels.

(5) "Cogeneration" means the sequential production of electrical or mechanical energy and useful thermal energy from a primary source such as oil, natural gas, or biomass. Cogeneration must qualify under the Small Scale Local Energy Loan Program Technical Requirements.

(6) "Committee" means the Small Scale Local Energy Project Advisory Committee.

(7) "Conservation Measure" means a system, component of a system, mechanism or series of mechanisms, support service, or combination thereof that:

(a) Reduces the use of energy at the project site;

(b) Directly avoids the loss of energy in the transmission of energy;

(c) Conserves energy used in transportation with the energy savings being substantially in Oregon;

(d) Is a cogeneration project; or

(e) Increases the production or efficiency of or extends operating life of a system or project otherwise described in OAR 330-110-0010(7), including but not limited to restarting a dormant project.

(8) "Conventional Fuels" means purchased electricity or fossil fuels.

(9) "Creditworthy" means an applicant has a satisfactory credit history and sufficient capacity to repay the loan.

(10) "Demonstration Project" means a project that showcases new or improved technologies or designs that promise cost-effective production or conservation of energy if adopted by the marketplace, including elements unrelated to energy production or conservation, but are practically inseparable from the project, and would not receive adequate financing unless these unrelated elements are also eligible for Department loan financing.

(11) "Department" means Department of Energy.

(12) "Director" means the Director of the Department of Energy or designee.

(13) "Eligible Federal Agency" means a federal agency or public corporation created by the Federal Government that proposes to use a loan for a small scale local energy project. "Eligible Federal Agency" does not include a federal agency or public corporation created by the federal

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government that proposes to use a loan for a small scale local energy project to generate electricity for sale.

(14) "Energy Need" means any of the energy demand forecasted by the Department under ORS 469.070 and the need to save energy to cut costs.

(15) "Feasible" means that a project saves or produces reasonable amounts of energy compared to the project's cost and type. "Feasible" does not mean that a project must return its owner's money or make a profit.

(16) "Financial Statement" means any report of a person's or entity's financial operations or status including but not limited to balance sheets, statements of financial condition, statements of financial position, income statements, statement of earnings, statements of revenues and expenses, statements of profit and loss, statements of operations, statements of retained income, statements of cash flows, statements of changes in financial position, pro forma statements, and any accounting reports, reviews, audits, tax returns, or other financial information submitted as, or as a part of, a financial statement.

(17) "Fleet" means three or more vehicles used for commercial or governmental purposes within Oregon.

(18) "Individual" means a natural person whose project serves his or her dwelling, not his or her business.

(19) "Interim Loan" means a disbursement of a Program loan for the purpose of paying for pre-construction costs.

(20) "Loan Contract" means, in addition to the meaning set forth in ORS 470.050(9), the loan agreement and all other documentation required by the Director to make a loan or change its terms and conditions.

(21) "Local Community or Region" means one or more energy users in Oregon.

(22) "Municipal Corporation" has the meaning assigned to that term by ORS 470.050.

(23) "Preference" means, in any choice between projects or applicants, preference under ORS 470.080 and these rules. It does not mean that any loan will be approved that does not conform to the law and these rules.

(24) "Program" means the Small Scale Local Energy Project Loan Program.

(25) "Qualified" means one is able and eligible under the law to apply for a loan and enter into a loan contract.

(26) "Recycling Project" means a facility or equipment that converts waste, as defined in ORS 459.005, into a new and usable product.

(27) "Renewable Resource" means solar, wind, geothermal, biomass, waste heat or water resource.

(28) "Responsible" means private and business history and circumstances indicating an applicant can be relied upon. For a business, it also means the owners of the business will, if asked, pledge to repay the loan.

(29) "Revolving Loan" means a loan made from funds moved to the loan fund from the sinking fund.

(30) "Security Value" means the value assigned by the Department to the project or other security.

(31) "Small Business" has the meaning given in ORS 470.050. The phrases "retail or service" and "industrial or manufacturing" as used therein include all types of businesses.

(32) "Small Scale Local Energy Project" or "Project" has the meaning given in ORS 470.050; including systems or devices that implement one or more conservation measures, use renewable resources to meet a local community or regional energy need in Oregon or are recycling or alternative fuel projects. The project may produce heat, electricity, mechanical action, or substitute fuels. A project may also be an improvement that increases the production or efficiency of or extends the operating life of a system or device otherwise described in this OAR 330-110-0005(30), including but not limited to restarting a dormant project. A project also:

(a) Must be primarily in Oregon but can have a minor contiguous component in a neighboring state. The components located in Oregon should exceed 70% of the project cost;

(b) Can indirectly conserve energy or enable the conservation of energy or indirectly use or enable the use of a renewable resource by the applicant or another person as for example: transmission, power conditioning, energy storage or smart metering;

(c) Can directly or indirectly reduce the amount of energy in construction and operation of a facility including the manufacture and transportation of construction materials providing the project or components meet acceptable sustainability practices established in the Small Scale Local Energy Loan Program Technical Requirements.

(33) "Small Scale Local Energy Loan Program Technical Requirements" means the specific technical requirements of the Department for certain projects. A loan application will be subject to the

technical requirements in effect on the date the Department receives the loan application.

(34) "Subsidiary" means a business that is owned by another, economically controlled by another, or owned in common with another.

(35) "Substitute Fuel" means organic matter that can be used directly or converted in order to replace Conventional Fuel.

(36) "Usable Life" of a project means the number of years that a project can likely function without major repair or replacement.

(37) "Waste Heat" means produced but unused heat that can be applied to an energy need.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.050 - 470.310

Hist.: DOE 12-1980, f. & ef. 12-16-80; DOE 2-1981(Temp), f. & ef. 6-3-81; DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 3-1983(Temp), f. & ef. 9-20-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1991(Temp), f. & cert. ef. 6-10-91; DOE 3-1991, f. & cert. ef. 12-3-91; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

## 330-110-0016

### Ineligible Costs

(1) Loans funded from proceeds of tax-exempt bonds may not pay capital costs incurred prior to bond issuance unless a document disclosing an intent to reimburse the costs has been completed.

(2) A loan may not pay for parts of a project that are not consistent with energy production or conservation or that do not qualify as an alternative fuel project or recycling project, or does not meet the sustainable building practices standard, unless the project is found by the Director to be a demonstration project.

(3) A loan may not pay for any project or component of a project the cost of which is equaled or exceeded by the projected value of its energy costs savings in its first year. "Component" means a part of a project that ordinarily saves energy by itself and that costs more than ten percent of total, estimated project costs.

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.080

Hist.: DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

## 330-110-0042

### Bond Refunding

(1)(a) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department. When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made with the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings, calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan. The Department will request that the borrower notify the Department of their

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intent to prepay their loan within 60 days of the date of the notification or risk losing the opportunity to prepay.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 469 & 470.140  
Stats. Implemented: ORS 470.270  
Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

## 330-110-0050

### Confidential Records

(1) Upon written request and within a reasonable time, the Director will provide non-exempt loan program records for inspection in accordance with the Oregon Public Records Law, ORS 192.410 to 192.505.

(2) The person asking to inspect the records may be charged in advance for the Department's cost to locate, compile, copy, and mail the records. Such costs include but are not limited to costs incurred in separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, and telefaxing materials. Such charges will be estimated or itemized for the person making the request before they are incurred.

(3) The following records are exempt from disclosure if the person providing these records so requests:

- (a) Financial statements;
- (b) Customer lists;

(c) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation that has been concluded, and nothing in this subsection may limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(d) Production, sales or cost data;

(e) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both; and

(f) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to, any description, analysis, evaluation or projection regarding the project or a component of the project.

Stat. Auth.: ORS 469 & 470.140  
Stats. Implemented: ORS 470.065  
Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1993, f. & cert. ef. 1-27-93; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

## 330-110-0055

### Fees and Charges

Pursuant to ORS 470.060, an applicant will pay the Department for costs to review, process, and service a request or loan. Applicants will pay the following charges:

(1) A non-refundable application fee as fixed by statute. "Application," as used here, includes requests to assume or transfer or increase existing loans but does not include interim loan requests made with a project loan request.

(2) A non-refundable underwriting fee of \$500 or one-half of one percent of the loan request amount, whichever is greater, but not to exceed \$5,000. All but \$500 of the underwriting fee may be applied toward the loan fee upon closing of the loan.

(3) A loan fee of one percent of the loan amount required at loan closing.

(4) Charges for credit reports, expert advice, legal fees, construction inspections, disbursement fees, loan servicing fees and appraisals, unless charges incurred also benefit another application, in which case the charges will be divided equitably. Such charges will be estimated or itemized for the applicant before they are incurred.

(5) Charges for managing construction fund investments for an applicant are one-half of one percent of the initial investment cost.

(6) A fee of \$500 for each request to release or modify security. Additional charges may be made for items listed in OAR 330-110-0055(4). Such charges will be estimated or itemized for the applicant before they are incurred.

(7) Department costs in excess of any fees and charges will be collected through interest and any other charges specified in the loan contract executed by the applicant and the Department.

(8) The interest rate on a loan will be the rate in effect for the type or size of loan on the date of the note or other evidence of indebtedness. However, the interest rate set in a binding loan commitment may not be

increased without the applicant's consent. The interest rate for any project proposed by an eligible federal agency must be set in accordance with ORS 470.150(2). Loan contracts may provide for rates to be adjusted upon issuance of the bonds whose proceeds fund the loans.

(9) The Department may offer a fee that combines the fees and charges in OAR 330-110-0055(1) through (3) and that is equal to or less than the sum of the fees and charges in OAR 330-110-0055(1) through (3). If offered, a combined fee will apply to any applicant receiving similar loan terms.

Stat. Auth.: ORS 469 & 470.140  
Stats. Implemented: ORS 470.060 & 470.150  
Hist.: DOE 6-1982, f. & ef. 4-21-82; DOE 2-1983, f. & ef. 5-16-83; DOE 4-1984, f. & ef. 3-6-84; DOE 2-1986, f. & ef. 3-4-86; DOE 4-1988, f. & cert. ef. 7-26-88; DOE 1-1994, f. & cert. ef. 4-1-94; DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Cleanup Rule Amendments: Soil Cleanup Standards and Technical Corrections.

**Adm. Order No.:** DEQ 3-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 3-17-06

**Notice Publication Date:** 11-1-05

**Rules Amended:** 340-122-0040, 340-122-0115

**Rules Repealed:** 340-122-0045

**Subject:** The Oregon Department of Environmental Quality (DEQ) is proposing to revise the state's cleanup rules to delete out-of-date numeric soil cleanup levels and correct a drafting error to make the rule consistent with the existing state cleanup statute and DEQ guidance.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

### 340-122-0040

#### Standards

(1) Any removal or remedial action shall address a release or threat of release of hazardous substances in a manner that assures protection of present and future public health, safety, and welfare, and the environment.

(2) In the event of a release of a hazardous substance, remedial actions shall be implemented to achieve:

(a) Acceptable risk levels defined in OAR 340-122-0115, as demonstrated by a residual risk assessment; or

(b) Numeric cleanup standards developed as part of an approved generic remedy identified or developed by the Department under OAR 340-122-0047, if applicable; or

(c) For areas where hazardous substances occur naturally, the background level of the hazardous substances, if higher than those levels specified in subsections (2)(a) through (2)(b) of this rule.

(3) In the event of a release of methane from a historic solid waste landfill, removal or remedial actions shall be implemented to prevent concentrations of methane exceeding or likely to exceed 1.25% by volume in confined spaces and structures, other than in equipment, piping, wells, or other structures designed for the collection and management of methane and approved by the Department.

(4) In the event of a release of hazardous substances to groundwater or surface water constituting a hot spot of contamination, treatment shall be required in accordance with OAR 340-122-0085(5) and 340-122-0090.

(5) A removal or remedial action shall prevent or minimize future releases and migration of hazardous substances in the environment. A removal or remedial action and related activities shall not result in greater environmental degradation than that existing when the removal or remedial action commenced, unless short-term degradation is approved by the Director under OAR 340-122-0050(4).

(6) A removal or remedial action shall provide long-term care or management, as necessary and appropriate, including but not limited to monitoring, operation, maintenance, and periodic review.

Stat. Auth.: ORS 465.400(1), 466 & 468.020  
Stats. Implemented: ORS 465.200 - 465.455 & 465.900  
Hist.: DEQ 26-1988, f. & cert. ef. 9-16-89; DEQ 12-1992, f. & cert. ef. 6-9-92; DEQ 2-1997, f. & cert. ef. 2-7-97; DEQ 3-2002(Temp), f. 2-21-02 thru 8-20-02; DEQ 9-2002, f. & cert. ef. 8-22-02; DEQ 3-2006, f. & cert. ef. 3-17-06

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## 340-122-0115

### Definitions

Terms not defined in this rule have the meanings set forth in ORS 465.200. Additional terms are defined as follows unless the context requires otherwise:

(1) "Acceptable risk level" with respect to the toxicity of hazardous substances has the meaning set forth in ORS 465.315 (1)(b)(A) and (B) and is comprised of the acceptable risk level definitions provided for carcinogenic exposures, noncarcinogenic exposures, and ecological receptors in sections (2) through (6) of this rule.

(2) "Acceptable risk level for human exposure to individual carcinogens" means:

(a) For deterministic risk assessments, a lifetime excess cancer risk of less than or equal to one per one million for an individual at an upper-bound exposure; or

(b) For probabilistic risk assessments, a lifetime excess cancer risk for each carcinogen of less than or equal to one per one million at the 90th percentile, and less than or equal to one per one hundred thousand at the 95th percentile, each based upon the same distribution of lifetime excess cancer risks for an exposed individual.

(3) "Acceptable risk level for human exposure to multiple carcinogens" means the acceptable risk level for human exposure to individual carcinogens and:

(a) For deterministic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at an upper-bound exposure; or

(b) For probabilistic risk assessments, a cumulative lifetime excess cancer risk for multiple carcinogens and multiple exposure pathways of less than or equal to one per one hundred thousand at the 90th percentile and less than or equal to one per ten thousand at the 95th percentile, each based upon the same distribution of cumulative lifetime excess cancer risks for an exposed individual.

(4) "Acceptable risk level for human exposure to noncarcinogens" means:

(a) For deterministic risk assessments, a hazard index less than or equal to one for an individual at an upper-bound exposure; or

(b) For probabilistic risk assessments, a hazard index less than or equal to one at the 90th percentile, and less than or equal to ten at the 95th percentile, each based upon the same distribution of hazard index numbers for an exposed individual.

(5) "Acceptable risk level for individual ecological receptors" applies only to species listed as threatened or endangered pursuant to 16 USC 1531 et seq. or ORS 465.172, and means:

(a) For deterministic risk assessments, a toxicity index less than or equal to one for an individual ecological receptor at an upper-bound exposure, where the toxicity index is the sum of the toxicity quotients attributable to systemic toxicants with similar endpoints for similarly-responding species and the toxicity quotient is the ratio of the exposure point value to the ecological benchmark value; or

(b) For probabilistic risk assessments, a toxicity index less than or equal to one at the 90th percentile and less than or equal to 10 at the 95th percentile, each based on the same distribution of toxicity index numbers for an exposed individual ecological receptor; or

(c) The probability of important changes in such factors as growth, survival, fecundity, or reproduction related to the health and viability of an individual ecological receptor that are reasonably likely to occur as a consequence of exposure to hazardous substances is de minimis.

(6) "Acceptable risk level for populations of ecological receptors" means a 10 percent chance, or less, that more than 20 percent of the total local population will be exposed to an exposure point value greater than the ecological benchmark value for each contaminant of concern and no other observed significant adverse effects on the health or viability of the local population.

(7) "Assessment endpoint" means an explicit expression of a specific ecological receptor and an associated function or quality that is to be maintained or protected. Assessment endpoints represent ecological receptors directly or as their surrogates for the purposes of an ecological risk assessment.

(8) "Background level" means the concentration of hazardous substance, if any, existing in the environment in the location of the facility before the occurrence of any past or present release or releases.

(9) "Beneficial uses of water" means any current or reasonably likely future beneficial uses of groundwater or surface water by humans or ecological receptors.

(10) "Carcinogen" means any substance or agent that produces or tends to produce cancer in humans.

(11) "Cleanup level", means the residual concentration of a hazardous substance in a medium that is determined to be protective of public health, safety and welfare, and the environment under specified exposure conditions.

(12) "Commission" means the Environmental Quality Commission.

(13) "Confirmed release" means a release of a hazardous substance into the environment that has been confirmed by the Department in accordance with OAR 340-122-0073.

(14) "Confirmed release list" means a list of facilities for which the Director has confirmed a release of a hazardous substance.

(15) "Contaminant of concern" means a hazardous substance that is present in such concentrations that the contaminant poses a threat or a potentially unacceptable risk to public health, safety or welfare, or the environment considering:

(a) The toxicological characteristics of the hazardous substance that influence its ability to affect adversely human health, ecological receptors or the environment relative to the concentration of the hazardous substance at the facility;

(b) The chemical and physical characteristics of the hazardous substance that govern its tendency to persist in the environment, move through environmental media, or accumulate through food webs;

(c) The background level of the hazardous substances;

(d) The thoroughness of the testing for the hazardous substance at the facility;

(e) The frequency that the hazardous substance has been detected at the facility; and

(f) Degradation by-products of the hazardous substances.

(16) "Critical endpoint" or "Critical effect" means the adverse health effect used as the basis for the derivation of the reference dose (RfD). Exposure to a given chemical may result in a variety of toxic effects (e.g., liver defects, kidney defects, or blood defects). The critical endpoint is selected from the different adverse health effects produced by a given chemical, and is the adverse health effect with the lowest dose level that produced toxicity.

(17) "Department" means the Oregon Department of Environmental Quality.

(18) "Deterministic risk assessment" means a risk assessment that produces a point value estimate of risk for a specific set of exposure assumptions.

(19) "De minimis release" means a release of a hazardous substance that, because of the quantity or characteristics of the hazardous substance released and the potential for migration and exposure of human or environmental receptors, can reasonably be considered to pose no significant threat to public health, safety or welfare, or the environment.

(20) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(21) "Ecological benchmark value" means the highest no-observed-adverse-effect-level (NOAEL) for individual ecological receptors considering effects on reproductive success or the median lethal dose or concentration (LD50 or LC50) for populations of ecological receptors. If a NOAEL, LD50 or LC50, as applicable, is not available for ecological receptors considered in the risk assessment, the ecological benchmark value may be derived from other toxicological endpoints for those receptors or appropriate surrogates for those receptors, adjusted with uncertainty factors to equate to a NOAEL, LD50 or LC50. The ecological benchmark value shall be based, to the extent practicable, on studies whose routes of exposure and duration of exposure were commensurate with the expected routes and duration of exposure for ecological receptors considered in the risk assessment, or appropriate surrogates for those receptors.

(22) "Ecological receptor" means a population of plants or animals (excluding domestic animals and cultivated plants) or an individual member of any species listed as threatened or endangered pursuant to 16 U.S.C. 1532 et seq. or ORS 496.172.

(23) "Engineering control" means a remedial method used to prevent or minimize exposure to hazardous substances, including technologies that reduce the mobility or migration of hazardous substances. Engineering controls may include, but are not limited to, capping, horizontal or vertical barriers, hydraulic controls, and alternative water supplies.

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(24) "Environment" includes ecological receptors, the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.

(25) "Exposure point value" means the concentration or dose of a hazardous substance occurring at a location of potential contact between a human receptor and the hazardous substance, or between an ecological receptor and the hazardous substance.

(26) "Facility" or "Site" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(27) "Groundwater" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(28) "Hazard index" means a number equal to the sum of the hazard quotients attributable to systemic toxicants with similar toxic endpoints.

(29) "Hazard quotient" means the ratio of the exposure point value to the reference dose, where the reference dose is typically the highest dose causing no adverse effects on survival, growth or reproduction in human populations.

(30) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005;

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499;

(c) Oil as defined in ORS 465.200(18); and

(d) Methane generated at a historic solid waste landfill; and

(e) Any substance designated by the commission under ORS 465.400.

(31) "Historic solid waste landfill" means:

(a) A solid waste landfill that was never permitted for disposal of solid waste, including landfills that received solid waste prior to adoption of permit requirements under ORS 459.205;

(b) A solid waste landfill that was previously permitted for disposal of solid waste pursuant to ORS 459.205, if operational and post-closure permits for management of the facility have expired, or have been terminated or revoked by the Department; and

(c) A permitted solid waste landfill, if the Department determines that permit requirements for management of methane will not be implemented by the permittee including determinations by the Department that the permittee is financially unable to implement applicable permit requirements.

(32) "Hot spots of contamination" means:

(a) For groundwater or surface water, hazardous substances having a significant adverse effect on beneficial uses of water or waters to which the hazardous substances would be reasonably likely to migrate and for which treatment is reasonably likely to restore or protect such beneficial uses within a reasonable time, as determined in the feasibility study; and

(b) For media other than groundwater or surface water, (e.g., contaminated soil, debris, sediments, and sludges; drummed wastes; "pools" of dense, non-aqueous phase liquids submerged beneath groundwater or in fractured bedrock; and non-aqueous phase liquids floating on groundwater), if hazardous substances present a risk to human health or the environment exceeding the acceptable risk level, the extent to which the hazardous substances:

(A) Are present in concentrations exceeding risk-based concentrations corresponding to:

(i) 100 times the acceptable risk level for human exposure to each individual carcinogen;

(ii) 10 times the acceptable risk level for human exposure to each individual noncarcinogen; or

(iii) 10 times the acceptable risk level for exposure of individual ecological receptors or populations of ecological receptors to each individual hazardous substance.

(B) Are reasonably likely to migrate to such an extent that the conditions specified in subsection (a) or paragraphs (b)(A) or (b)(C) would be created; or

(C) Are not reliably containable, as determined in the feasibility study.

(33) "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to hazardous substances. Institutional controls may include, but are not limited to, use restrictions, environmental monitoring requirements, and site access and security measures.

(34) "Inventory" means a list of facilities for which the Director has confirmed a release of a hazardous substance and, based on a preliminary assessment or equivalent information, has determined that additional investigation, removal, remedial action, or long term engineering or institutional controls related to removal or remedial action are required to assure protection of the present and future public health, safety and welfare, and the environment.

(35) "Locality of the facility" means any point where a human or an ecological receptor contacts, or is reasonably likely to come into contact with, facility-related hazardous substances, considering:

(a) The chemical and physical characteristics of the hazardous substances;

(b) Physical, meteorological, hydrogeological, and ecological characteristics that govern the tendency for hazardous substances to migrate through environmental media or to move and accumulate through food webs;

(c) Any human activities and biological processes that govern the tendency for hazardous substances to move into and through environmental media or to move and accumulate through food webs; and

(d) The time required for contaminant migration to occur based on the factors described in subsections (35)(34)(a) through (c) of this rule.

(36) "Measurement endpoints for ecological receptors" are quantitative expressions of an observed or measured response in ecological receptors exposed to hazardous substances.

(37) "Noncarcinogen" means hazardous substances with adverse health effects on humans other than cancer.

(38) "Onsite", for purposes of ORS 465.315(3), means the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for implementation of a removal or remedial action.

(39) "Permitted or authorized release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by an authorized public agency.

(40) "Population" and "Local population", for purposes of evaluating ecological receptors, means a group of individual plants, animals, or other organisms of the same species that live together and interbreed within a given habitat, including any portion of a population of a transient or migratory species that uses habitat in the locality of the facility for only a portion of the year or for a portion of their lifecycle.

(41) "Practical quantification limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability when testing field samples under routine laboratory operating conditions using Department-approved methods.

(42) "Preliminary assessment" means an investigation conducted in accordance with OAR 340-122-0072 for the purpose of determining whether additional investigation, removal, remedial action, or related engineering or institutional controls are needed to assure protection of public health, safety and welfare, and the environment.

(43) "Probabilistic risk assessment" means a risk assessment that produces a credible range or distribution of possible risk estimates by taking into consideration the variability and uncertainty in the exposure and toxicity data used to make the assessment.

(44) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or any threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to the requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by product special nuclear material from any processing

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site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(45) "Remedial action" and "Removal" have the meanings set forth in ORS 465.200(22) and (24), respectively, and, for purposes of these rules, may include investigations, treatment, excavation and offsite disposal, engineering controls, institutional controls, any combination thereof.

(46) "Remediated" means implementation of a removal or remedial action.

(47) "Residual risk assessment" means both:

(a) A quantitative assessment of the risk resulting from concentrations of untreated waste or treatment residuals remaining at the conclusion of any treatment and offsite disposal taking into consideration current and reasonably likely future land and water use scenarios and the exposure assumptions used in the baseline risk assessment; and

(b) A qualitative or quantitative assessment of the adequacy and reliability of any institutional or engineering controls to be used for management of treatment residuals and untreated hazardous substances.

(48) "Risk" means the probability that a hazardous substance, when released into the environment, will cause adverse effects in exposed humans or ecological receptors.

(49) "Risk assessment" means the process used to determine the probability of an adverse effect due to the presence of hazardous substances. A risk assessment includes identification of the hazardous substances present in the environmental media; assessment of exposure and exposure pathways; assessment of the toxicity of the hazardous substances; characterization of human health risks; and characterization of the impacts or risks to the environment.

(50) "Sensitive environment", for purposes of OAR 340-122-0045, means an area of particular environmental value where a hazardous substance could pose a greater threat than in other non-sensitive areas. Sensitive environments include but are not limited to: Critical habitat for federally endangered or threatened species; National Park, Monument, National Marine Sanctuary, National Recreational Area, National Wildlife Refuge, National Forest Campgrounds, recreational areas, game management areas, wildlife management areas; designated federal Wilderness Areas; wetlands (freshwater, estuarine, or coastal); wild and scenic rivers; state parks; state wildlife refuges; habitat designated for state endangered species; fishery resources; state designated natural areas; county or municipal parks; and other significant open spaces and natural resources protected under Goal 5 of Oregon's Statewide Planning Goals.

(51) "Significant adverse effect on beneficial uses of water" means current or reasonably likely future exceedance of:

(a) Applicable or relevant federal, state or local water quality standards, criteria, or guidance;

(b) In the absence of applicable or relevant water quality standards, criteria, or guidance, the acceptable risk level; or

(c) If subsections (a) and (b) of this section do not apply, the concentration of a hazardous substance indicated by available published peer-reviewed scientific information to have a significant adverse effect on a current or reasonably likely future beneficial use of water.

(52) "Soil" means a mixture of organic and inorganic solids, air, water, and biota which exists on the earth surface above bedrock, including materials of anthropogenic sources such as slag and sludge.

(53) "Solid waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

(a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(54) "Solid waste landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(55) "Surface water" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a

junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(56) "Total excess cancer risk" means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.

(57) "Treatment" means to permanently and substantially eliminate or reduce the toxicity, mobility or volume of hazardous substances with the use of either in-situ or ex-situ remedial technologies.

Stat. Auth.: ORS 465.315 & 465.400

Stats. Implemented: ORS 465.200-455, 465.900, 466.706-835 & 466.895

Hist.: DEQ 2-1997, f. & cert. ef. 2-7-97; DEQ 11-1999(Temp), f. & cert. ef. 7-6-99 thru 1-2-2000; Administrative correction 6-12-01; DEQ 3-2002(Temp), f. 2-21-02 thru 8-20-02; DEQ 9-2002, f. & cert. ef. 8-22-02; DEQ 3-2006, f. & cert. ef. 3-17-06

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**Rule Caption:** Enforcement Procedure and Civil Penalties, Chapter 340, Division 12.

**Adm. Order No.:** DEQ 4-2006

**Filed with Sec. of State:** 3-29-2006

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**Subject:** Oregon's environmental enforcement program (OAR 340-012) lists "classifications" and "magnitudes" for the various violations of Oregon environmental law. These two factors are used for determining the base penalty of a violation. This rulemaking creates greater clarity between these concepts by classifying violations based on how important the requirement is to achieving the intended environmental and public health protections and how probable it is that a violation will result in significant harm to the environment or pose significant threat to public health. This means that "potential" harm is considered in determining the magnitude of the violation using the facts of the particular situation rather than classifying a violation based on an improbable (but possible) worst case scenario. This rulemaking revises the classifications and magnitudes of some violations to better reflect the department's environmental priorities and to create consistency among programs. Where re-classification of a violation is modified it may lead to fewer cases being referred for formal enforcement; in some limited instances violations are classified to a more serious classification. For the latter there may be a greater likelihood of civil penalties being imposed. Finally, this rulemaking revises the penalty matrix for some open burning rule violations and water quality suction dredge general permit violations.

These amendments, along with OAR 340-200-0040, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

## 340-012-0027

### Rule Effective Date

These rules will become effective on March 31, 2006.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 183.355, 454, 459, 465, 466, 468, 468A & 468B

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0053

### Violations that Apply to all Programs

#### (1) Class I:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

(b) Submitting false, inaccurate or incomplete information to the department where the submittal masked a violation, caused environmental harm, or caused the department to misinterpret any substantive fact;

(c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree); or

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(d) Using fraud or deceit to obtain department approval, permit or license.

(2) **Class II:** Violating any otherwise unclassified requirement.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0054

### Air Quality Classification of Violations

#### (1) **Class I:**

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO<sub>2</sub> Trading Program;

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

(k) Causing emissions that are a hazard to public safety;

(l) Violating a work practice requirement for asbestos abatement projects;

(m) Storing or accumulating friable asbestos material or asbestos-containing waste material;

(n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

(p) Failing to hire a licensed contractor to conduct an asbestos abatement project;

(q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3); or

(r) Failing to install certified vapor recovery equipment.

#### (2) **Class II:**

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;

(b) Violating the terms or conditions of a permit or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit modification from the department without first obtaining such approval from the department, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit an ACDP annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

(h) Failing to timely submit a permit application or permit renewal application;

(i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified;

(k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

(l) Failing to provide notification of an asbestos abatement project;

(m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project; or

(n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620.

#### (3) **Class III:**

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from the department without first obtaining such approval from the department, unless otherwise classified;

(d) Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or

(f) Failing to display a temporary label on a certified woodstove.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0055

### Water Quality Classification of Violations

#### (1) **Class I:**

(a) Causing pollution of waters of the state;

(b) Reducing the water quality of waters of the state below water quality standards;

(c) Discharging any waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;

(d) Operating a discharge source or conducting a disposal activity without first obtaining an individual permit or applying for coverage under a general permit for that discharge or disposal activity;

(e) Failing to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters;

(f) Failing to take appropriate action, as required by the municipal wastewater treatment works owner's department-approved pretreatment-compliance oversight program, against an industrial discharger to the municipal treatment works who violates any pretreatment standard or requirement, if the violation impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment;

(g) Making unauthorized changes, modifications, or alterations to a facility operating under a Water Pollution Control Facility (WPCF) or National Pollutant Discharge Elimination System (NPDES) permit;

(h) Allowing operation or supervision of a wastewater treatment and collection system without proper certification, by the permittee and/or owner;

(i) Applying biosolids or domestic septage to a parcel of land that does not have department approval for land application;

(j) Applying biosolids that do not meet the pollutant, pathogen or one of the vector attraction reduction requirements of 40 CFR 503.33(b)(1) through (10);

(k) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) the discharge level (except for pH and bacteria) exceeds the limitation by 50 percent or more;

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(B) the discharge is outside the permitted pH range by more than 2 pH units;

(C) the discharge exceeds a bacteria limit as a result of an inoperative disinfection system where there is no disinfection; or

(D) the discharge of reclaimed water exceeds a bacteria limit by more than five times the limit.

(I) Violating a water quality based effluent limitation in an NPDES permit;

(m) Violating a WPCF permit limitation in a designated groundwater management area if the exceedance is of a parameter for which the groundwater management area was established;

(n) Failing to report an effluent limitation exceedance;

(o) Failing to collect monitoring data required in Schedule B of the permit;

(p) Contracting for operation or operating a prohibited Underground Injection Control (UIC) system other than a cesspool that only disposes of human waste;

(q) Operating an Underground Injection Control (UIC) system that causes a data verifiable violation of federal drinking water standards in an aquifer used as an underground source of drinking water; or

(r) Failing to implement an erosion and sediment control plan in accordance with an NPDES permit.

## (2) Class II:

(a) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) the discharge level (except for pH and bacteria) exceeds the limitation by 20 percent or more, but less than 50 percent, for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by 10 percent or more, but less than 50 percent, for all other limitations;

(B) the discharge is outside the permitted pH range by more than 1 pH unit but less than or equal to 2 pH units;

(C) the discharge exceeds a bacteria limit by a factor of five or more, unless otherwise classified; or

(D) the discharge of reclaimed water exceeds a bacteria limit by an amount equal to or less than five times the limit.

(b) Failing to timely submit a report or plan as required by rule, permit, or license, unless otherwise classified;

(c) Causing any wastes to be placed in a location where such wastes are likely to be carried into waters of the state by any means;

(d) Violating any management, monitoring, or operational plan established pursuant to a waste discharge permit, unless otherwise classified; or

(e) Failing to timely submit or implement a Total Maximum Daily Load (TMDL) Implementation Plan, by a Designated Management Agency (DMA), as required by department order.

## (3) Class III:

(a) Failing to submit a complete discharge monitoring report;

(b) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) the discharge (except for pH and bacteria) exceeds the limitation by less than 20 percent for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by less than 10 percent for all other limitations;

(B) the discharge is outside the permitted pH range by 1 pH unit or less; or

(C) the discharge (except for reclaimed water) exceeds a bacteria limit by less than five times the limit.

(c) Failing to achieve a removal efficiency established in an NPDES or WPCF permit;

(d) Failing to register an Underground Injection Control (UIC) system, except for a UIC system prohibited by rule; or

(e) Failing to follow the owner's department-approved pretreatment program procedures, where such failure did not result in any harm to the treatment works and was not a threat to the public health or the environment.

Stat. Auth.: ORS 468.020 & 468B.015

Stats. Implemented: ORS 468.090 - 468.140, 468B.025, 468B.220 & 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0060

### Onsite Sewage Disposal Classification of Violations

#### (1) Class I:

(a) Performing sewage disposal services without a current license;

(b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit;

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the department; or

(d) Owning, operating or using an onsite wastewater treatment system that is discharging sewage or effluent to the ground surface or into waters of the state.

#### (2) Class II:

(a) Failing to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit;

(c) Operating or using an onsite wastewater treatment system or part thereof without first obtaining a Certificate of Satisfactory Completion;

(d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license;

(e) Placing into service, reconnecting to or changing the use of an onsite wastewater treatment system in a manner that increases the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, or repair permit;

(f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a department-approved system, unless failure results in sewage discharging to the ground surface or to waters of the state;

(g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof;

(h) Failing to submit an annual maintenance report, by a service provider of alternative treatment technologies; or

(i) Failing to report that a required operation and maintenance contract has been terminated, by a service provider of alternative treatment technologies.

#### (3) Class III:

(a) Failing to obtain an operation and maintenance contract from a certified service provider, by an owner of an alternative treatment technology, recirculating gravel filter or commercial sand filter; or

(b) Placing an existing onsite wastewater treatment system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice, where the design flow of the system is not exceeded.

Stat. Auth.: ORS 454.050, 454.625 & 468.020

Stats. Implemented: ORS 454.635, 454.645 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0065

### Solid Waste Management Classification of Violations

#### (1) Class I:

(a) Establishing or operating a disposal site without first obtaining a registration or permit;

(b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the department and obtaining department approval;

(c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the department to receive that solid waste;

(d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;

(e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from the department, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;

(f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, department approved plans, or department rules;

(g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or department rules;

(h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;



# ADMINISTRATIVE RULES

(i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order;

(j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal.

**(2) Class II:**

(a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;

(b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;

(c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;

(d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining department approval or without complying with an approved plan for a HHW collection event; or

(e) Receiving or managing waste in violation of or without a department approved Special Waste Management Plan.

**(3) Class III:**

(a) Failing to post required signs;

(b) Failing to control litter;

(c) Failing to notify the department of any name or address change; or

(d) Violating any labeling requirement under ORS 459A.675–.685.

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0066

### Solid Waste Tire Management Classification of Violations

**(1) Class I:**

(a) Establishing or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires or tire-derived products at an unauthorized site;

(c) Violating the fire safety requirements of a waste tire storage site permit;

(d) Hauling waste tires without first obtaining a waste tire carrier permit; or

(e) Failing to establish and maintain financial assurance as required by statute, rule, permit or order.

**(2) Class II:** Failing to maintain written records of waste tire generation, storage, collection, transportation, or disposal.

**(3) Class III:**

(a) Failing to keep required records on use of vehicles;

(b) Failing to post required signs;

(c) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or

(d) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit.

Stat. Auth.: ORS 459.785 & 468.020

Stats. Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0067

### Underground Storage Tank (UST) Classification of Violations

**(1) Class I:**

(a) Failing to investigate or confirm a suspected release;

(b) Failing to establish or maintain the required financial responsibility mechanism;

(c) Failing to obtain the appropriate general permit registration certificate before installing or operating an UST;

(d) Failing to install spill and overfill protection equipment that will prevent a release, or failing to demonstrate to the department that the equipment is properly functioning;

(e) Failing to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;

(f) Failing to protect from corrosion any part of an UST system that routinely contains a regulated substance;

(g) Failing to permanently decommission an UST system;

(h) Failing to obtain approval from the department before installing or operating vapor or groundwater monitoring wells as part of a release detection method;

(i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by the department;

(j) Failing to conduct testing or monitoring, or to keep records where the failure constitutes a significant operational compliance violation;

(k) Providing, offering or supervising tank services without the appropriate license;

(l) Demonstrating negligence or incompetence in performing tank services; or

(m) Failing to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by the department.

**(2) Class II:**

(a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(b) Failing to have a trained UST system operator for an UST facility after March 1, 2004;

(c) Failing to apply for a modified general permit registration certificate;

(d) Failing to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate;

(e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;

(f) Failing to decommission an UST in compliance with the statutes and rules adopted by the department, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;

(h) Failing to obtain the identification number and operation certificate number before depositing a regulated substance into an UST, by a distributor;

(i) Failing, by a distributor, to maintain a record of all USTs into which it deposited a regulated substance;

(j) Allowing tank services to be performed by a person not licensed by the department;

(k) Failing to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(l) Failing to complete an integrity assessment before adding corrosion protection;

(m) Failing by an owner or permittee to pass the appropriate national examination before performing tank services; or

(n) Failing to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.

**(3) Class III:** Failing to notify the new owner or permittee of the department's general permit registration requirements, by a person who sells an UST.

Stat. Auth.: ORS 466.720, 466.746, 466.882, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835, 466.994 & 468.090 - 468.140

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0068

### Hazardous Waste Management and Disposal Classification of Violations

**(1) Class I:**

(a) Failing to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;

(b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;

(c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 CFR 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest;

(f) Transporting, delivering or designating on a manifest delivery of hazardous waste to a facility not authorized or permitted to manage hazardous waste; or failing to submit an exception report;

# ADMINISTRATIVE RULES

- (g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;
  - (h) Illegally treating or disposing of a hazardous waste;
  - (i) Failing to submit Land Disposal Restriction notifications;
  - (j) Failing to have and maintain a closure plan or post closure plan for a Treatment, Storage or Disposal (TSD) facility or for each regulated hazardous waste management unit, as defined in 40 CFR 260.10, by the owner or operator of facility or unit;
  - (k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;
  - (l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 CFR 264.147 or 40 CFR 265.147, by an owner or operator of a TSD facility;
  - (m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;
  - (n) Failing to comply with the export requirements in 40 CFR 262.52 for hazardous wastes;
  - (o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;
  - (p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;
  - (q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment; or
  - (r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, by any person having ownership or control over hazardous waste.
- (2) **Class II:**
- (a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;
  - (b) Failing to label a tank having a capacity of 100 gallons or more, or containers equaling more than 110 gallon capacity used for accumulation or storage of hazardous waste;
  - (c) Failing to post required emergency response information next to the telephone, by a small quantity generator;
  - (d) Accumulating hazardous waste more than thirty (30) days beyond the specified accumulation time frame;
  - (e) Failing to submit a manifest discrepancy report;
  - (f) Shipping hazardous waste on manifests that do not comply with department rules;
  - (g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a treatment, storage or disposal facility;
  - (h) Failing to conduct required inspections at hazardous waste generator accumulation sites or hazardous waste permitted storage areas;
  - (i) Failing to prepare a contingency plan;
  - (j) Failing to follow the requirements of a groundwater monitoring program, unless otherwise classified;
  - (k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;
  - (l) Generating, treating, storing or disposing of hazardous waste without complying with the Personnel Training requirements;
  - (m) Failing to keep containers of hazardous waste closed, except when adding or removing wastes;
  - (n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator or storage facility;
  - (o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;
  - (p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;

- (q) Failing to obtain a hazardous waste EPA identification number when required;
  - (r) Failing to comply with 40 CFR 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
  - (s) Failing to comply with 40 CFR 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified; or
  - (t) Failing to timely submit an annual report, by a hazardous waste generator, TSD facility, or hazardous waste recycling facility.
- (3) **Class III:**
- (a) Accumulating hazardous waste up to thirty (30) days beyond the specified accumulation time frame;
  - (b) Failing to label containers equaling 110 gallon capacity or less used for the accumulation or storage of hazardous waste;
  - (c) Failing to label a tank having less than 100 gallon capacity used for the accumulation or storage of hazardous waste;
  - (d) Failing to maintain on site a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or
  - (e) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0071

### Polychlorinated Biphenyl (PCB) Classification of Violations

#### (1) Class I:

- (a) Treating, storing or disposing of PCBs anywhere other than a permitted PCB disposal facility or a location authorized by the department; or
- (b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit or department authorization.

(2) **Class II:** Violating any other requirement related to the treatment, storage, generation or disposal of PCBs is classified under OAR 340-012-0053.

Stat. Auth.: ORS 459.995, 466.625, 467.030, 468.020 & 468.996

Stats. Implemented: ORS 466.255, 466.265 - 466.270, 466.530 & 466.990 - 466.994

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0072

### Used Oil Management Classification of Violations

#### (1) Class I:

- (a) Using used oil as a dust suppressant, pesticide, or otherwise spreading used oil directly in the environment;
- (b) Burning a used oil mixture where the used oil mixture has less than 5,000 Btu/pound;
- (c) Offering for sale used oil as specification used oil fuel when the used oil does not meet used oil fuel specifications;
- (d) Selling off-specification used oil fuel to a facility not meeting the definition of an industrial boiler or furnace;
- (e) Burning off-specification used oil in a device that does not meet the definition of an industrial boiler or furnace and is not otherwise exempt;
- (f) Failing to make an on-specification used oil fuel determination when required, by a used oil generator, transporter, burner or processor;
- (g) Storing or managing used oil in a surface impoundment;
- (h) Failing to determine whether used oil exceeds the permissible halogen content, by a used oil transporter, burner or processor;
- (i) Failing to perform required closure on a used oil tank or container, by a used oil processor or re-refiner;
- (j) Failing to maintain required secondary containment at a used oil transfer facility or by a processor, burner, or marketer of used oil; or
- (k) Failing to immediately clean up spills or releases or threatened spills or releases of used oil, by any person having ownership or control over the used oil.

#### (2) Class II:

- (a) Failing to obtain a one time written notification from a burner before shipping off-specification used oil fuel, by a used oil generator, transporter, processor or re-refiner;
- (b) Failing to develop, follow and maintain records of a written waste analysis plan, by a used oil processor;

# ADMINISTRATIVE RULES

- (c) Failing to close or cover a used oil tank or container;
- (d) Failing to timely submit annual used oil handling reports, by a used oil processor;
- (e) Failing to label each container or tank used for the accumulation or storage of used oil on site, unless otherwise classified;
- (f) Failing to keep a written operating record at the facility, by used oil processor;
- (g) Failing to prepare and maintain an up-to-date preparedness and prevention plan, by a used oil processor; or
- (h) Transporting, processing, re-refining, burning or marketing used oil without first obtaining an EPA ID number.

## (3) Class III:

- (a) Failing to label one container or tank in which used oil was accumulated on site, if five or more tanks or containers are present;
- (b) Failing to label up to two containers used for the accumulation or storage of used oil on site; or
- (c) Failing to label a tank having less than 100 gallon capacity when used for the accumulation or storage of used oil on site.

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

Stat. Auth.: ORS 459.995, 468.020, 468.869, 468.870 & 468.996

Stats. Implemented: ORS 459A.580 - 459A.585, 459A.590 & 468.090 - 468.140

Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0073

### Environmental Cleanup Classification of Violations

(1) **Class I:** Violating any otherwise unclassified environmental cleanup-related requirements are addressed under OAR 340-012-0053.

(2) **Class II:** Failing to provide information under ORS 465.250.

Stat. Auth.: ORS 465.280, 465.400 - 465.410, 465.435 & 468.020

Stats. Implemented: ORS 465.210 & 468.090 - 468.140

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0074

### Underground Storage Tank (UST) Cleanup Classification of Violations

#### (1) Class I:

- (a) Failing to report a confirmed release from an UST;
- (b) Failing to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;
- (c) Failing to conduct free product removal;
- (d) Failing to properly manage petroleum contaminated soil;
- (e) Failing to mitigate fire, explosion or vapor hazards;
- (f) Demonstrating negligence or incompetence in performing soil matrix cleanup services; or
- (g) Providing or supervising soil matrix cleanup services without obtaining the appropriate license.

(2) **Class II:**

- (a) Failing to report a suspected release from an UST;
- (b) Failing to timely submit reports or other documentation from the investigation or cleanup of a release from an UST; or
- (c) Failing to timely submit a corrective action plan or submitting an incomplete corrective action plan.

Stat. Auth.: ORS 466.746, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835 & 466.994

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0079

### Heating Oil Tank (HOT) Classification of Violations

#### (1) Class I:

- (a) Failing to report a release from an HOT when the failure is discovered by the department;
- (b) Failing to initiate and complete the investigation or cleanup of a release from an HOT;
- (c) Failing to initiate and complete free product removal;
- (d) Failing to certify that heating oil tank services were conducted in compliance with all applicable regulations, by a service provider;
- (e) Failing, by a responsible party or service provider, to conduct corrective action after the department rejects a certified report;
- (f) Demonstrating negligence or incompetence in performing HOT services; or
- (g) Providing or supervising HOT services without first obtaining the appropriate license.

#### (2) Class II:

- (a) Failing to submit a corrective action plan;

- (b) Failing to properly decommission an HOT;
- (c) Failing to hold and continuously maintain errors and omissions or professional liability insurance, by a HOT service provider;
- (d) Failing to have a supervisor present when performing HOT services;
- (e) Failing to report a release from an HOT within 72 hours when the failure is reported to the department by the responsible person or the service provider; or
- (f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Stat. Auth.: ORS 466.746, 466.858 - 466.994 & 468.020

Stat. Implemented: ORS 466.706, 466.858 - 466.882, 466.994 & 468.090 - 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0081

### Oil and Hazardous Material Spill and Release Classification of Violations

#### (1) Class I:

(a) Failing to immediately clean up spills or releases or threatened spills or releases of oil or hazardous materials, by any person having ownership or control over the oil or hazardous materials;

(b) Failing to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material, and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity, or will exceed the reportable quantity within 24 hours;

(c) Spilling or releasing any oil or hazardous materials which enters waters of the state;

(d) Failing to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;

(e) Failing to immediately implement a required plan; or

(f) Failing to take immediate preventative, repair, corrective or containment action in the event of a threatened spill or release.

#### (2) Class II:

(a) Failing to submit a complete and detailed written report to the department of a spill of oil or hazardous material;

(b) Failing to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;

(c) Failing to coordinate with the department during the emergency response to a spill after being notified of the department's jurisdiction;

(d) Failing to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040;

(e) Failing to immediately manage any spill or release of oil or hazardous materials consistent with the National Incident Management System (NIMS);

(f) Improperly or without approval of the Department, treating, diluting or disposing of spill, or spill-related waters or wastes; or

(g) Using chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous materials without prior department approval.

#### (3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to the department upon request; or

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records, and oil transfer procedures available to the department upon request.

Stat. Auth.: ORS 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 7-2003, f. & cert. ef. 4-21-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0082

### Contingency Planning Classification of Violations

#### (1) Class I:

(a) Failing to immediately implement the oil spill prevention and emergency response contingency plan or other applicable contingency plan, after discovering a spill;

(b) Operating an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(c) Entering into the waters of the state, by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(d) Failing to implement prevention measures identified in the facility or covered vessel spill prevention plan that directly results in a spill;

# ADMINISTRATIVE RULES

(e) Failing to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(f) Failing to establish and maintain financial assurance as required by statute, rule or order; or

(g) Failing by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

**(2) Class II:**

(a) Failing to submit an oil spill prevention and emergency response contingency plan to the department at least 90 calendar days before beginning operations in Oregon, by any onshore or offshore facility or covered vessel;

(b) Failing to have available on site a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(c) Failing, by a plan holder, to submit and implement required changes to a required vessel or facility contingency plan following conditional approval;

(d) Failing, by a covered vessel or facility contingency plan holder, to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(e) Failing to submit spill prevention strategies as required; or

(f) Failing to obtain department approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

**(3) Class III:**

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to the department upon request;

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records and oil transfer procedures available to the department upon request;

(c) Failing to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failing to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failing to notify the department within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failing to distribute amended page(s) of the plan changes to the department within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350

Stats. Implemented: ORS 468B.345

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0083

### Ballast Water Management Classification of Violations

(1) **Class I:** Discharging of ballast water without authorization.

**(2) Class II:**

(a) Failing to report ballast water management information to the department at least 24 hours before entering the waters of this state; or

(b) Failing to file an amended ballast water management report after a change in the vessel's ballast water management plan.

Stat. Auth.: ORS 783.600 - 783.992

Stats. Implemented: ORS 783.620

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0097

### Dry Cleaning Classification of Violations

**(1) Class I:**

(a) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, boiler or into waters of the state;

(b) Failing to have a secondary containment system under and around each dry cleaning machine or each tank or container of stored solvent;

(c) Failing to report a release outside of a containment system of more than one pound of dry cleaning solvent released in a 24-hour period;

(d) Failing to repair the cause of a release within a containment system of dry cleaning solvent;

(e) Failing to immediately clean up a release or repair the cause of a release outside of a containment system of dry cleaning solvents or waste water contaminated with solvent;

(f) Illegally treating or disposing hazardous waste generated at a dry cleaning facility;

(g) Transporting, delivering or designating on a manifest, delivery of hazardous waste generated at a dry cleaning facility to a destination facility not authorized or permitted to manage hazardous waste; or

(h) Failing to conduct weekly perchloroethylene leak inspections, and to measure the perchloroethylene refrigerated condenser outlet temperature and log the results, by a dry cleaning owner or operator.

**(2) Class II:**

(a) Failing to place or store hazardous waste generated at a dry cleaning facility in properly labeled and closed containers;

(b) Accumulating hazardous waste beyond the specified accumulation time period;

(c) Failing, by a dry cleaning owner or operator, to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;

(d) Failing to immediately clean up a release within a containment system of dry cleaning solvent or hazardous waste;

(e) Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility;

(f) Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator;

(g) Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations; or

(h) Failing to timely submit an annual report to the department, by a dry cleaning owner or operator.

**(3) Class III:** Failing to notify the department of change of ownership or operator or closure at a dry cleaning business or dry cleaning store.

Stat. Auth.: ORS 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.990, 466.994 & 468.090 - 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0130

### Determination of Violation Magnitude

(1) For each civil penalty assessed, the magnitude is moderate unless:

(a) A selected magnitude is specified in 340-012-0135 and information is reasonably available to the department to determine the application of that selected magnitude; or

(b) The department determines, using information reasonably available to it, that the magnitude should be major under section (3) or minor under section (4).

(2) If the department determines, using information reasonably available to the department, that a general or selected magnitude applies, the department's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that another magnitude applies and is more probable than the presumed magnitude.

(3) The magnitude of the violation is major if the department finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the department will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and department rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the department may consider any single factor to be conclusive.

(4) The magnitude of the violation is minor if the department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or other environmental receptors. In making this finding, the department will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and department rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the department may consider any single factor to be conclusive.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0135

### Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Opacity limitation violations:

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(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limitation, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent and less than 20 percent over the applicable limitation; or

(C) Minor — Opacity measurements or readings of 10 percent or less over the applicable limitation.

(b) Operation of a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — The Best Achievable Control Technology (BACT) analysis shows need for additional controls and/or if offsets are required.

(c) Air contaminant emission limitation violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual limit as established by permit, rule or order by more than the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by more than ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by more than 0.5 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by more than 0.1 percent of the above amount.

(B) Moderate:

(i) Exceeding the annual limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(C) Minor:

(i) Exceeding the annual limit as established by permit, rule or order by an amount less than 50 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount less than five percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount less than 0.25 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(e) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(f) Asbestos violations:

(A) Major — More than 260 lineal feet or more than 160 square feet of asbestos-containing material;

(B) Moderate — From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet of asbestos-containing material; or

(C) Minor — Less than 40 lineal feet or 80 square feet of asbestos-containing material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(g) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 5 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if the department lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 5 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if the department finds that one or more of the following are true, or decreased one level if the department finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(2) Magnitudes for selected violations pertaining to Water Quality will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows:  $D = ((Q_R / 4) + Q_I) / Q_I$ , where  $Q_R$  is the estimated receiving stream flow and  $Q_I$  is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants:  $C_S/D$  was more than  $C_{Acute}$ , where  $C_S$  is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and  $C_{Acute}$  is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges:  $(BOD5)/D$  is more than 10, where BOD5 is the concentration of the five day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows:  $D = ((Q_R / 4) + Q_I) / Q_I$ , where  $Q_R$  is the estimated receiving stream flow and  $Q_I$  is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows:  $D = ((Q_R / 4) + Q_I) / Q_I$ , where  $Q_R$  is the receiving stream flow and  $Q_I$  is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water-quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxics pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

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(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one level if the violation:

(i) Occurred in a water body that is water-quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(ii) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(iii) Violated a bacteria standard either in shell-fish growing waters or during the period from June 1 through September 30; or

(iv) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected violations pertaining to Solid Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Operating a solid waste disposal facility without a permit:

(A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected violations pertaining to Hazardous Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Failure to make a hazardous waste determination:

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment and disposal violations OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment or disposal of more than three gallons or 18 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment or disposal of three gallons or 18 pounds or less of acutely hazardous waste.

(c) Hazardous waste management violations OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving more than 20 gallons or 120 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving more than 5 gallons or 30 pounds, up to and including 20 gallons or 60 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste; or

(ii) Hazardous waste management violations involving 5 gallons or 30 pounds or less of acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Used Oil violations OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (j):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations OAR 340-012-0072(1)(a) through (e), (g) and (k):

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 1-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0140

### Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(D) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

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(E) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(F) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(G) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(H) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(I) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(J) Any violation of an oil and hazardous material spill and release statute, rule, or related order.

(K) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(L) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(M) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8000;

(ii) Moderate — \$4000;

(iii) Minor — \$2000.

(B) Class II:

(i) Major — \$4000;

(ii) Moderate — \$2000;

(iii) Minor — \$1000.

(C) Class III: \$750.

(3) \$6,000 Penalty Matrix:

(a) The \$6,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(F) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(G) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$6,000.

(ii) Moderate — \$3,000.

(iii) Minor — \$1,500.

(B) Class II:

(i) Major — \$3,000.

(ii) Moderate — \$1,500.

(iii) Minor — \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

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- (A) Class I:  
(i) Major — \$2500;  
(ii) Moderate — \$1250;  
(iii) Minor — \$625.

- (B) Class II:  
(i) Major — \$1250;  
(ii) Moderate — \$625;  
(iii) Minor — \$300.

- (C) Class III: \$200.  
(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of a statute, rule, permit or order relating to woodstoves, except a violation related to the sale of new or used woodstoves.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(L) Any violation by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for Suction Dredges.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

- (A) Class I:  
(i) Major — \$1000;  
(ii) Moderate — \$500;  
(iii) Minor — \$250.

- (B) Class II:  
(i) Major — \$500;  
(ii) Moderate — \$250;  
(iii) Minor — \$125.

- (C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-012-0155

### Additional or Alternate Civil Penalties

(1) The following violations and violators may be subject to additional civil penalties as specified below:

(a) In addition to any other penalty prescribed by these rules, any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, ORS Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to ORS 459.205-459.426, 459.705-459.790, ORS Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment, may incur a civil penalty of up to \$100,000. When determining the civil penalty to be assessed under this subsection, the director will apply the following procedures:

(A) Select one of the following base penalties after evaluating the cause of the violation:

- (i) \$50,000 if the violation was caused intentionally;

(ii) \$75,000 if the violation was caused recklessly;

(iii) \$100,000 if the violation was caused flagrantly.

(B) Then determine the civil penalty through application of the following formula:  $BP + [(.1 \times BP) (P + H + O + C)] + EB$ .

(b) In addition to any other penalty prescribed by these rules, any person who intentionally or negligently causes or permits the discharge of oil to waters of the state will incur a civil penalty not to exceed \$20,000 dollars for each violation. The amount of the penalty is determined by doubling the penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045.

(c) In addition to any other penalty prescribed by these rules, any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) In addition to any other penalty prescribed by these rules, any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted will incur a civil penalty according to the schedule set forth in this subsection for the destruction, due to contamination of food or water supply by such waste or substance, of any of the following wildlife that are property of the state:

(A) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(B) Each mountain sheep or mountain goat, \$3,500.

(C) Each elk, \$750.

(D) Each silver gray squirrel, \$10.

(E) Each game bird other than wild turkey, \$10.

(F) Each wild turkey, \$50.

(G) Each game fish other than salmon or steelhead trout, \$5.

(H) Each salmon or steelhead trout, \$125.

(I) Each fur-bearing mammal other than bobcat or fisher, \$50.

(J) Each bobcat or fisher, \$350.

(K) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, \$25.

(2) The following violations are subject to the civil penalties specified below, in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) Until December 31, 2005, whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the director may issue a civil penalty of up to \$100 for each day the fee is due and owing.

(b) Until December 31, 2005, the department will assess a field penalty as specified under OAR 340-150-0250 for Class I, Class II or Class III violations under OAR 340-012-0067 unless the department determines that an owner, operator or permittee is not eligible for the field penalty. In such cases of ineligibility, the penalty will be calculated according to the procedures in OAR chapter 340, division 12.

(c) Any owner or operator of a vessel discharging ballast water in violation of ORS 783.635 may incur a civil penalty not to exceed \$5,000 for each violation. In determining the amount of the penalty, the director will consider whether the violation was intentional, negligent or without any fault and will consider the quality and nature of risks created by the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any owner or operator of a vessel violating the ballast water reporting requirements in ORS 783.640 will incur a civil penalty not to exceed \$500 per violation.

(e) Air emission sources operating under the Western Backstop SO2 Trading Program will be assessed a civil penalty of at least \$5,000 for each ton and each day of violation in excess of the applicable allowance limitation as determined by OAR chapter 340 division 228.

(f) Any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050 will be assessed a civil penalty of \$500.



# ADMINISTRATIVE RULES

(g) Any person that fails to comply with Toxics Use and Hazardous Waste Reduction Plan, system or summary requirements of ORS 465.003 to 465.034 may incur a civil penalty of \$500 for each violation on each day.  
 Stat. Auth.: ORS 465, 466, 468.020, 468.130, 468.996 & 783.992  
 Stats. Implemented: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992  
 Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission’s rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on March 3, 2006.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020  
 Stats. Implemented: ORS 468A.035  
 Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. & cert. ef. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 4-3-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

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**Department of Fish and Wildlife**  
**Chapter 635**

**Rule Caption:** Area modification to Youngs Bay Select Area commercial gillnet fishery.

**Adm. Order No.:** DFW 15-2006(Temp)

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 3-23-06 thru 7-27-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0145

**Subject:** This rule extends the spring chinook gillnet commercial fishery boundary in Youngs Bay. Revision is consistent with action taken March 22, 2006 by the Columbia River Compact.

**Rules Coordinator:** Tina Edwards—(503) 947-6033

## 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:

(i) 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.

(ii) 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.

(iii) 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:

(i) April 17, 2006 from 9:00 a.m. to 1:00 p.m.

(ii) 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: (A) From February 15, 2006 through March 23, 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).

(B) On April 17, 2006, the fishing area extends from old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(C) From March 27, 2006 through April 13, 2006 the fishing area extends from markers directly under the first powerlines downstream of the Walluski River 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)(C), 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 stur-

# ADMINISTRATIVE RULES

geon 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. & cert. 8-22-79; FWC 28-1980, f. & cert. 6-23-80; FWC 42-1980(Temp), f. & cert. 8-22-80; FWC 30-1981, f. & cert. 8-14-81; FWC 42-1981(Temp), f. & cert. 11-5-81; FWC 54-1982, f. & cert. 8-17-82; FWC 37-1983, f. & cert. 8-18-83; FWC 61-1983(Temp), f. & cert. 10-19-83; FWC 42-1984, f. & cert. 8-20-84; FWC 39-1985, f. & cert. 8-15-85; FWC 37-1986, f. & cert. 8-11-86; FWC 72-1986(Temp), f. & cert. 10-31-86; FWC 64-1987, f. & cert. 8-7-87; FWC 73-1988, f. & cert. 8-19-88; FWC 55-1989(Temp), f. & cert. 8-20-89; FWC 82-1990(Temp), f. & cert. 8-14-90, cert. 8-19-90; FWC 86-1991, f. & cert. 8-7-91, cert. 8-18-91; FWC 123-1991(Temp), f. & cert. 5-22-92, cert. 5-25-92; FWC 74-1992 (Temp), f. & cert. 8-16-92; FWC 28-1993(Temp), f. & cert. 4-26-93; FWC 48-1993, f. & cert. 8-6-93, cert. 8-9-93; FWC 21-1994(Temp), f. & cert. 4-22-94, cert. 4-25-94; FWC 51-1994, f. & cert. 8-19-94, cert. 8-22-94; FWC 64-1994(Temp), f. & cert. 9-14-94, cert. 9-15-94; FWC 66-1994(Temp), f. & cert. 9-20-94; FWC 27-1995, f. & cert. 3-29-95, cert. 4-1-95; FWC 48-1995(Temp), f. & cert. 6-5-95; FWC 66-1995, f. & cert. 8-22-95, cert. 8-27-95; FWC 69-1995, f. & cert. 8-25-95, cert. 8-27-95; FWC 8-1995, f. & cert. 2-28-96, cert. 3-1-96; FWC 37-1996(Temp), f. & cert. 6-11-96, cert. 6-12-96; FWC 41-1996, f. & cert. 8-12-96; FWC 45-1996(Temp), f. & cert. 8-16-96, cert. 8-19-96; FWC 54-1996(Temp), f. & cert. 9-23-96; FWC 4-1997, f. & cert. 1-30-97; FWC 47-1997, f. & cert. 8-15-97; DFW 8-1998(Temp), f. & cert. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. 3-3-98; DFW 18-1998(Temp), f. & cert. 3-9-98, cert. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. 8-24-98; DFW 10-1999, f. & cert. 2-26-99; DFW 52-1999(Temp), f. & cert. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. 8-12-99; DFW 9-2000, f. & cert. 2-25-00; DFW 42-2000, f. & cert. 8-3-00; DFW 3-2001, f. & cert. 2-6-01; DFW 66-2001(Temp), f. & cert. 8-2-01, cert. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. & cert. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. 2-14-03; DFW 17-2003(Temp), f. & cert. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. 4-30-03, cert. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. 2-13-04; DFW 19-2004(Temp), f. & cert. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. & cert. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. & cert. 5-5-04, cert. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. 5-17-04, cert. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. 8-2-04, cert. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. 9-19-04 thru 12-31-04; DFW 6-2005, f. & cert. 2-14-05; DFW 15-2005(Temp), f. & cert. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. & cert. 5-17-05, cert. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. & cert. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. & cert. 7-14-05, cert. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. & cert. 8-1-05, cert. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. 10-4-05, cert. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. 2-15-06; DFW 14-2006(Temp), f. & cert. 3-15-06, cert. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. 3-23-06 thru 7-27-06

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**Rule Caption:** Additional fishing periods for Blind Slough Winter commercial salmon fishery.

**Adm. Order No.:** DFW 16-2006(Temp)

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 3-26-06 thru 7-27-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0160

**Subject:** This rule adds two additional fishing periods to the Blind Slough Winter commercial salmon season. Revision is consistent with action taken March 22, 2006 by the Columbia River Compact.

**Rules Coordinator:** Tina Edwards—(503) 947-6033

## 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; March 12–March 13, 2006; March 19–March 20, 2006; March 22–March 23, 2006; March 26–March 27, 2006; and March 29–March 30, 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. 8-23-96; FWC 48-1997, f. & cert. 8-25-97; DFW 15-1998, f. & cert. 3-3-98; DFW 67-1998, f. & cert. 8-24-98; DFW 86-1998(Temp), f. & cert. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. 2-26-99; DFW 48-1999(Temp), f. & cert. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. 8-12-99; DFW 9-2000, f. & cert. 2-25-00; DFW 42-2000, f. & cert. 8-3-00; DFW 65-2000(Temp), f. & cert. 9-22-00, cert. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. 2-6-01; DFW 84-2001(Temp), f. & cert. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. & cert. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. 2-14-03; DFW 34-2003(Temp), f. & cert. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. 4-30-03, cert. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. 2-13-04; DFW 19-2004(Temp), f. & cert. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. & cert. 4-8-04, cert. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. & cert. 5-5-04, cert. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. 5-17-04, cert. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. 8-2-04, cert. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. 2-14-05; DFW 16-2005(Temp), f. & cert. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. 10-4-05, cert. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. 2-15-06; DFW 14-2006(Temp), f. & cert. 3-15-06, cert. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. 3-23-06 thru 7-27-06

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**Rule Caption:** Fishing period modifications to Youngs Bay Select Area commercial gillnet fishery.

**Adm. Order No.:** DFW 17-2006(Temp)

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 3-30-06 thru 7-27-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0145

# ADMINISTRATIVE RULES

**Subject:** This rule extends the spring chinook gillnet commercial fishery fishing periods in Youngs Bay. Revision is consistent with action taken March 27, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 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:

(i) 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.

(ii) 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.

(iii) March 27, 2006 from 6:00 a.m. to 6:00 p.m.; March 30, 2006 from 6:00 a.m. to 8:00 p.m.; April 3, 2006 from 6:00 a.m. to 8:00 p.m.; April 6, 2006 from 6:00 a.m. to 8:00 p.m.; April 10, 2006 from 6:00 a.m. to 8:00 p.m. and April 13, 2006 from 6:00 a.m. to 8:00 p.m.

#### (B) Spring Season:

(i) April 17, 2006 from 9:00 a.m. to 1:00 p.m.

(ii) 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:

(A) From February 15, 2006 through March 23, 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).

(B) On April 17, 2006, the fishing area extends from old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(C) From March 27, 2006 through April 13, 2006 the fishing area extends from markers directly under the first powerlines downstream of the Walluski River 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)(C), 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; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06

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**Rule Caption:** Additional fishing periods for Blind Slough Winter commercial salmon fishery.

**Adm. Order No.:** DFW 18-2006(Temp)

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 4-2-06 thru 7-27-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0160

**Subject:** This rule adds two additional fishing periods to the Blind Slough Winter commercial salmon season. Revision is consistent with action taken March 27, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 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; March 12–March 13, 2006; March 19–March 20, 2006; March 22–March 23, 2006; March 26–March 27, 2006; March 29–March 30, 2006; April 2–April 3, 2006; and April 5–April 6, 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;

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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; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06

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**Rule Caption:** Sturgeon retention prohibition and angling closure in Columbia River between The Dalles Dam and John Day Dam.

**Adm. Order No.:** DFW 19-2006(Temp)

**Filed with Sec. of State:** 4-6-2006

**Certified to be Effective:** 4-8-06 thru 7-31-06

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Subject:** This rule defines boundaries of a sturgeon spawning sanctuary and prohibits retention of sturgeon in the Columbia River and tributaries between The Dalles Dam and John Day Dam. Revision

is consistent with action taken March 30, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 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.

(8) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:01 a.m., April 8, 2006.

(9) Angling for sturgeon is prohibited from the west end of the grain silo located near Rufus, Oregon upstream to John Day Dam effective 12:01 a.m., May 1, 2006 through 11:59 p.m., 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; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06

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**Rule Caption:** Additional fishing periods for Blind Slough Winter commercial salmon fishery.

**Adm. Order No.:** DFW 20-2006(Temp)

**Filed with Sec. of State:** 4-7-2006

**Certified to be Effective:** 4-9-06 thru 7-27-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0160

**Subject:** This rule adds two additional fishing periods to the Blind Slough Winter commercial salmon season. Revision is consistent with action taken April 6, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 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; March 12–March 13, 2006; March 19–March 20,

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2006; March 22–March 23, 2006; March 26–March 27, 2006; March 29–March 30, 2006; April 2–April 3, 2006; April 5–April 6, 2006; April 9–April 10, 2006; and April 12–April 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. & cert. ef. 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. & cert. ef. 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. & cert. ef. 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. & 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. & cert. ef. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. & cert. ef. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. & cert. ef. 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. & cert. ef. 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. & cert. ef. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. & cert. ef. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. & cert. ef. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. & cert. ef. 4-13-06, cert. ef. 4-14-06 thru 5-15-06

**Rule Caption:** Closure of Columbia River Spring Chinook Sport fishery.

**Adm. Order No.:** DFW 21-2006(Temp)

**Filed with Sec. of State:** 4-13-2006

**Certified to be Effective:** 4-14-06 thru 5-15-06

**Notice Publication Date:**

**Rules Amended:** 635-023-0125

**Subject:** This rule closes the Columbia River Spring Chinook Sport fishery from Buoy 10 upstream to the I-5 Bridge effective 12:01 AM April 14, 2006 through May 15, 2006. Revision is consistent with action taken April 11, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 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 closed to angling for salmon, steelhead and shad effective 12:01 AM April 14, 2006 through May 15, 2006 from the mouth at Buoy 10 upstream to the I-5 Bridge. The Columbia River remains open 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. & cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. & cert. ef. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. & cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. & cert. ef. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. & cert. ef. 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. & cert. ef. 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. & cert. ef. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. & cert. ef. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. & cert. ef. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. & cert. ef. 4-13-06, cert. ef. 4-14-06 thru 5-15-06

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**Rule Caption:** Amendments to season dates and boundaries published in the 2006 Big Game Regulations.

**Adm. Order No.:** DFW 22-2006(Temp)

**Filed with Sec. of State:** 4-7-2006

**Certified to be Effective:** 4-7-06 thru 10-4-06

**Notice Publication Date:**

**Rules Amended:** 635-071-0000, 635-071-0010, 635-073-0000, 635-073-0050

**Subject:** Amend rules to change the boundary description providing an additional hunt area to for Hunt 249B - McKay Creek. The boundary description published in the 2006 Oregon Big Game Regulations is incorrect.

Amend rules to add November 18-26, 2006 to the open season dates for Hunt 258A - Zumwalt. The open season date published in

# ADMINISTRATIVE RULES

the 2006 Oregon Big Game Regulations is missing this later hunt period.

Amend rules to correct the open season dates for Hunt 644T2 - Umatilla County Private. The open season date published in the 2006 Oregon Big Game Regulations is Correct open dates are November 25 - December 10, 2006.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6034

## **635-071-0000**

### **Purpose and General Information**

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in **Tables 1 and 2** and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "**2006 Oregon Big Game Regulations**," into Oregon Administrative Rules. Therefore, persons must consult the "**2006 Oregon Big Game Regulations**" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the **2006 Oregon Big Game Regulations** are amended to change the boundary description for Hunt 249B-McKay Creek on page 88 and open season dates for Hunt 258A-Zumwalt on page 80. The corrected boundary description and open season dates can be found under 635-071-0010.

[ED. NOTE: Tables referenced are available from the agency.]  
[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. & cert. ef. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06

## **635-071-0010**

### **Controlled Rocky Mountain Antlerless Elk Rifle Hunts**

(1) Hunt 249B-McKay Creek:

(a) Bag Limit: one antlerless elk;

(b) Open Season: December 2 through December 10, 2006;

(c) Hunt Area: 5% public lands. That part of Unit 49 north of East Birch Ck Co Rd (including Indian Lk Rd) and that part of Unit 44 north of Interstate 84.

(2) Hunt 258A-Zumwalt:

(a) Bag Limit: one antlerless elk;

(b) Open Season: October 25 through October 29 and November 18 through November 26, 2006;

(c) Hunt Area: 5% public lands. That part of Unit 58 south of the following line: Beginning where Crow Cr RD crosses Chesnimnus Cr; east on Chesnimnus Cr to pine Cr; southeast on Pine Cr to FR 990; east on 990 to FR #46; south on 46 to Indian Village-Fence Cr Rd; east on Village-Fence Cr Rd to Innaha Rvr.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 37-1982, f. & cert. ef. 6-25-82; FWC 28-1983, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 76-1985(Temp), f. & cert. ef. 12-6-85; FWC 71-1985, f. & cert. ef. 11-8-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 45-1987, f. & cert. ef. 7-6-87; FWC 42-1988, f. & cert. ef. 6-13-88; FWC 69-1989, f. & cert. ef. 8-15-89; FWC 115-1989(Temp), f. & cert. ef. 11-16-89; FWC 61-1990, f. & cert. ef. 6-21-90; FWC 116-1990(Temp), f. & cert. ef. 10-11-90; FWC 64-1991, f. & cert. ef. 6-24-91; FWC 115-1991, f. & cert. ef. 9-30-91; FWC 49-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 63-1994(Temp), f. & cert. ef. 9-13-94; FWC 6-1995, f. & cert. ef. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. & cert. ef. 4-10-96, cert. ef. 4-15-96; FWC 17-1996, f. & cert. ef. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06

## **635-073-0000**

### **Purpose and General Information**

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS chapter 496.

(2) Controlled hunt tag numbers for 2005 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in **Tables 1 and 2** and are adopted and incorporated into OAR chapter 635, division 073 by reference

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "**2006 Oregon Big Game Regulations**" into Oregon Administrative Rules. Therefore, persons must consult the "**2006 Oregon Big Game Regulations**" in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the **2006 Oregon Big Game Regulations** are amended to change the open season dates for Hunt 644T2-Umatilla County Private on page 70. The corrected open season dates can be found under 635-073-0050.

[ED. NOTE: Tables referenced are available from the agency.]  
[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 17-1996, f. & cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. & cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. & cert. ef. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. & cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06

## **635-073-0050**

### **Controlled Antlerless Deer Youth Hunts**

Hunt 644T2-Umatilla County Private:

(1) Bag Limit: one antlerless deer.

(2) Open Season: November 25 through December 10, 2006.

(3) Hunt Area: 0% public lands. All of Umatilla Co outside exterior boundaries of the Umatilla and Wallowa Whitman National Forest.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 66-1991, f. & cert. ef. 6-24-91; FWC 51-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 72-1993(Temp), f. & cert. ef. 11-19-93, cert. ef. 11-20-93; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. & cert. ef. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. & cert. ef. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 113 2001(Temp), f. & cert. ef. 12-13-01 thru 1-31-02; Administrative correction 1-13-05; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06

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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 7-2006(Temp)

**Filed with Sec. of State:** 4-13-2006

**Certified to be Effective:** 4-13-06 thru 7-31-06

**Notice Publication Date:**

**Rules Amended:** 413-010-0086

**Subject:** OAR 413-010-0086, which is a temporary rule, is being amended to correct (extend) the timeline (from seven to three days prior to the meeting of the scheduled adoption committee) in section (3) of the rule for the Department to make certain documents available to the child's CASA through the local CASA program director, to the child's tribe or the child's attorney. This rule is part of a series of rules that provide for the release of adoption home studies to CASAs, children's attorneys and tribes for purpose of evaluating various adoptive homes being considered for children in state custody. These rules also provide means of protecting confidential information of potential adoptive families.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

# ADMINISTRATIVE RULES

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 three 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; CWP 7-2006(Temp), f. & cert. ef. 4-13-06 thru 7-31-06

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

**Rule Caption:** Participation in Medicaid Drug Rebate Program, update for January 2006 (Rel#139).

**Adm. Order No.:** OMAP 5-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 410-121-0157

**Subject:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. OMAP permanently amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Releases and updates are included to ensure a 24-month time period for billing is covered, using the appropriate effective dates in all Releases. The most current changes include information from CMS Release #139 (dated December 1, 2005) and the OMAP Master Pharmaceutical Rebate Lists, updated December 8, 2005.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

410-121-0157

## Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, OMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by OMAP providers to bill for services. OMAP includes in rule by reference, the following CMS Releases and subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release #128, dated January 21, 2004 — Lists updated February 10, 2004; Release #129, dated February 19, 2004 and Release #130, dated April 30, 2004 — Lists updated May 13, 2004; Release #132, dated June 22, 2004 — Lists updated July 19, 2004; Release #133, dated August 13, 2004 — Lists updated August 24, 2004; Release #134, dated November 18, 2004 — Lists updated December 16, 2004; Release #135, dated December 10, 2004 — Lists updated February 14, 2005; Release #136, dated February 17, 2005 — Lists updated March 30, 2005; Release #137, dated May 13, 2005 and Lists updated June 23, 2005; Release #138, dated August 5, 2005, and Lists updated August 19, 2005, and Release #139, dated December 1, 2005 — Lists updated December 8, 2005. All CMS Releases are available on the Department of Human Services' website: [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html), and on the CMS website: [www.cms.hhs.gov/medicaid/drugs/drughmpg.asp](http://www.cms.hhs.gov/medicaid/drugs/drughmpg.asp), and the subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists, are available on the Department of Human Services' website: [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html).

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to OMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert.

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ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 5-2006, f. 3-22-06, cert. ef. 4-1-06

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

**Adm. Order No.:** OMAP 6-2006

**Filed with Sec. of State:** 3-22-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 410-141-0520

**Subject:** The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to certain clients. Rule 410-141-0520 incorporates in rule by reference the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List). OMAP permanently amended 410-141-0520 to incorporate the April 1, 2006 technical changes to the Prioritized List of Health Services.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0520

### Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: [www.oregon.gov/DHS/healthplan/priorlist/main](http://www.oregon.gov/DHS/healthplan/priorlist/main), or, for a hardcopy contact the Office of Health Policy and Research. This rule incorporates by reference the January 1, 2006 Prioritized List with technical revisions effective April 1, 2006, including expanded definitions and practice guidelines that are available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The January 1, 2006 Prioritized List, with technical changes effective April 1, 2006, is in effect and condition/treatment pairs through line 530 are funded.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-

2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06

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**Rule Caption:** Medicaid Drug Rebate Program list from CMS letter dated March 15, 2006.

**Adm. Order No.:** OMAP 7-2006(Temp)

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 4-1-06 thru 9-15-06

**Notice Publication Date:**

**Rules Amended:** 410-121-0157

**Subject:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to certain clients. OMAP temporarily amended rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #140, date March 15, 2006, indicating the changes to be effective April 1, 2006.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0157

### Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, OMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by OMAP providers to bill for services. OMAP includes in rule by reference, the following CMS Releases and subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release #128, dated January 21, 2004 — Lists updated February 10, 2004; Release #129, dated February 19, 2004 and Release #130, dated April 30, 2004 — Lists updated May 13, 2004; Release #132, dated June 22, 2004 — Lists updated July 19, 2004; Release #133, dated August 13, 2004 — Lists updated August 24, 2004; Release #134, dated November 18, 2004 — Lists updated December 16, 2004; Release #135, dated December 10, 2004 — Lists updated February 14, 2005; Release #136, dated February 17, 2005 — Lists updated March 30, 2005; Release #137, dated May 13, 2005 and Lists updated June 23, 2005; Release #138, dated August 5, 2005, and Lists updated August 19, 2005, and Release #139, dated December 1, 2005 — Lists updated December 8, 2005; Release #140, dated March 15, 2006, and Lists updated March 17, 2006. All CMS Releases are available on the Department of Human Services' website: [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html), and on the CMS website: [www.cms.hhs.gov/medicaid/drugs/drughmpg.asp](http://www.cms.hhs.gov/medicaid/drugs/drughmpg.asp), and the subsequent OMAP Master Pharmaceutical Manufacturer's Rebate Lists, are available on the Department of Human Services' website: [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html).

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to OMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must



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verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993(Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. & cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 5-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 7-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06

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**Rule Caption:** CMS Federal Upper Limits for Drug Payments listing for April 2006.

**Adm. Order No.:** OMAP 8-2006(Temp)

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 4-1-06 thru 9-15-06

**Notice Publication Date:**

**Rules Amended:** 410-121-0300

**Subject:** The Pharmaceutical Rules govern Office of Medical Assistance Programs' payment for pharmaceutical products provided to certain clients. OMAP temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This temporary filing is to immediately update Transmittal #37, with the March 10, 2006, Title XIX State Agency Letter that includes changes to the list. These changes are effective for services rendered on or after April 10, 2006, and they are to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS). This rule will be made permanent on or after June 1, 2006.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-121-0300

#### CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing includes changes to Transmittal #37, included in the March 10,

2006 Title XIX State Agency Letter. These changes are to be effective for services rendered on or after April 10, 2006, and are available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp), f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 59-2005(Temp), f. 11-8-05, cert. ef. 11-12-05 thru 5-1-06; OMAP 68-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 8-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06

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## Department of Human Services, Public Health Chapter 333

**Rule Caption:** Retroactive amendment of 333-064-0060 relating to the ORELAP fee schedule.

**Adm. Order No.:** PH 5-2006

**Filed with Sec. of State:** 4-6-2006

**Certified to be Effective:** 4-6-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 333-064-0060

**Subject:** The Department of Human Services, Public Health, permanently amends Oregon Administrative Rule, 333-064-0060, relating to the Oregon Environmental Laboratory Accreditation Program (ORELAP) fee schedule to retroactively correct rule language that was inadvertently left out of the final rulemaking adopted on October 10, 2002. The amendment specifies that when accredited laboratories requesting additions to their fields of testing during the accreditation period, they must pay the difference in cost of the application fee. There is a minimum fee of \$200. This rule has 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

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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 - 438.620 & 448.280(1)(b) & (2)

Stats. Implemented: ORS 438.605 - 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; PH 5-2006, f. & cert. ef. 4-6-06

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## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients

**Adm. Order No.:** SSP 6-2006

**Filed with Sec. of State:** 3-31-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 11-1-05, 12-1-05, 2-1-06

**Rules Adopted:** 461-175-0206

**Rules Amended:** 461-105-0010, 461-105-0060, 461-105-0070, 461-105-0100, 461-105-0110, 461-105-0120, 461-105-0130, 461-110-0110, 461-110-0370, 461-110-0630, 461-115-0071, 461-115-0530, 461-120-0110, 461-120-0125, 461-135-0010, 461-135-0095, 461-135-0400, 461-135-0506, 461-135-0570, 461-135-0832, 461-135-0835, 461-135-0875, 461-135-0950, 461-145-0150, 461-145-0190, 461-150-0055, 461-155-0250, 461-160-0015, 461-160-0030, 461-160-0040, 461-160-0410, 461-160-0530, 461-160-0700, 461-165-0140, 461-165-0180, 461-165-0410, 461-165-0420, 461-165-0430, 461-180-0100, 461-195-0621

**Rules Repealed:** 461-105-0050, 461-105-0080, 461-105-0090, 461-105-0095, 461-105-0140, 461-135-0950(T)

**Subject:** OAR 461-105-0010 is being amended to add the "religion," "gender," and "political beliefs" to categories protected against discrimination.

OAR 461-105-0050 concerning disclosure of client information is being repealed.

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

OAR 461-105-0070 is being amended to change the policy on attorney access to client records, to remove references to written

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authorization requirements, and to remove redundant language covered in other rules.

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

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

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

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

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

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

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

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

OAR 461-110-0110 is being amended to state that citizen or alien status requirements in Division 461-120 apply to children receiving child care services.

OAR 461-110-0370 is being amended to reorganize and to resolve any inconsistencies in the current rule on the subject of the composition of the filing group for the Food Stamp program.

OAR 461-110-0630 is being amended to reflect that Medical Assistance Assumed (MAA) applicants are not excluded from the MAA need group due to a Temporary Assistance to Needy Family (TANF) disqualification.

OAR 461-115-0071 is being amended to clarify who must sign the application for the Oregon Health Plan (OHP).

OAR 461-115-0530 is being amended to reflect the length of the certification period for Oregon Health Plan (OHP) benefits for applicants who are, and who are not, currently receiving Department of Human Services (DHS) medical benefits.

OAR 461-120-0110 is amended to state the extent to which the citizen or alien status requirements in Division 461-120 apply to ERDC.

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

OAR 461-135-0010 about assumed eligibility for medical programs is amended to correct its formatting with consistent use of singular nouns.

OAR 461-135-0095 is being amended as follows: to clarify that persons must have been eligible for and receiving Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) in order to be considered for EXT (Extended Medical); to remove references regarding clients disqualified from Temporary Assistance to Needy Families (TANF) for failure to comply with requirements of the Job Opportunity and Basic Skills (JOBS) program; and to indicate that some clients who lose EXT eligibility can regain eligibility if they again meet non-financial eligibility requirements. References to the Assessment Program have also been removed.

OAR 461-135-0400 is being amended to clarify eligibility requirements for ERDC.

OAR 461-135-0506 is being amended to restate when TBA (transitional benefit alternative) benefits may end early and to clarify when a person is ineligible for TBA.

OAR 461-135-0570 is being amended to add the statement that students participating in a meal plan offered by the institution they are attending are ineligible for food stamp benefits.

OARs 461-135-0832 and 461-135-0835, pertaining to the recovery of public assistance from the estates of deceased Medicaid recipients or their surviving spouse, are being amended to clarify the def-

inition of "Value," and to relocate (from OAR 461-135-0832(27) to 461-135-0835(2)) and update the text concerning estate recovery deferral when there is a surviving spouse.

OAR 461-135-0875 is being amended to state more precisely the earliest date medical benefits can start for clients determined to be eligible for medical assistance retroactively.

OAR 461-135-0950 is being amended to make permanent a temporary rule change implementing Senate Bill 913 (2005) and ORS 411.113 and revising the rules concerning suspension of medical assistance for inmates of public institutions who are either persons receiving medical assistance because of serious mental illnesses, on SSI, or pregnant women. The definitions of "inmate" and "public institution" are updated for consistency with current law.

OAR 461-145-0150 is being amended to add QMB (Qualified Medicare Beneficiaries – additional medical coverage for Medicare recipients) as one of the programs that excludes certain types of educational grants of and loans from client income in considering eligibility.

OAR 461-145-0190 is being amended to permit clients to exclude from income the value of checks or vouchers to children or seniors under the Oregon Farm Direct Nutrition program.

OAR 461-150-0055, "Eligibility and Budgeting; OHP," is being amended to clarify the budget month used in determining eligibility for OHP.

OAR 461-155-0250 is being amended to eliminate the excess SSI benefit (ESB) resource amount for Oregon Supplemental Income Program (OSIP) clients. The ESB is used to offset special and service need payments in the amount \$10.30 or \$18.40, depending on the number in the need group.

OAR 461-160-0015 is being amended to make several corrections to the resource limit for the financial group in the food stamp program, including a cross reference to the definition of elderly and disabled consistent with federal law. The amendment removes the special resource limit for persons working under JOBS Plus because that waiver ended in September 2003.

OAR 461-160-0030 is being amended to eliminate the deduction associated with the Medicare-approved Drug Discount Card.

OAR 461-160-0040 is being amended to clarify when child care is deductible and when it is paid for in various public assistance programs.

OAR 461-160-0410 is being amended to more clearly reflect current federal regulations regarding the proration of deductions for groups in the Food Stamp program containing an ineligible non-citizen or a person disqualified for not providing their Social Security Number.

OAR 461-160-0530 is being amended to eliminate the excess SSI benefit (ESB) resource amount for Oregon Supplemental Income Program clients. The ESB is used to offset special and service need payments in the amount of \$10.30 or \$18.40, depending on the number in the need group.

OAR 461-160-0700 is being amended to indicate more clearly that average income is used in determining Oregon Health Plan (OHP) eligibility for all members of the need group, and if not eligible using average income, budget month income is used for some members of the need group.

OAR 461-165-0140 is being amended to change the right of survivorship to Food Stamp benefits and to remove outdated language about Food Stamp coupons.

OAR 461-165-0180, which concerns the eligibility requirements for child care providers, is being amended to: allow the Department to conduct a weighing test for eligibility if the Department receives additional information indicating a risk to children; remove references to providers under age 18; clarify provider reporting requirements around additional persons or employees; add additional examples of hazards that require barriers; require providers to be reviewed

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for eligibility; explain provider ineligibility for payment and findings; and clarify rule with minor wording changes.

OAR 461-165-0410 concerning disqualification of child care providers is being amended to clarify the rule by defining terminology and correcting rule references.

OAR 461-165-0420 concerning the disqualification of child care providers is being amended to expand the information that the Department may consider to determine that a subject individual is not likely to jeopardize the safety of children in the provider's care, and to clarify rule by defining terminology and correcting rule references.

OAR 461-165-0430 concerning child care provider hearings is being amended to clarify the rule by including cross-references to other rules.

OAR 461-175-0206 is being adopted to clarify the relationship between ORS 411.095 and the other notice of decision situations that apply to public assistance programs in division 461-175 of the Oregon Administrative Rules, such as mass change notices.

OAR 461-180-0100 is being amended to clarify that the determination of an effective date of eligibility following closure of benefits or following the end of a certification period (for all programs except Food Stamps and Temporary Assistance to Needy Families) requires either the timely completion of the application process or a new date of request.

OAR 461-195-0621 is being amended to clarify the types of intentional program violations and convictions that lead to 10-year disqualifications in the Food Stamp and TANF programs.

In addition, the above rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-105-0010

### Rights of Clients

Clients of the Department in programs regulated by chapter 461 of these rules have the following rights and the right to be informed of them:

(1) The right to information about the programs administered by the Department.

(2) The right to confidentiality for individually identifiable information to the extent provided under federal and state law and the administrative rules of the Department.

(3) The right to refuse social services unless:

(a) The service is court-ordered;

(b) The service is related to a case plan as defined in OAR 461-190-0161 or 461-190-0310; or

(c) Treatment is required under OAR 461-135-0085.

(4) The right, upon expressing dissatisfaction with an action of the Department, to obtain the Department's standard form for requesting a hearing.

(5) The right to request a hearing within 45 days (90 days for FS) of the date of notice informing clients that their benefits are:

(a) Authorized.

(b) Reduced, ended, or denied.

(c) Changed to vendor, protective, or two-party payments.

(6) The right to apply for any program administered by the Department.

(7) The right to have a decision on eligibility made by the Department:

(a) In the Food Stamp program, within 30 days from the filing date.

(b) In the OSIPM program, within 90 days from the date of request if a disability decision must be made, and in all other cases within 45 days.

(c) In all other programs, within 45 days from the date of request.

(8) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department which are funded in whole or in part with federal funds without discrimination on the basis of race, color, national origin, religion, gender, disability, or political beliefs.

(9) The right to courteous, fair and dignified treatment by Department personnel.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92;

AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-

2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert.

ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-105-0060

### Release of Information to the Client

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department must make the information in a case record of a client available to the following people within the limits described in this rule:

(a) Anyone in the filing group.

(b) Anyone authorized by the primary person or by a person in the filing group.

(2) The primary person and filing group members may have access only to client information that is related to the time during which they had that position in the case. The person can appoint an authorized representative whose access to client information covers only that same period.

(3) The "minimum necessary" standard as described in OAR 410-014-0040 is extended to limit the sharing of individually identifying information by the Department about one member of a filing group with either another member of the filing group or anyone authorized by another member of the filing group.

(4) Except for HIV information, case record information may be requested by the client and released to the client by telephone. The client must satisfy the branch as to their identity.

(5) Except as provided in this rule and in OAR 410-014-0030(6), information obtained from a third party that is part of the case record of the client is available to the client.

(6) The Department may withhold from a client information obtained from a confidential informant, including the identity of the informant, if all of the following are true:

(a) The information was submitted to the Department in confidence.

(b) The information was not required by law to be submitted.

(c) The information can reasonably be considered confidential.

(d) The Department has obliged itself not to disclose the information.

(e) The information is not part of the case record.

(f) The public interest would suffer if the information were disclosed.

(7) Notwithstanding OAR 461-105-0160:

(a) A client, an authorized representative (as defined at OAR 461-115-0090, 461-115-0140, and 461-115-0145), or a personal representative (as defined at OAR 410-014-0000(32), including an attorney who represents the client on a matter before the Department) may request a copy of information from the client file at no cost once every 12 months. If the client, authorized representative, or personal representative requests another copy of the same information already provided more frequently than once every 12 months, the branch office may impose a reasonable, cost-based fee.

(b) If an authorized third party who is not an authorized representative or personal representative requests client records, fees may be assessed for accessing stored records, extracting filed matter, duplication of records, or other costs necessary to releasing requested information.

(c) A branch office may establish additional, reasonable fees to cover extraordinary costs of duplicating records, making extensive searches, or preparing written summaries of records.

(d) At the option of the branch office, fee assessment may be waived.

(8) An individual designated by the manager must be present while the client or the authorized third party has access to the case record. No one except a Department employee is allowed to remove any material from the case record. Subject to payment of any cost-based fee assessed by a branch office, the branch office will provide the person examining the case record with a copy of any portion of the case record that they are entitled to examine.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-105-0070

### Client Authorization for Release of Client Information to Third Party

For any program covered by chapter 461 of the Oregon Administrative Rules, except for health, treatment, and domestic violence information, a verbal authorization from the client is permitted to allow verbal release of case record information specified by the client to third parties. Any such verbal authorization to release information to a third party is valid for a period of 30 days from the date the authorization is given verbally, unless a shorter time period is given.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

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## 461-105-0100

### Release of Client Information to Law Enforcement Officers

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may provide client information to a law enforcement officer in any of the following situations:

(a) The law enforcement officer is involved in carrying out public assistance laws, or any investigation, criminal or civil proceedings connected with administering the Department's benefit programs.

(b) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department.

(c) The disclosure is authorized by statute or administrative rule.

(2) Except as provided in section (3) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(a) Is a *fugitive felon* or is violating parole or probation; or

(b) For all programs except FS, has information that is necessary for the officer to conduct official duties of the officer, and the location or apprehension of the client is within the officer's official duties. For clients only in the FS program, has information that is necessary to conduct an official investigation of a *fugitive felon* or someone violating parole or probation.

(3) If domestic violence has been identified in the household, section (2) of this rule does not authorize the release of information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating probation or parole.

(4) For purposes of the rules in division 461-105, a *fugitive felon* is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony

(5) For purposes of the rules in division 461-105, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose job duties include arrest authority.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-105-0110

### Release of Client Information to Service Providers and Legal Bodies

For any program covered by chapter 461 of the Oregon Administrative Rules, in the absence of a specific and current client authorization that covers the applicable information and identifies the recipient:

(1) Department employees may release to service providers information necessary for accurate billing of services provided to Department clients.

(2) The following client information may be released to the client's child care providers:

(a) The program for which the client is eligible.

(b) The amount of the Department child care payment.

(c) The client's copayment amount.

(d) Reasons for a delay in payment, but only information that is specific to the reason for the delay.

(3) The Department may not disclose any information identifying any client by name or address to any committee, advisory board, legislative body, or individual member of such committee, board, or body.

(4) Except for social security numbers, health, treatment, and domestic violence information, the Department may disclose the minimum necessary information about a client to a staff member in the office of a member of the Oregon state legislature or United States Congress who has been asked by the client to review an action taken by the Department.

(5) Court-appointed special advocate (CASA) volunteers who have been appointed to a specific child are authorized to view information about the child. All other information must be removed from the case file.

(6) The Department may release client information in a judicial proceeding if at least one of the following is true:

(a) The proceedings are directly connected with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(b) A judge orders the release of the information.

(7) When appearing before the court in a judicial proceeding where the proceeding is not directly connected with administering a program covered by chapter 461 of the Oregon Administrative Rules, a Department employee provides the presiding judge with copies of the state statutes relating to confidentiality of client records (such as ORS 411.117, 411.320,

and 418.130). The employee requests the court's guidance about testifying under the statutes.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-105-0120

### Release of Information on Child Support and Paternity Cases

(1) For the purposes of this rule, the following terms have the following definitions:

(a) "Alleged father" means any male who has been named as a possible father of a child for whom paternity has not been established or has been contested.

(b) "Obligee" means a caretaker parent or custodian, spouse, former spouse or other dependent person for whose benefit a court or hearing officer has ordered payment of support.

(c) "Obligor" means any person who has been ordered by a court or hearing officer to make payments for the support of a child or a caretaker parent or custodian, spouse, former spouse or other dependent person.

(2) For any program covered by chapter 461 of the Oregon Administrative Rules, in the absence of a specific and current client authorization that covers the applicable information and identifies the recipient, the Department may release to the Department of Justice, Division of Child Support, the names of the alleged father, the obligor, and the obligee, the amount of support ordered, and the amount of current and past due support owed at any given time from its electronic files.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-105-0130

### Disclosure of Client Information

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may disclose the minimum necessary client information without client authorization for purposes directly connected with:

(a) Administering the public assistance and food stamp laws, except for social security numbers, health, treatment, and domestic violence information.

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(c) Any legally authorized audit or review by a governmental entity conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Client information, other than health or treatment information, may be exchanged with other governmental or private, non-profit agencies to only the extent necessary to assist applicants or recipients of public assistance or food stamps to access and receive other governmental or private, non-profit services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain applicant or recipient authorization in advance.

(3) For all programs except FS, client information may be disclosed without the client's authorization for purposes directly connected with foster care and adoption assistance programs under Title IV-E of the Social Security Act.

(4) Notwithstanding any rule in this division, client information — other than information related to substance abuse treatment, mental health treatment, or HIV — may be disclosed to an Oregon attorney who represents that client if both of the following requirements are met:

(a) The attorney states that he or she currently is representing the client.

(b) The attorney states that the client has authorized disclosure of the client information to the attorney.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

# ADMINISTRATIVE RULES

## 461-110-0110

### Terms Used in Determining Eligibility

The following terms are used in the eligibility determination process:

(1) *Child* includes natural, step, and adoptive children. The term child does not include an unborn.

(a) For EXT, MAA, MAF, REFM, and TANF, the term dependent child means the following:

(A) A person who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(B) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(b) For ERDC, a *child* need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(c) For FS, a *child* is an adult and minor children living with their parent(s).

(d) For GA, GAM and OSIP, a child is a person under the age of 18.

(e) For OHP, child means a person, including a minor parent, under the age of 19.

(f) For OSIPM and QMB, *child* means an unmarried person living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 21 and attending full time secondary, post-secondary or vocational-technical training designed to prepare the person for employment.

(2) *Community-based care* is any of the following:

(a) Adult foster care — Room and board and 24-hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more physically handicapped or socially dependent people.

(e) Specialized living facility — Identifiable services designed to meet the needs of persons in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(3) Custodial parents means parents who have physical custody of their child(ren). Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(4) In the FS program, a disabled person or a person with a disability means a person who meets any of the following requirements:

(a) Receives SSI benefits under title XVI of the Social Security Act.

(b) Receives SSB benefits based on blindness or disability criteria under title I, II, X, XIV, or XVI of the Social Security Act.

(c) Receives OSIP or other state or federal supplement under section 1616(a) of the Social Security Act based on disability or blindness criteria.

(d) Receives state general assistance benefits based upon disability or blindness criteria under title XVI of the Social Security Act.

(e) Receives disability-related medical assistance under title XIX of the Social Security Act.

(f) Receives a state or federally administered supplemental benefit under section 212(a) of Public Law 93-66.

(g) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible for Medicare by the Railroad Retirement Board.

(h) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and meets the disability criteria used under title XVI of the Social Security Act.

(i) Receives VA benefits for non-service or service-connected disability rated or paid as total under title 38 of the United States Code.

(j) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

(k) Has a disability considered permanent under 221(i) of the Social Security Act section and is the surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38 of the United States Code.

(l) Is a veteran or surviving spouse of a veteran considered by the VA to be in need of Aid and Attendance benefits or permanently housebound under title 38 of the United States Code.

(m) Is a surviving child of a veteran and considered permanently incapable of self-support under title 38 of the United States Code.

(5) *Disqualified* means an individual cannot receive program benefits because they have not cooperated in fulfilling some eligibility requirement. Actions that can disqualify an individual include not cooperating with JOBS, JOBS Plus or OFSET, failing to provide an SSN or failure to pursue assets. In some cases, a disqualified individual can make their filing group ineligible for benefits.

(6) *Domestic violence shelters* are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(7) For FS, *elderly* means a person 60 years of age or older.

(8) In the FS program, a *person* is homeless if the person does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:

(a) A supervised shelter that provides temporary accommodations.

(b) A halfway house or residence for people who may become institutionalized.

(c) A temporary accommodation in another person's or family's residence for 90 days or less.

(d) A place not designed to be or ordinarily used as a place for people to sleep, such as a hallway, bus station, or similar place.

(9) *Ineligible* means a person cannot receive program benefits because they do not meet some eligibility requirement that is beyond their control; not because they refuse to fulfill the requirement. A person may be ineligible for benefits because of age, alien status, student status (for FS) or because a disqualified member of the filing group makes them ineligible.

(10) *Long-term care* is the system through which the Department provides required financial benefits, specialized living arrangements, and a broad range of social and health services to eligible aged, blind or disabled adults for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(11) *Marriage* means legal marriage uniting two people. Legal marriage is:

(a) One recognized as legal by state statute of the state where the marriage occurred, including common-law marriage if recognized as legal in a state where the couple previously resided.

(b) A cultural marriage if it occurred in a country that recognizes it as legal.

(12) For FS, a *migrant farmworker* is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of an FS household fits the definition of migrant farmworker at any time during the redetermination period, budget the household according to the policy on migrant farmworkers.

(13) *Nonstandard living* arrangements are those in which a person does not live in their own home or requires special services to remain in their home.

(14) *Parent* means the biological or legal (step or adoptive) mother or father of a person or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The person is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

# ADMINISTRATIVE RULES

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

- (A) The *child* lives with the biological parent; and
- (B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(15) For all programs except FS, *primary person* means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

- (a) For EXT, MAA, MAF and TANF, the parent or caretaker relative.
- (b) For ERDC, the caretaker.
- (c) For GA, GAM, OSIP, OSIPM and QMB, the client or their spouse.
- (d) For OHP, REF and REFM, the applicant, caretaker, caretaker relative or parent.

(16) For FS, *primary person* means:

(a) An adult in the filing group who is designated by the group to serve as the primary person.

(A) A child of any age cannot be the primary person when more than one generation lives together, and an adult who is the parent or fulfilling the role of parent is employed, work-registered for FS or receiving TANF or UC.

(B) Where there is no adult, the group can designate another responsible person in the filing group.

(b) Once the primary person has been designated, the filing group cannot choose a different person to be the primary person during the same certification period or during an OFSET or job quit disqualification period, unless there is a change in the composition of the household group.

(17) Safe homes are private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(18) For FS, *seasonal farmworkers* are people employed in agricultural employment of a seasonal or temporary nature. If any member of an FS household fits the definition of seasonal farmworker at any time during the redetermination period, budget the household according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

(19) *Sibling* means the brother or sister of a person. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(20) *Spouse* means a person who is legally married to another person. In the ERDC and FS programs, spouse includes a person who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) *Sharing living* expenses or household duties.

(21) *Standard living* arrangement means people living in what is normally considered a single family dwelling (such as a house, apartment, motel room or trailer) without needing special services to remain in their home.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 30-1992 (Temp), f. & cert. ef. 10-14-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-110-0370

### Filing Group; FS

In the Food Stamp program:

(1) Except as provided in this rule, the filing group is composed of members of a household group who customarily purchase and prepare meals together.

(2) Except as provided in sections (3), (5), (6), and (7) of this rule, the following persons, if they are in the same household group, must be in the

same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse.

(b) A *parent* (as defined in OAR 461-110-0110) and their child under age 22 who is living with them.

(c) A *household* group member and child under age 18 who lives with and is under parental control of that household group member. For the purposes of this subsection, *parental control* means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) Notwithstanding sections (1) and (2) of this rule, a person is excluded from the filing group if, during the month the group applied for food stamps, the person received food-stamp benefits or SSI benefits through the state of California that included food-stamp benefits. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month. This exclusion does not apply to a person who was the head of household in the prior household.

(4) The following persons may form a separate filing group if they purchase and prepare food with other members of the household group, unless they are required by section (2) of this rule to be in the same filing group:

(a) A paid live-in attendant and the attendant's minor children may choose not to be in the filing group with the people for whom they are providing services.

(b) An *elderly* person (as defined in OAR 461-110-0110) may be considered a separate filing group from the others with whom the elderly person purchases and prepares meals, if:

(A) The *elderly* person is unable to purchase and prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(5) The following persons who are paying to have meals provided are not eligible to participate in the Food Stamp program independently of the care or service provider. However, they may be included in the care or service provider's filing group if the provider chooses to apply for benefits for them.

(a) A person in foster care.

(b) A member of the household group who pays the filing group a reasonable amount for room and board (lodger). A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the person and anyone in that person's filing group (see OAR 461-155-0190(2)), if more than two meals a day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the person and anyone in that person's filing group, if two or fewer meals a day are provided.

(6) Notwithstanding section (2) of this rule, the following household group members may form a separate filing group from other members of the household group:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative.

(b) A resident of a nonprofit public or private residential care facility.

(c) A resident of a homeless or domestic violence shelter.

(d) A member of the household group who is not paying the filing group a reasonable amount for room and board (lodger), as defined in subsection (5)(b) of this rule.

(7) The following household group members are excluded from the filing group:

(a) A resident of a commercial boarding house.

(b) An ineligible student, as defined in OAR 461-135-0570.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, F, & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

# ADMINISTRATIVE RULES

## 461-110-0630

### Need Group

(1) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in section (1)(b) of this rule, the need group consists of the financial group members who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program, a person who cannot be in the need group because of a disqualification penalty.

(2) In the MAF program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except for the following people:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(3) In the EA, REF, and REFM programs, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(4) In the EXT program, the need group consists of financial group members who:

(a) Meet all nonfinancial eligibility requirements; and

(b) Were eligible to be in the MAA or MAF benefit group when those benefits ended.

(5) In the SAC program, the need group consists of the person in the financial group.

(6) In the ERDC program, the need group consists of each member of the financial group.

(7) In the FS program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A client fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(c) A person violating a condition of parole or probation imposed under a state or federal law.

(8) In the GA and GAM programs, the need group consists of each member of the financial group except that the following people may not be in the need group:

(a) A client fleeing to avoid prosecution, or custody or confinement after conviction, or fleeing after trying to commit a crime, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(b) A person in violation of a condition of parole or probation imposed under a state or federal law.

(9) In the OHP program, the need group consists of each member of the financial group. An unborn child of a pregnant female is included in the need group.

(10) In the OSIP and OSIPM programs, the need group consists of each member of the financial group.

(11) In the QMB program, the need group consists of each member of the financial group, except for the following:

(a) A person who does not meet the citizenship or alien status requirements.

(b) A person disqualified from TANF for noncooperation in the JOBS program.

(c) A person disqualified for failure to meet the requirements of OAR 461-120-0345(2) or for not providing a social security number (SSN).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f.

& cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-115-0071

### Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, MAA, MAF, REF, REFM, and TANF programs, the following people must sign the application and complete the application process:

(a) In the MAA, MAF, REF, REFM, and TANF programs:

(A) Each parental caretaker relative must sign the application.

(B) A non-parental caretaker relative must sign the application, subject to the following specific requirements:

(i) If the non-parental caretaker relative applies for benefits with the dependent child and lives with a spouse, both the non-parental caretaker relative and the spouse must sign the application.

(ii) A non-parental caretaker relative who applies only for children must sign the application, but the non-parental caretaker relative's spouse is not required to sign the application.

(iii) If the non-parental caretaker relative changes, the new non-parental caretaker relative must sign a current application.

(b) In the ERDC program, a caretaker must sign.

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a dependent child under age 18. If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse, both must sign the application.

(c) A dependent child age 18 who applies must sign the application and complete the application process.

(3) In the Food Stamp program, the primary person, the spouse of the primary person, or another adult member of the filing group must sign the application and complete the application process.

(4) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's spouse, if they live together, must complete the application process and sign the application.

(5) In the OHP program, the primary person, the spouse of the primary person, and other adult members of the filing group who are age 19 or over must sign the application and complete the application process.

(6) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's spouse, if they live together, must sign the application and complete the application process. If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(7) A person required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-115-0530

### Certification Period; OHP

(1) The OHP certification period is the period for which a client is certified eligible for the program.

(2) For OHP applicants not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following six calendar months. All other OHP certification periods are for six months.

(3) A client's OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(4) To establish a new certification period, an OHP benefit group must complete a redetermination of eligibility and be found eligible.

(5) When a person wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group is ineligible, the original benefit group remains eligible for the remainder of its certification period.

(6) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(7) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new



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benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(8) A pregnant woman found eligible for the OHP-OPP program is not assigned a certification period — she is eligible for the period described in OAR 461-135-0010.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-120-0110

### Citizenship and Alien Status Requirements

(1) To be a member of a benefit group for all programs except CAWEM, ERDC, REF and REFM, a person must:

- (a) Be a citizen of the United States;
- (b) Meet the alien status requirements in OAR 461-120-0125;
- (c) Be a citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or
- (d) Be a national from American Samoa or Swains Islands.

(2) The need and benefit groups for ERDC must contain a child who meets the citizenship and alien status requirements of section (1) of this rule.

(3) To be a member of the need and benefit groups for REF and REFM, a person must meet the alien status requirements of OAR 461-120-0120.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, 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. 1253(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) In all programs except the Food Stamp program — 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) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, a person meets the alien status requirements if he or she is one of the following:

- (a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(4) In the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. A person is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program only, is receiving SSI benefits.

(5) In the GA and GAM programs, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

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(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) A person receiving SSI benefits.

(e) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, a person meets the alien status requirement if he or she is one of the following:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked

by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0010

### Assumed Eligibility for Medical Programs

This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(1) Except for a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345 and a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0125, the following people are assumed eligible for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Assessment Program (see OAR 461-135-0475).

(e) A child in a benefit group whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is assumed eligible for Medicaid.

(4) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC benefits is assumed eligible for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(5) The following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The following persons are assumed eligible for OSIPM (except OSIP-EPD and OSIPM-EPD):

(a) A recipient of SSI benefits.

(b) A person deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individu-

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als with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program.

(8) A client is assumed eligible for REF if:

(a) The client is receiving cash assistance through the REF program;

or

(b) The client is ineligible for cash assistance through the REF program only because of income or resources.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 418.100, 1999 OL 859

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0095

### Specific Requirements; EXT

(1) To be eligible for EXT benefits, the filing group must have been eligible for and received MAA or MAF, and then become ineligible because of an increase in the caretaker relative's earnings or in child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the group ineligible for MAA or MAF.

(3) Once eligibility for EXT is established, members of the eligibility group are ineligible if the filing group contains no dependent child.

(4) Subject to the time periods established in OAR 461-135-0096(1):

(a) A benefit group can regain EXT eligibility after becoming ineligible whenever the group again meets the EXT non-financial eligibility requirements

(b) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility for the balance of the period if they return and if the rest of the family has been continuously eligible.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0400

### Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program:

(a) At least one *caretaker* (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months; and

(b) A child who needs child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(2) In the ERDC-SBG program:

(a) At least one *caretaker* must be an undergraduate student without a bachelor's degree. The student must have been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and must be registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) In addition to meeting the requirements of sub-section (a) of this section, a student who applies for the ERDC-SBG program on or after July 1, 2005 must have been admitted to a two- or four-year non-profit, generally accredited institution of higher education located in Oregon, including community colleges, that is eligible for federal financial aid.

(c) A *caretaker* who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(d) A student may use ERDC-SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(e) Students must maintain good standing according to the standards of the institution they are attending.

(f) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(g) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) The unemployed adult is unavailable to provide care while participating in requirements of a case plan other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0506

### Transitional Benefit Alternative (TBA) in the Food Stamp Program

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive food stamp benefits without reduction during the transition period. The transition period is five months. If the filing group separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) Clients in the Food Stamp program who receive a cash grant in the TANF program may participate in TBA when the TANF benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for FS during the last month before TBA begins, but the TANF grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

(a) The filing group submits a new application in the Food Stamp program and will receive more food stamps if they are not using the TBA reporting system;

(b) A member of the filing group leaves and applies for food stamps as a member of another household; or

(c) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA in each of the following situations:

(a) A member of the filing group is receiving benefits of the TANF program.

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(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to report the change timely.

(d) As of the date the TANF case closed, a person in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the Food Stamp program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group is subject to a penalty in the Food Stamp program because of the person's conduct, for instance, because the person:

(A) Was excluded from the need group under OAR 461-110-0630(7);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for food stamps under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the Food Stamp program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(5) Once the TBA benefits have ended, a client's eligibility for the Food Stamp program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0570

### Eligible and Ineligible Students; FS

(1) For the purposes of this rule, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) A person 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive FS benefits, unless one of the following is true:

(a) The student is:

(A) A paid employee working a minimum of 20 hours per week; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program and expects to actually perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this sub-section:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group, and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group.

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by their disenrollment), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student participating in a meal plan offered by the institution is ineligible for Food Stamp benefits.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of OAR 461-135-0832 to 461-135-0845 and ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340, the terms listed below have the meanings ascribed to them herein; provided, however, as used in this section, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 U.S.C. § 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department of Human Services applies the definitions and procedures set forth in OAR 461-135-0832 to 461-135-0845 to recoveries and claims made pursuant to ORS 414.105, 411.795, 412.600, 413.200, 416.310, and 416.340.

(1) *Assets* means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death.

(2) *Assign* means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) *Bona fide purchaser for value* means any person who provides consideration, including money or property, to a seller or transferor of *real property or personal property equal* to the fair market value of the real or personal property sold or transferred.

(4) *Consideration furnished test* means the method by which the ownership of *real or personal property* is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(5) *Convincing evidence* includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(6) *Disabled child* means a natural or adopted son or daughter of the deceased client, of any age, who met SSI disability criteria and was permanently and totally disabled, as defined in ORS 412.510(3), at the time the Department's claim was asserted, and who presented evidence to the

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Department substantiating the disability within two years after the Department asserted the claim.

(7) *Estate* means:

(a) With respect to the collection of payments made for services provided on or after July 18, 1995, *all real property, personal property, or other assets* wherever located in which a deceased individual had any legal title or ownership or beneficial interest at the time of death, including real property, personal property or assets conveyed by the deceased individual to a survivor, heir, or assign of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, an annuity purchased on or after April 1, 2001, or other similar arrangement.

(b) With respect to the collection of payments made for services provided before July 18, 1995, all real and personal property and other assets included within an individual's estate as such estate is defined by applicable state probate law.

(8) *Heir* means any individual, including the surviving spouse, who is entitled under *intestate succession* to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(9) *Interest* means any form of legal, beneficial, equitable or ownership interest.

(10) *Intestate* means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(11) *Intestate succession* means succession to *real property, personal property or assets* of a decedent who dies intestate or partially intestate.

(12) *Joint tenancy* means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(13) *Legal title* means legal ownership by a person.

(14) *Life estate* means an interest in real or personal property that terminates upon the death of a measuring life.

(15) *Living trust* means a revocable inter vivos trust.

(16) *Medical institution* means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(17) *Ownership documents* mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or legal title held by a person.

(18) *Permanently institutionalized* means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(19) *Person* means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(20) *Personal property* means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(21) *Real property* means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties.

(22) *Recipient of property* means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(23) *Survivor* means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(24) *Survivorship* means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(25) *Tenancy in common* means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(26) *Time of death* means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(27) *Value* means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the value would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 411.105

Stats. Implemented: ORS 414.105

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

### 461-135-0835

#### Limits on Estate Claims

(1) For BCCM, GA, GAM, OHP, OSIP, OSIPM, and QMB, the Department has a priority claim against the property or any interest therein belonging to the estate of any deceased person as provided in ORS chapters 411, 412, 413, and 414. The Estate Administration Unit of the Department (EAU) is authorized to present and file such claim against the estate. It will be treated as a preferred claim and filed in a like manner as the claims of other creditors.

(2) If there is a surviving spouse, the Department shall have a claim against the estate of the surviving spouse for aid paid to the surviving spouse. In addition, the Department shall have a claim against the estate of the surviving spouse for aid paid to the deceased client, but only to the extent that the surviving spouse received property or other assets from the deceased client through probate or through operation of law. If estate recovery is deferred until the surviving spouse dies, the fair market value of the property subject to the Department's claim is determined based on the current value of the property in the surviving spouse's estate. However, neither claim is enforceable until after the death of the surviving spouse (if any) and only when there is no surviving child under age 21, no surviving blind child of any age, and no surviving disabled child.

(3) The amount of the claim is as follows:

(a) For GA and GAM, the amount of the claim will not exceed the total amount of cash and medical benefits paid. The claim will include benefits provided under the Home and Community-Based Care Waiver program. This applies to all General Assistance programs, even those that are no longer active.

(b) For BCCM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB, the amount of the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was permanently institutionalized, the claim shall include the total amount of cash and medical benefits paid at any age. This applies to all Old Age Assistance and Aid to the Disabled clients, including those served by Home and Community-Based Care Waiver programs. It also includes clients covered by programs that are no longer active.

(c) For OHP, OSIP-AB, and OSIPM-AB, the claim shall include the total amount of cash paid at any age and all medical benefits provided after the client reached age 55. If the client was *permanently institutionalized*, the claim shall include the total amount of cash and medical benefits paid at any age. The claim shall include benefits provided under the Home and Community-Based Care Waiver program.

(d) For OSIP, OSIPM-AB, OSIPM-AD, and OSIPM-OAA, the amount of the claim shall also include the total amount of medical benefits provided to clients who were age 55 to 64 on the date the medical benefits were provided if the benefits were provided after July 18, 1995. Medical benefits will be considered to have been provided to a client on the day of provision of medical services for which medical assistance payments are made.

(4) The priority for payment of claims against the estate will be as established under ORS 115.125.

(5) EAU may nominate a personal representative for an estate if the Department has a claim and it appears that no person with a higher preference, as established in ORS 113.085, is willing to be the representative.

(6) Property disposal will be in accordance with OAR 461-135-0838.

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Stat. Auth.: ORS 410.070 & 411.060  
Stats. Implemented: ORS 411.795, 412.600, 413.200 & 415.105  
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0875

### Specific Requirements; Retroactive Medical

(1) The following clients are evaluated for retroactive eligibility for medical assistance:

(a) Clients found eligible for the BCCM, MAA, MAF, OSIPM, QMB-DW, REFM, or SAC program.

(b) Clients found ineligible for the BCCM, MAA, MAF, OSIPM, or SAC program solely because they do not meet the citizenship requirements of OAR 461-120-0125. Clients eligible under this subsection are eligible only for CAWEM program benefits (see OAR 461-135-1070).

(c) Clients found eligible for QMB-BAS, who are evaluated for OSIPM retroactive eligibility.

(2) If eligible for medical assistance retroactively, the client's eligibility cannot start earlier than the date indicated by OAR 461-180-0140.

(3) In the BCCM program, a woman cannot be eligible prior to January 1, 2002.

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 28-1992, f. & cert. ef. 10-1-92; AFS 8-1993(Temp), f. & cert. ef. 4-26-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-135-0950

### Eligibility for Inmates

(1) This rule sets out additional restrictions on the eligibility of inmates for programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Definition of an *inmate*.

(a) An *inmate* is a person living in a *public institution* who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including a person being held involuntarily in a detention center awaiting trial or a person serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a *public institution* where, under the terms of the contract, the facility is a *public institution*;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a *public institution*.

(b) An individual is no longer an *inmate* when:

(A) The person is released on parole, probation, or post-prison supervision;

(B) The person is on home- or work-release, unless the person is required to report to a public institution for an overnight stay; or

(C) The person is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual.

(3) Definition of a *public institution*.

(a) A *public institution* is any of the following:

(A) A state hospital (as defined by ORS 162.135) such as the Oregon State Hospital, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and any other hospital established by law for similar purposes, including the "SAIP" means Secure Adolescent Inpatient Program (SAIP), and the Secure Children's Inpatient Program (SCIP).

(B) A local correctional facility (as defined in ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

(C) A Department of Corrections institution (as defined in ORS 421.005): a facility used for the incarceration of persons sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (as defined in ORS 162.135):

(i) A facility used for the confinement of youth offenders and other persons placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term *public institution* does not include:

(A) A medical institution as defined in 42 C.F.R. 435.1009;

(B) An intermediate care facility as defined in 42 C.F.R. 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 C.F.R. 435.1009; or

(D) A child-care institution as defined in 42 C.F.R. 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) If this rule indicates that the medical benefits of a client are suspended, a client meeting the eligibility requirements of a program covered under chapter 461 of the Oregon Administrative Rules is not required to submit a new application for the benefits to be reinstated.

(5) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an *inmate* of a *public institution* is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program is an *inmate* of a *public institution*, her medical benefits are suspended. When the Department is informed the woman is no longer an *inmate*, her medical benefits are reinstated — effective on the first day she is no longer an *inmate* — if she is still in her protected period of eligibility under OAR 461-135-0010(2).

(c) In the OSIP and OSIPM programs, if a client who is receiving SSI becomes an *inmate* of a *public institution*, the medical benefits are suspended. Benefits may be suspended for up to twelve full calendar months. When the Department is informed the client is no longer an *inmate*, the medical benefits are reinstated — effective on the first day the client is no longer an *inmate* — if the client meets the eligibility requirements for the program, including being in suspense status with SSA and the client intends to remain in Oregon. The client has 30 days from the date of release to provide verification that SSI has been reinstated or the case will be closed.

(d) In the SAC program, medical benefits are suspended if a client who receives medical assistance because of a serious mental illness becomes an *inmate* of a *public institution*. When the Department is informed the client is no longer an *inmate*, the medical benefits will be reinstated, effective on the first day the client is no longer an *inmate*, and eligibility will be determined for all medical assistance programs. For purposes of this subsection, a client has a serious mental illness if the client has been diagnosed, prior to becoming an inmate of a public institution, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both:

(A) Caused primarily by substance abuse; and

(B) Likely to improve if the substance abuse discontinues or declines.

(6) In the Food Stamp and GA programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the person.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.113

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-145-0150

### Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

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(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — that is, ERDC or other child care subsidies. In that situation, the amount the student actually pays for child care (including the ERDC copay) is excluded from the educational income instead of the amount shown in the award letter.

(c) The student states actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) In the GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, SAC and TANF programs, the following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(c) An amount used (or anticipated to be used) for tuition, mandatory fees, books and supplies, transportation, child care, and miscellaneous personal expenses (except room and board).

(4) In the ERDC and FS programs, educational income from the BIA and Title IV of the Higher Education Act is excluded.

(5) The cost of the following items from remaining educational funds (including non-Title IV work study and educational loans) is excluded:

(a) In the ERDC and FS programs — tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In the FS program — dependent care.

(6) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3), (4), or (5) of this rule is earned income.

(b) Educational income not covered by subsection (6)(a) of this rule is treated as follows:

(A) In all programs except OHP, educational income is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(B) In the OHP program, educational income is counted in the month received.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-145-0190

### Food Programs Other Than the Food Stamp Program

(1) In all programs, the following benefits are excluded:

(a) Benefits from the Special Supplemental Food Program for Women, Infants and Children (WIC), including demonstration projects (coupons exchanged for food at farmers markets) under the Hunger Prevention Act of 1988 (Pub. L. 100-435, section 501).

(b) The value of supplemental food assistance provided to children under the Child Nutrition Act of 1966 (Pub. L. 89-642) and the National School Lunch Act (Pub. L. 79-396, section 12(e), and Pub. L. 94-105).

(c) Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands.

(d) The value of supplemental food assistance provided for children and seniors in the Oregon Farm Direct Nutrition program funded by grants from the United States Department of Agriculture.

(2) In all programs except FS, benefits from the tribal Food Distribution Program are excluded. In the FS program, these benefits are subject to OAR 461-165-0030.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-150-0055

### Eligibility and Budgeting; OHP

In the OHP program:

(1) The budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.

(e) For applicants who are not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The financial group's average countable income is calculated as follows:

(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) A change in income or resources during a certification period does not affect the eligibility of the benefit group for that certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-155-0250

### Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, clothing, personal incidentals, and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income standard includes a transportation allowance. The total standard is:

(4) The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

# ADMINISTRATIVE RULES

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2006 federal poverty level for a family of one. This 250 percent limit equals \$2,042 per month or \$24,500 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$920 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0015

### Resource Limits

(1) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for need groups with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(2) In the EA program, all countable resources must be used to meet the emergent need.

(3) In the ERDC, EXT, and REFM programs, there is no resource limit.

(4) In the FS program, the resource limit is:

(a) \$3,000 for financial groups with at least one member who is elderly or an individual with a disability, as defined at OAR 461-110-0110.

(b) \$2,000 for all other financial groups.

(5) In the OHP program:

(a) There is no resource limit for a person whose eligibility is determined under the OHP-OPC, OHP-OP6, or OHP-OPP programs.

(b) The resource limit for a person whose eligibility is determined under the OHP-OPU program is \$2,000.

(c) The resource limit for children whose eligibility is determined under the OHP-CHP program is \$10,000.

(6) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-145-0025 for funds that may be excluded as approved accounts).

(7) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more people.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-

99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0030

### Overview of Costs

(1) Costs incurred by the client, that the client has a legal responsibility to pay, are deductible from income in accordance with the rules in this division of rules.

(2) The following costs are not deductible:

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in-kind benefit.

(b) A cost that is paid by a person or company outside the financial group or that is written off by a medical facility. These are referred to as third-party payments.

(c) The cost for a service provided by someone in the filing group, such as child care provided by the father while the mother works.

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1990, f. & cert. ef. 2-16-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0040

### Dependent Care Costs; Deduction and Coverage

(1) In the EXT and MAF programs, the cost of dependent child care may be deducted from the income of a client in accordance with the following:

(a) The dependent child must live with the filing group;

(b) The provider of child care may not be in the filing group;

(c) The provider of child care may not be the parent of the child; and

(d) The amount of the deduction is determined as follows:

(A) In the MAF program, as set out in OAR 461-160-0190.

(B) In the EXT program, the amount is limited to the cost necessary for the caretaker relative to maintain employment, including time required to commute, work, and take a meal break.

(2) In the FS program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group and is in the care, control, and custody of a person in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan.

(3) In the ERDC-BAS, ERDC-SBG, REF, and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if all of the following requirements are met.

(a) In the ERDC-BAS, REF, and TANF programs, dependent child care is necessary for the working client to maintain employment, including time required to work, commute, or take a meal break. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(b) In the ERDC-SBG program, dependent child care is necessary for a client to continue his or her education, training, or employment and the client is attending class, studying, working, commuting, or is on a meal break.

(4) In the ERDC, JOBS, REF, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(5) Child care is not covered in the ERDC-BAS and TANF programs if the nature of the work of the caretaker does not make it necessary for a person other than the caretaker to provide the care. It is generally unnecessary during a period of time when:

(a) The caretaker works at home, or is self-employed, and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) The caretaker provides child care in a residence; or

(c) The caretaker works for a provider of child care in a residence that is not certified under OAR 414-350-0000 and following.



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(6) In the JOBS program, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0211).

(7) In the ERDC, JOBS, JOBS Plus, REF, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child:

(A) In the JOBS, JOBS Plus, REFM, and TANF programs, lives with the filing group.

(B) In the ERDC program, is a member of the benefit group and is in the care, control, and custody of a person in the group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of the dependent.

(8) Coverage of the cost of dependent care is subject to the requirements in chapter 461 of the Oregon Administrative Rules, including OAR 461-120-0510(4), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0410

### Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; FS

When a member of the financial group is not in the need group, benefits in the Food Stamp program are calculated as follows:

(1) If the member is a qualified non-citizen (defined in OAR 461-120-0125(1)(a)-(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the qualified non-citizen were eligible.

(b) Benefits are then calculated as if the qualified non-citizen were not a member of the filing group. Any income received by another member of the filing group from the non-citizen is counted as income of the financial group. No expenses paid by the non-citizen are deducted from gross income.

(c) The household's benefits are the lesser of the amounts calculated in subsections (1)(a) and (b) of this rule.

(2) The process described in sections (3) and (4) of this rule is used if the member:

(a) Is a qualified non-citizen (as defined in OAR 461-120-0125(1)(i)) who does not meet the alien status requirements of OAR 461-120-0110;

(b) Is a non-citizen but not a qualified non-citizen;

(c) Is unwilling to disclose his or her alien status; or

(d) Is disqualified for failing to obtain or provide a SSN.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's *countable income* is prorated among the people in the financial group.

(b) The pro rata share of each person not in the need group is excluded.

(c) The rest of the prorated income is *countable income* for the financial group.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When either billed to or paid by these members, deductions for shelter, child support, and dependent care, are calculated as follows:

(a) The deductions, except deductions for the standard utility allowance, are prorated among the members of the financial group.

(b) The prorated share of the members of the need group is deducted.

(c) The deduction for the standard utility allowance is made in accordance with OAR 461-160-0420(8).

(5) The countable income of the following financial group members, subject to allowable deductions, is used to determine benefits:

(a) A client who is disqualified for failure to comply with the requirements of the OFSET program or because of an intentional program violation.

(b) A client who is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the

place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0530

### Calculating Benefits; SSI-Eligible Clients Living in the Community; OSIP

OSIP clients who receive SSI and live in the community or in a community-based setting are eligible for a payment based on the difference between the SSI standard and the OSIP payment standard (see OAR 461-155-0250), determined as follows:

(1) The financial group's countable income is compared to the supplemental income payment (SIP) table for the need group to determine the SIP payment.

(2) The SIP payment is changed to the OSIP standard for clients who, though separated from their spouses, receive benefits under the OSIP standard because the Social Security Administration considers them to be a couple. The SIP payment is computed by subtracting the client's countable income (including SSI) from the appropriate OSIP standard.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-160-0700

### Use of Income; OHP

Income is used to determine eligibility for OHP as follows:

(1) The average countable income of the financial group assigned to the budget month is determined in accordance with OAR 461-150-0055.

(2) For each member of the need group, the average countable income of the financial group assigned to the budget month is compared to the applicable OHP income standard. If the average countable income of the financial group is below the applicable income standard for the need group size and all other financial and non-financial eligibility requirements are met, the need group member is eligible for OHP. If the average countable income of the financial group equals or exceeds the applicable OHP income standard, the need group member is ineligible for OHP except as provided by section (3) of this rule.

(3) The following members of the need group who are not eligible under section (2) of this rule are eligible for OHP if all other financial and non-financial eligibility requirements are met and the financial group's countable income, received or anticipated to be received in the budget month, is below the applicable OHP income standard:

(a) Victims of domestic violence.

(b) OHP-OPC clients.

(c) OHP-OP6 clients.

(d) OHP-OPP clients.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; 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 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-165-0140

### Endorsement and Survivorship of Benefits

(1) The client or the client's payee must endorse checks issued in payment of a benefit. The endorsement on the check must be the same as the name appearing as payee.

(2) The client may endorse a check with a mark or thumbprint if duly witnessed by two people giving their full names and addresses.

(3) Benefits issued by EBT (electronic benefit transfer) may be used only with the Oregon Trail debit card and the client's matching personal identification number (PIN).

(4) The person with power of attorney may:

(a) Act as authorized representative or alternate payee.

(b) Endorse and cash the benefit check as in the following example: John Doe (Recipient) by Richard Jones (Power of Attorney).

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(5) For all programs except FS, any cash benefit issued to clients before their death is available to their survivors.

(a) Checks may be endorsed in the name of the deceased beneficiary by the surviving spouse or next-of-kin, or by the administrator of their estate. The Department uses the following procedure:

(A) Before the next-of-kin endorses a check, the check must be presented to the branch office.

(B) The Department will rubber-stamp the endorsement on the check only if it has been determined that the client died on or after the first day of the period for which the payment was provided.

(C) The endorsement must show both the name of the deceased beneficiary and the name of the surviving spouse or next of kin, as well as the relationship of the endorser to the beneficiary.

(D) The person who endorses the check receives the proceeds of the benefit.

(b) For cash benefits in an EBT account (except for FS cash-out benefits), the Department will designate an adult survivor as the alternate payee. The Department will issue the payee an EBT card and PIN to access the balance in the EBT account.

(6) For FS, there is no survivor's right to benefits unless the survivor is independently entitled to benefits as a member of the benefit group. When the survivor is not in the benefit group:

(a) The Department will request the return of unused coupons or unnegotiated cash-out checks to the branch.

(b) For FS benefits that were issued by EBT, if no one remains in the benefit group, the Department will cancel the remaining benefits from the EBT account.

Stat. Auth.: ORS 411.060, 411.816, 418.100  
Stats. Implemented: ORS 411.060, 411.610, 411.816, 418.047, 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-165-0180

### Eligibility of Child Care Providers

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1) to (6) of this rule.

(1) The provider must submit a completed Department listing form to the Department. The provider and all persons identified under section (4) of this rule are considered "subject individuals" under OAR 410-007-0210(27)(a)(H) and must complete and sign the authorization for a records check and, if necessary, an authorization to release information and fingerprint cards, as necessary for the Department to complete a current records check. The provider must fully disclose all requested information as part of the records check. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

(a) The provider was previously found ineligible for payment and was not *subsequently determined* to be eligible; or

(b) The Department determines, following a preliminary or final fitness determination (as provided in OAR 410-007-0320) and Child Protective Service (CPS) records checks, that the provider or other *subject individual* is not eligible for payment.

(2) The provider must meet all of the following requirements:

(a) Allow the Department to inspect the site of care while child care is provided.

(b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.

(c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.

(d) Not be in the same filing group as the child cared for and must not be the *parent* (as defined at OAR 461-110-0110) of the child.

(e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) The provider must not have a history of behavior that indicates a substantial risk to the health or safety of children in the care of the provider. A single incident may be sufficient history for ineligibility. This determination is based on a review of Criminal History (CH) and CPS records, an investigation of complaints, if any, and information provided by another agency:

(a) The Department may conduct a national criminal history check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 410-007-0290 and may withhold authorization for payment to a provider until the check is complete.

(b) If the Department obtains information of a potentially disqualifying crime, potentially disqualifying condition, or child protective services history with respect to the provider or another *subject individual*, as described in OAR 410-007-0280, 410-007-0290, 461-165-0410, or 461-165-0420, the Department will conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(c) If the Department obtains information regarding eligibility under this rule that indicates a substantial risk to the health or safety of children in the care of the provider, the Department may conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(4) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules.

(b) A provider exempt from the rules specified in subsection (a) of this section must meet all of the following requirements:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Be in such physical and mental health as will not adversely affect his or her ability to care for a child in care.

(C) Be 18 years of age or older.

(D) Report to the Department, with respect to any person covered by paragraph (3)(b)(A) of this rule, any arrest and any involvement with CPS or any other agency that provides child protective services.

(E) Report to the Department within 10 days of occurrence any change to his or her name or address and the addition of any person or employee to the household or facility.

(F) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(G) Supervise each child in care at all times.

(H) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(I) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(J) Inform parents of the need to obtain immunizations for their children.

(K) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(L) Provide, in a manner specified by the Department, information required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(M) Ensure that the facility where care is provided meets all of the following standards, unless the care is provided in the home of the child, except that a provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways, pools, ponds, and other hazards have barriers to protect children.

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(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(N) Complete and submit a new listing form every two years, or sooner at the request of the Department, in order for the Department to review eligibility.

(5) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

(6) Ineligibility for payment may result from any of the following:

(a) A finding of "failed". The Department may determine, based on a specific eligibility requirement and the evidence, that a provider has failed to meet eligibility requirements listed in this rule. A provider with a status of "failed" may reapply at any time with documents and information to the Department for review. If documents and information show that the provider meets the eligibility requirements, the Department will approve the provider for payment if there is no other basis for ineligibility.

(b) A finding of "denied". If, after conducting a weighing test as described in section (3) of this rule, the Department finds substantial risk to the health or safety of children in the care of the provider, the provider will be denied and will be ineligible for payment. Providers who have been denied have hearing rights as described in OAR 410-007-0330.

Stat. Auth.: ORS 181.537 & 411.060

Stats. Implemented: ORS 181.537, 411.060 & 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-165-0410

### Provider Listing; Disqualifying Criminal History

(1) This rule explains the grounds upon which the Department denies a request of a child care provider to receive child care payments from self-sufficiency programs of the Department based on the records of subject individuals. For the purposes of this rule, the provider and all persons identified under OAR 461-165-0180(4) are considered "subject individuals" under OAR 410-007-0210(27)(a)(H).

(2) The Department may find a child care provider ineligible for payment when the criminal history of a subject individual indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, in the following circumstances:

(a) The *subject individual* has been charged with or arrested for a crime listed in OAR 410-007-0280. The subject individual must provide sufficient documentation of the disposition of the charges before the criminal history check and fitness determination can be completed. A provider covered by this subsection is ineligible for payment until the criminal history check and final fitness determination can be completed.

(b) The *subject individual* has been convicted of two or more crimes listed in OAR 410-007-0280 at any time.

(c) The *subject individual* has been convicted of violation of probation and a crime listed in OAR 410-007-0280, at any time, that relates to the person's qualification or duties as a child care provider.

(d) The subject individual has been charged with two or more crimes listed in OAR 410-007-0280 within the past five years or has three or more arrests at any time for a crime listed in OAR 410-007-0280.

(3) The Department may pay for the services of a child care provider even if a *subject individual* has a potentially disqualifying criminal history, defined by OAR 410-007-0280, only if the Department has determined — based on a weighing test as described in OAR 410-007-0320 and consideration of the information listed in OAR 410-007-0280, 410-007-0290, 410-007-0300, and 461-165-0410 — that repeated criminal behavior is unlikely and that the provider does not present a danger to a child in the provider's care.

Stat. Auth.: ORS 411.060 & 411.122

Stats. Implemented: ORS 181.537, 411.060, 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-165-0420

### Provider Listing; Disqualifying Child Protective Service History

(1) A provider of child care is not eligible for a payment from the Department if the Department determines, based on prior conduct, that a subject individual is likely to engage in conduct that would jeopardize the safety of children in the provider's care. For the purposes of this rule, the provider and all persons identified under OAR 461-165-0180(4) are considered "subject individuals" under OAR 410-007-0210(27)(a)(H). In order to make its determination, the Department may use any available information including the Child Protective Service (CPS) records of the Department.

(2) There is a rebuttable presumption that a person is likely to engage in conduct that would jeopardize the safety of children in the provider's care if, with respect to that person, there is a *Founded CPS Disposition* (a founded report), as defined in OAR 413-010-0705.

(3) Notwithstanding a *founded report* or other report in the records of the Department, the Department may determine the presence of the *subject individual* would not likely jeopardize the safety of children in the provider's care based on:

(a) The content and source of the reports, the time elapsed since the reports, and the number of reports and referrals;

(b) The person's participation in rehabilitation, training, or counseling;

(c) The likelihood of the person's abuse of drugs or alcohol;

(d) Any other relevant eligibility requirements or supplemental information under OAR 410-007-0300 or 461-165-0180.

(4) If there is a *founded report* with respect to a subject individual, but the Department determines, based on a fitness determination made in accordance with the procedures in OAR 410-007-0320, that the presence of the person would not likely jeopardize the safety of children in the provider's care, the Department may pay for services of a child care provider.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-165-0430

### Child Care Provider Hearings

(1) A provider has a right to a contested case hearing only to contest a fitness determination that results in a denial of eligibility for payment or to dispute an allegation of an overpayment of child care. Hearings to contest a fitness determination that results in a denial are governed by OAR 410-007-0330. Hearings to contest an overpayment are governed by division 461-025 of the Oregon Administrative Rules.

(2) In the case of an alleged overpayment, the provider may delay repayment on an overpayment until a final order is served by completing a request for hearing not later than the fifteenth day following the date of the overpayment notice.

(3) A provider whose application for listing is denied and who fails to request a hearing within the 45-day hearing request period is not eligible to reapply for listing until 180 days following the date of the denial notice.

(4) If a provider requests a hearing to contest a fitness determination resulting in a denial of eligibility for payment, the provider remains ineligible for payment pending the hearing unless the decision to deny eligibility was based on a mistake in identifying the person with the CH or CPS record.

Stat. Auth.: ORS 181.537, 411.060

Stats. Implemented: ORS 181.537, 411.060, 411.095

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-175-0206

### Notice Situation; Benefit Standard Changes; Not FS

(1) If the basis for a decision to reduce, suspend, or close a grant of public assistance is a *change to a benefit standard*, a timely continuing benefit decision notice is sent at least 30 calendar days before the effective date of the action, or at least 10 working days before the effective date of the action if the Department has fewer than 60 days before the effective date to implement a change to a benefit standard.

(2) For purposes of this rule, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

(3) This rule does not apply in the Food Stamp program.

Stat. Auth.: ORS 411.060, 418.100

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Stats. Implemented: ORS 411.060, 411.095, 418.100  
Hist.: SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-180-0100

### Effective Dates; Eligibility Following Closure

The new effective date of eligibility following closure of benefits or following the end of a certification period is determined as follows:

(1) For the Food Stamp program, see OAR 461-115-0450.

(2) In the OHP program, if the client completes the application process within the time period described in OAR 461-115-0190, the effective date is determined as follows:

(a) If the Department initiates a recertification of eligibility for the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(b) If the filing group establishes a date of request before the end of a certification period in the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(c) If the filing group requests medical benefits while eligible for medical assistance from a program other than OHP, the effective date for the certification period is the first day that the client meets all eligibility requirements following the closure of the program under which the group was receiving medical assistance.

(d) If the filing group requests medical benefits after the closing date for the prior certification period, or if an effective date cannot be determined by subsection (a), (b), or (c) of this section, the effective date is determined by OAR 461-180-0090.

(3) In the ERDC program, eligibility starts the first day of the month of the date of request.

(4) In the TANF program:

(a) Eligibility starts on the date provided by OAR 461-180-0070 for TANF unless the client meets the requirements of subsection (b) of this section.

(b) Eligibility starts the first day of the month following closure if the client contacts the Department during the month of closure and submits to the Department a complete application not later than the end of the month following closure.

(5) In all other programs, if the client completes the application process within the applicable time period described in chapter 461 of the Oregon Administrative Rules, eligibility starts on the first day of the month following closure if the filing group meets all eligibility requirements on that date and if:

(a) The filing group established a date of request (see OAR 461-115-0030 for the meaning of *date of request*) prior to closure; or

(b) The Department initiated a redetermination of eligibility prior to closure.

(6) For all programs except Food Stamps, ERDC, and TANF, if the client does not complete the application process within the time period described in chapter 461 of the Oregon Administrative Rules, the determination of an effective date requires a *new date of request* (see OAR 461-115-0030 for the meaning of *date of request*).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

## 461-195-0621

### Intentional Program Violations; Penalties and Liability for Overpayments

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state continues in effect in Oregon.

(2) In the ERDC program, if an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that person is liable for repayment to the Department of the full amount of overpayment the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider found to have committed an intentional program violation (IPV) in the child care program is ineligible for payment for child care as follows:

(a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.

(b) A child care provider who has incurred an overpayment established as an IPV claim after September 30, 2005 is ineligible for payment:

(A) For six months and until the full amount of the overpayment is paid; or

(B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.

(4) In the Food Stamp and TANF programs, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) The client is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV and permanently for the third IPV.

(c) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined in accordance with OAR 461-145-0105.

(5) In the TA-DVS program, if an IPV is established against a person through a contested case hearing or a waiver of the right to hearing:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.

(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.

(6) A person found by a federal, state, or local court to have traded a controlled substance for food stamp coupons ("coupon" is defined in 7 U.S.C. 2012 (1999)) is disqualified from participation in the Food Stamp program as follows:

(a) For a period of two years upon the first occasion.

(b) Permanently upon the second occasion.

(7) A person found by a federal, state, or local court to have traded firearms, ammunition, or explosives for coupons (as defined in 7 U.S.C. 2012 (1999)) is permanently disqualified from participation in the Food Stamp program.

(8) A person convicted of an act prohibited by 7 U.S.C. 2024(b) or (c) (1999) involving an item covered by those subsections and having a value of \$500 or more is permanently disqualified from participation in the Food Stamp program.

(9) A person is disqualified for a 10-year period from receiving benefits in the program in which the person committed fraud if the person:

(a) In the TANF program:

(A) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act.

(B) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.

(b) In the Food Stamp program, is convicted in state or federal court, is found in an IPV hearing, or admits in a written waiver of the right to an IPV hearing, of having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously from one or more states under programs that are funded under the Food Stamp Act of 1977.

(10) The disqualification provided for in this rule begins on the date the individual is convicted, the date of the final order in an IPV hearing, or the date the person waives the IPV hearing as applicable.

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(11) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group of the disqualified person.

Stat. Auth.: ORS 411.060, 411.816 & 418.100  
Stats. Implemented: ORS 411.060, 411.816 & 418.100  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06

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**Rule Caption:** Changing OARs affecting public assistance, medical assistance or food stamp clients.

**Adm. Order No.:** SSP 7-2006(Temp)

**Filed with Sec. of State:** 3-31-2006

**Certified to be Effective:** 4-1-06 thru 9-28-06

**Notice Publication Date:**

**Rules Adopted:** 461-155-0175

**Rules Amended:** 461-110-0630, 461-135-0095, 461-135-0096, 461-155-0030, 461-155-0150

**Subject:** OAR 461-110-0630 is being amended to indicate that the need group for the Extended Medical Assistance (EXT) program consists of all members of the EXT financial group. The income and resources of members of a financial group count toward determining eligibility. The basic and special needs of members of a need group are considered in determining eligibility.

OAR 461-135-0095 is being amended to incorporate into the eligibility requirements for the Extended Medical Assistance (EXT) program a requirement that a filing group must have been found eligible for and received Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) for at least three of the six months prior to the beginning date of the EXT eligibility period. This rule is also being amended to indicate that the filing group must meet certain employment, earnings, and reporting requirements to continue EXT eligibility beyond six months. The filing group is the people whose circumstances are considered in the eligibility determination process.

OAR 461-135-0096 is being amended to indicate that the eligibility period for the Extended Medical Assistance (EXT) program which results from an increase in the earning of the caretaker relative is six months, and may be extended for up to an additional six months if the filing group meets certain employment, earnings, and reporting requirements. The filing group is the people whose circumstances are considered in the eligibility determination process. This rule is also being amended to indicate specific situations in which eligibility for EXT is characterized as based on increased earnings.

OAR 461-155-0030 is being amended to raise the Adjusted Income/Payment Standard for the TANF, MAA, MAF, REF and SAC programs. The payment standard for these programs is being increased by 2.4% effective.

OAR 461-155-0150 is being amended to implement a legislatively approved 2.4% Cost of Living Adjustment for Department child care providers in the ERDC, JOBS, JOBS Plus, and TANF programs.

OAR 461-155-0175 is being adopted to indicate the income standards or limits that apply to eligibility for the Extended Medical Assistance (EXT) program.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-110-0630

### Need Group

(1) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in section (1)(b) of this rule, the need group consists of the financial group members who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program, a person who cannot be in the need group because of a disqualification penalty.

(2) In the MAF program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except for the following people:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(3) In the EA, REF, and REFM programs, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(4) In the EXT program, the need group consists of all members of the financial group.

(5) In the SAC program, the need group consists of the person in the financial group.

(6) In the ERDC program, the need group consists of each member of the financial group.

(7) In the FS program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A client fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(c) A person violating a condition of parole or probation imposed under a state or federal law.

(8) In the GA and GAM programs, the need group consists of each member of the financial group except that the following people may not be in the need group:

(a) A client fleeing to avoid prosecution, or custody or confinement after conviction, or fleeing after trying to commit a crime, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(b) A person in violation of a condition of parole or probation imposed under a state or federal law.

(9) In the OHP program, the need group consists of each member of the financial group. An unborn child of a pregnant female is included in the need group.

(10) In the OSIP and OSIPM programs, the need group consists of each member of the financial group.

(11) In the QMB program, the need group consists of each member of the financial group, except for the following:

(a) A person who does not meet the citizenship or alien status requirements.

(b) A person disqualified from TANF for noncooperation in the JOBS program.

(c) A person disqualified for failure to meet the requirements of OAR 461-120-0345(2) or for not providing a social security number (SSN).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

## 461-135-0095

### Specific Requirements; EXT

(1) To be eligible for EXT benefits, at least one member of the filing group must have been eligible for and received MAA or MAF for at least three of the six months prior to the beginning date of the EXT eligibility period (see OAR 461-135-0096(3) to determine the beginning date), and then become ineligible because of an increase in the caretaker relative's earnings or in child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the group ineligible for MAA or MAF.

(3) Eligibility for EXT is limited to the members of the MAA or MAF benefit group at the time that those benefits end.

(4) Subject to the time periods established in OAR 461-135-0096(1):

# ADMINISTRATIVE RULES

(a) Once eligibility for EXT is established, members of the benefit group are ineligible if the filing group contains no dependent child.

(b) A benefit group may regain EXT eligibility after becoming ineligible, even if eligibility was lost due to moving out of state, whenever the group again meets EXT eligibility requirements.

(c) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility when they return to the household.

(5) For purposes of this rule, "good cause" means a circumstance beyond the reasonable control of the client.

(6) To be considered for EXT benefits in the seventh month, unless good cause exists, the filing group must report the following information by the 21st day of the fourth month for each of the preceding three months:

- (a) The gross earned income of the financial group; and
- (b) Costs for child care necessary for the employment of the caretaker relative.

(7) Unless *good cause* exists, to be considered for EXT benefits in the eighth through tenth months, all of the following requirements must be met:

(a) The filing group must have met the requirements of section (6) of this rule.

(b) The caretaker relative must have had earnings in each of the second three months of the EXT period.

(c) By the 21st day of the seventh month, the filing group must report all of the following information for each of the preceding three months:

- (A) The gross earned income of the financial group.
- (B) Costs for child care necessary for the employment of the caretaker relative.

(d) The average adjusted earned income of the filing group for the reporting period must be below 185% of the federal poverty level (see OAR 461-155-0175).

(8) Unless *good cause* exists, to be considered for EXT benefits in the eleventh and twelfth months, all of the following requirements must be met:

(a) The filing group must have met the requirements of section (7) of this rule.

(b) The caretaker relative must have had earnings in each of the third three months of the EXT period.

(c) By the 21st day of the tenth month, the filing group must report all of the following information for each of the preceding three months:

- (A) The gross earned income of the financial group.
- (B) Costs for child care necessary for the employment of the caretaker relative.

(d) The average adjusted earned income of the filing group for the reporting period must be below 185% of the federal poverty level (see OAR 461-155-0175).

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

## 461-135-0096 Eligibility Period; EXT

(1) For a client who meets the eligibility requirements for EXT, the period of eligibility is one of the following:

(a) If eligibility for EXT results from increased child support, the period of eligibility is four months and may not be extended.

(b) If eligibility for EXT results from an increase in the caretaker relative's earnings:

- (A) The period of eligibility is six months.
- (B) The period of eligibility may be extended for no more than six additional months if the filing group meets the specific EXT requirements in OAR 461-135-0095 and the earned income of the filing group is below the EXT income standard in OAR 461-155-0175.

(2) The period of eligibility for EXT is based on the increase in the caretaker relative's earnings and is described in subsection (1)(b) of this rule in each of the following situations:

(a) A client meets the eligibility requirements for EXT based on an increase in the caretaker relative's earnings and also meets the eligibility requirements based on an increase in child support in the same month.

(b) A client meets the eligibility requirements for EXT based on a combination of increased income from the caretaker relative's earnings and child support, although either increase by itself does not make the filing group ineligible for MAA or MAF.

(3) The EXT eligibility period begins the first of the month following the month eligibility for MAA or MAF ends. If a benefit group received

MAA or MAF benefits when they were eligible for EXT, the MAA or MAF benefits are not an overpayment. However, any month in which the client receives MAA or MAF benefits when eligible for EXT is counted as a month of EXT eligibility.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; 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 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

## 461-155-0030 Income and Payment Standards; MAA, MAF, REF, SAC, TANF

For MAA, MAF, REF, SAC and TANF, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For need groups in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.](b) In the REF and TANF programs, when the need group contains no adults, the "no-adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in (A) by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from (B) by the number of people in the need group. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) For the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of people in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of people in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of people in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.070 & 418.045  
Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

## 461-155-0150 Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

- (a) Infant: A child aged birth through 12 months.
- (b) Toddler: A child aged 1 year through 30 months.
- (c) Preschool Child: A child aged 31 months through 5 years.
- (d) School Child: A child aged 6 years or older.
- (e) Special needs child: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

# ADMINISTRATIVE RULES

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Oregon Registry entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The Enhanced Group Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(e) The Enhanced Center Rate applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the Oregon Registry entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry entry level training requirements noted in paragraph (2)(b)(A) of this rule.

(B) New staff must meet the Oregon Registry entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (2)(e)(A) of this rule.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of subsection (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (c), (e), or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider

customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Tables not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is \$25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows:  $y = k + (b \times m^x)$

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons:  $k = -30$

(B) 3 persons:  $k = -55$

(C) 4 persons:  $k = -50$

(D) 5 persons:  $k = -51$

(E) 6 persons:  $k = -80$

(F) 7 persons:  $k = -92$

(G) 8 or more persons:  $k = -103$

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons:  $b = 18.0$

(B) 3 persons:  $b = 23.0$

(C) 4 persons:  $b = 20.9$

(D) 5 persons:  $b = 20.6$

(E) 6 persons:  $b = 33.2$

(F) 7 persons:  $b = 33.2$

(G) 8 or more persons:  $b = 40.4$

# ADMINISTRATIVE RULES

(e) The constant m is determined by the number of people in the need group, as follows:

- (A) 2 persons: m = 1.001885
- (B) 3 persons: m = 1.001550
- (C) 4 persons: m = 1.001380
- (D) 5 persons: m = 1.001250
- (E) 6 persons: m = 1.000990
- (F) 7 persons: m = 1.000910
- (G) 8 or more persons: m = 1.000795

(11) Effective October 1, 2003, a client's copay is limited to \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

- (a) The amount billed by the provider or providers.
- (b) The monthly rate established in this rule for 215 hours of care.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

## 461-155-0175

### Income Standard; EXT

(1) For the first seven months of EXT eligibility, there is no income limit.

(2) To continue EXT eligibility after the first seven months, the average adjusted earned income of the filing group must be below 185 percent of the federal poverty level as described in OAR 461-155-0225(2)(c), using income from:

(a) The second three months of the EXT period to continue eligibility for the eighth through tenth months.

(b) The third three months of the EXT period to continue eligibility for the eleventh and twelfth months.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06

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

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

**Adm. Order No.:** SPD 10-2006

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030

**Subject:** • 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 prop-

erty, 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—(503) 945-6398

## 411-020-0002

### Definitions

(1) "Abuse" means a range of actions or inactions, including abandonment, financial exploitation, neglect, physical abuse, emotional or verbal abuse, self-neglect, and sexual abuse.

(a) "Abandonment" means the desertion or intentional forsaking of an older adult or an adult with a disability for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm.

(b) "Emotional or verbal abuse" means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights.

(c) "Financial exploitation" means the illegal or improper use, by means including, but not limited to, deceit, coercion, fraud, or undue influence, of the resources (including medications) of an older adult or individual with a disability. This includes causing 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 will be carried out.

(d) "Neglect" means the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic necessary care or services when agreed to by legal, contractual, or otherwise assumed responsibility when such failure may lead to physical or emotional harm. This includes failure of a person who has fiduciary responsibility to assure the continuation of necessary care (for example, failure to pay for necessary care resulting in the withdrawal of services).

(e) "Physical abuse" means the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to:

(A) Such acts of violence as striking (with or without object), hitting, beating, punching, shoving, shaking, slapping, kicking, pinching, and burning;

(B) The intentionally inappropriate use of drugs or physical restraints;

(C) The intentional mis-administration of types or amounts of drugs in order to cause harm to the person receiving them; and

(D) The use of force-feeding or physical punishment.

(f) "Self-neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(g) "Sexual abuse" means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are considered non-consensual if a person does not make, or is incapable of making, an informed choice.

(2) "APS Risk Management" means the process by which APS continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(3) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(4) "At-risk" means there is reason to believe injury, hazard, damage or loss may occur.

(5) "Community Based Care Facility" means an Assisted Living Facility, Residential Care Facility, Adult Foster Home, or registered Room and Board Facility.

(6) "Conservatorship" means that a court has issued an order appointing and investing a person with the power and duty of managing the property of another person.

(7) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(8) "Disability" for the purposes of these rules means any physical or cognitive condition that significantly interferes with an adult's ability to protect his or her self from harm or neglect (See section 411-020-0015, Eligibility.).



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(9) "Elder abuse" means abuse as defined in OAR 411-021-0005, Alleged Elderly Abuse, of any adult aged 65 years of age or older. Abuse to adults 65 and over which does not fall within those administrative rules is considered Adult Protective Services.

(10) "Evidence" for the purpose of these rules means material gathered, examined or produced during the course of an APS investigation. This includes, but is not limited to, witness statements, documentation, photographs and relevant physical evidence.

(11) "Facility abuse" means abuse or neglect of care that occurs in facilities that are licensed (such as Residential Care Facilities, Assisted Living Facilities, Nursing Facilities, or Room and Board Facilities that are registered) when the reported perpetrator is the facility itself or is an employee or agent of the facility. Commercial adult foster homes, including those with limited licenses, are to be treated as facilities. Relative foster homes are to be treated as non-facility settings.

(12) "Guardianship" means a court has issued an order appointing and investing a person with the power and duty of managing the care, comfort or maintenance of an incapacitated adult.

(13) "Imminent danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(14) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(15) "Informed choice" means the person has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(16) "Law enforcement agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;
- (d) Any District Attorney; or
- (e) The Oregon Department of Justice.

(17) "Licensed care facility" means a facility licensed by the Department, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

(18) "Local office" means the local service staff of the Department or Area Agency on Aging.

(19) "Mandatory reporter" for the purpose of these rules means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If a person is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any person living in a nursing facility or an older adult in any setting has suffered abuse or neglect, he or she must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 and OAR chapter 411, division 021, (Elder Abuse) or ORS 441.615 to 441.695 and OAR 411-085-0005 and 411-085-0360 to 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the person, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any person living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

- (A) Physician, including any intern or resident;
- (B) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(C) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or a nursing facility or a person who contracts to provide services to a nursing facility.

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker; physical, speech, or occupational therapist;

(G) Senior center employee;

(H) Information and referral or outreach worker;

(I) Area Agency on Aging employee; and

(J) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident;

(K) For elder abuse, all of the above, excluding (J); and

(L) Firefighter; or

(M) Emergency Medical Technician.

(20) "Older adult," for the purpose of these rules, means any person 65 years of age or older.

(21) "Relevant" means tending to prove or disprove the allegation at hand.

(22) "Risk Assessment" means the process by which a person is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system and other relevant factors are also evaluated to determine their impact on the person's ability to become or remain safe.

(23) "Self-determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(24) "Serious risk of harm" means that without intervention the person is likely to incur substantial injury or loss.

(25) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(26) "Undue influence" means the process by which a person uses his or her role and power to exploit the trust, dependency, and fear of another person and to deceptively gain control over the decision making of the second person.

(27) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-020-0010

### Authority and Responsibility

The Department is granted statutory authority and responsibility to protect older adults and people who are blind or have a disability and are aged 18 years or older, from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

(a) ORS 410.020 authorizes the Department to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) OAR chapter 411, division 020 details the steps in the adult protective service process.

(2) Reported Abuse in Adult Foster Homes:

(a) ORS 443.767 requires the Department to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that could result in injury, abuse, or neglect of a resident and could place the resident's health or safety in imminent danger.

(b) OAR 411-050-0455 details the steps for filing, investigating and documenting complaints in Adult Foster Homes.

(3) Reported Abuse in Residential Care Facilities or Assisted Living Facilities:

(a) ORS 443.435 allows the Department access to a facility to determine whether it is maintained and operated in accordance with ORS 443.000-443.455 and 443.991(2) and the rules of the director.

(b) OAR 411-055-0230 details methods for conducting inspections and investigations in Residential Care Facilities.

(4) Reported Resident Abuse in Nursing Facilities:

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650-441.695 address the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating and documenting investigations in Nursing Facilities and the corrective action procedure for substantiated complaints.

(5) Reported Abuse in Room and Board Facilities:

(a) ORS 443.500 allows the Department access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances and regulations. If the Department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, it may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in Room and Board Facilities.

(6) Reported Elder Abuse:

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

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(b) OAR 411-021-0000 to 411-021-0025 details the procedures for reporting, investigating and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070 & 411.116  
Stats. Implemented: ORS 410.070 & 411.116  
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-020-0015

### Eligibility Criteria

(1) Adult protective services as defined in OAR 411-020-0040 are available for:

- (a) Adults aged 65 and older;
- (b) Adults aged 18 and older who have a disability as defined in these rules; and

(c) Anyone living in a nursing facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to people who are entitled to services from the Department under ORS 430.735-430.765 and OAR 410-009-0050 to 410-009-0160 should be referred for investigation by County Mental Health offices or the Office of Investigations and Training.

(3) Eligibility for protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070 & 411.116  
Stats. Implemented: ORS 410.070 & 411.116  
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0015 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-020-0020

### Reporting and Notification

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.650) to a Department designated local office or a local law enforcement agency.

(2) Reporting of instances involving abuse or neglect of older adults and adults with disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith will have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the person reporting the suspected abuse must be confidential and can be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

(4) When a community investigation has been completed, the complainant may be informed (verbally, unless notification in writing is requested) either that appropriate action is being taken, or that no abuse was found.

(5) When a facility investigation has been completed, notification of the complainant and other appropriate parties will be done according to procedures spelled out in the relevant facility licensing rules.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767  
Stats. Implemented: ORS 410.070 & 411.116  
Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-020-0030

### Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain persons and information obtained as a result of an adult protective service intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential and can be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names can be released without the consent of the person named except as provided in sub-section (4).

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings will be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, and all witnesses, and the protected health information of any party will remain confidential, unless release is specifically authorized by the affected person or otherwise dictated by judicial process.

(4) Where the Department deems it is appropriate, the names of the complainant, reported victim, witnesses and any investigative report may be made available to the following sources:

- (a) Any law enforcement agency;
- (b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the person who practices there;
- (c) The Long Term Care Ombudsman; or
- (d) Any governmental or private non-profit agency providing protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767  
Stats. Implemented: ORS 410.070 & 411.116  
Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06

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

**Adm. Order No.:** SPD 11-2006

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 411-021-0000, 411-021-0005, 411-021-0010, 411-021-0015, 411-021-0020, 411-021-0025

**Subject:** • 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—(503) 945-6398

## 411-021-0000

### Purpose

The purpose of these administrative rules is to:

(1) Implement ORS 124 for the prevention of abuse by gaining data on instances and circumstances of abuse, characteristics of the alleged abuser and of the abused so that appropriate intervention techniques can be developed to provide assistance before abuse occurs.

(2) Safeguard and enhance the welfare of elderly persons by:

- (a) Providing for the reporting of alleged abuse so an investigation can be done;
- (b) Providing policies and procedures for assisting the abused elderly person in the reported situation determined to be abusive;
- (c) Providing policies and procedures for continued assistance to the elderly person to prevent recurrence of the abuse;
- (d) Providing for cooperation between local and state programs to provide services to the elderly person in abuse situations.

(3) Gather data to determine the extent and types of abuse.

(4) Define the gaps in the state and local delivery systems as identified by the data and determine the resources needed to fill the gaps. (Refer to Statute)

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.055

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-021-0005

### Definitions Relating to Elderly Abuse

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or which appears to be at variance with the explanation given of the injury;

(b) Neglect which leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being. An elderly person who, in good faith, is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules;

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury.

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(e) Sexual abuse means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are considered non-consensual if a person does not make, or is incapable of making, an informed choice.

(f) Financial Exploitation which includes the illegal or improper use, by means including but not limited to deceit, coercion, fraud, or undue influence, of the resources (including medications) of an elderly person. This includes subjecting an elderly person to alarm by conveying a threat to wrongfully take or appropriate money or property, which would be expected to cause the elderly person to believe the threat will be carried out.

(2) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(3) "Division Field Office" means the local service staff of the Seniors and People with Disabilities Type B Area Agency on Aging, or a contracting agency.

(4) "Elderly Person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665 (the Nursing Facility Abuse Law).

(5) "Imminent Danger" means that there is reasonable cause to believe that the elderly person's life, physical well-being, or resources are in danger.

(6) "Law Enforcement Agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police; or
- (d) Any District Attorney.

(7) "Public or Private Official" means:

(a) Physician, Naturopathic Physician, Chiropractor or Podiatrist, including an Intern or Resident;

(b) Licensed Practical Nurse, Registered Nurse, Nurse's Aide, Home Health Aide or employee of an In-Home Health Service;

(c) Employee of the Oregon Department of Human Services, County Health Department or Community Mental Health Program;

(d) Peace Officer;

(e) Clergyman;

(f) Registered Social Worker;

(g) Physical Therapist or Occupational Therapist;

(h) Senior Center employee;

(i) Information and referral or outreach worker;

(j) Area Agency on Aging employee or a contracting agency; or

(k) Any public official who comes in contact with elderly persons in the performance of his or her official duties;

(l) Firefighter; or

(m) Emergency Medical Technician.

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.050

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-021-0010

### Mandatory Reporting

(1) Any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an elderly person has suffered abuse or a person has abused an elderly person must report or cause a report to be made to the Division field office or a local law enforcement agency. Anyone participating in good faith in the making of a report of elder abuse will have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(2) Each Division field office will establish an after hours reporting system. The alleged abuse complaint will be relayed to the Division field office by the next working day.

(3) Each Division field office will establish a procedure for receiving reports from the local law enforcement agency.

(4) The identity of the person making the report must be treated as confidential information by the person who receives it at the Department. All Department of Human Services' confidentiality rules, guidelines or provisions must apply to disclosure of the identity of said person. Such identity may only be disclosed with the consent of that person, by judicial process, or as required to perform the investigation by the Department or a law enforcement agency.

(5) The report to the Department must contain, if known, at least the following:

- (a) The name(s) and address(es) of the elderly person(s);
- (b) Any persons responsible for the care of the elderly person(s);

(c) The nature and extent of the alleged abuse (including any evidence of previous abuse);

(d) The explanation given for the alleged abuse;

(e) The identity of the alleged perpetrator, if known; and

(f) Any other information which the person making the report believes might be helpful in establishing the cause of the alleged abuse.

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.060, 124.065 & 124.075

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-021-0015

### Response

(1) Upon oral or written receipt of a report of alleged abuse, the Division field office/Type B AAA will record the information on a form designated by the Department.

(2) Upon receipt of a report, the Division field office/Type B AAA will investigate or cause an investigation to be commenced:

(a) At once, if the elderly person is in imminent danger;

(b) Before the end of the next working day if the elderly person is not thought to be in imminent danger.

(3) The Division field office/Type B AAA may contact the local law enforcement agency and report the complaint.

(4) The Division field office/Type B AAA will notify the law enforcement agency to initiate an investigation immediately when:

(a) The elderly person is in imminent danger;

(b) There is reason to believe a crime has been committed;

(c) Photographic evidence is needed;

(d) Access to the allegedly abused elderly person is denied. Law enforcement will provide assistance in gaining access when requested by SPD.

(5) The investigation will include, but not be limited to:

(a) A visit to the named elderly person;

(b) Consultation with individuals having knowledge of the facts of the particular case.

(6) In carrying out its investigative duties, the Department or the law enforcement agency may photograph, or cause to have photographed, any alleged victim for the purposes of preserving evidence of his or her condition observed at the time of the investigation. The photographs will be considered "records" and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.070 & 124.080

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SSD 6-1983(Temp), f. & ef. 9-1-83; SSD 9-1983, f. 10-5-83, ef. 10-15-83; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-021-0020

### Reporting Systems

(1) The Division field office/Type B AAA must prepare reports, in writing, when a complaint of alleged abuse is made; and

(2) The Division field office/Type B AAA must forward the reports to the Department; and

(3) The written reports shall be maintained at the Department state office.

(4) If the SPD unit/Type B AAA conducting the investigation finds reasonable cause to believe that abuse has occurred, it shall send a copy of the report to local law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.085

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SSD 6-1983(Temp), f. & ef. 9-1-83; SSD 9-1983, f. 10-5-83, ef. 10-15-83; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-021-0025

### Confidentiality

(1) During the investigation all reports must be treated as confidential information and will be disclosed only with the consent of the alleged victim or by judicial process.

(2) If no abuse is found upon completion of the investigation, only the finding of no abuse may be disclosed. The name of the complainant, witnesses and victims must remain confidential and will be disclosed only with the consent of that person or by judicial process.

(3) Completed abuse investigation reports regarding adult foster home providers must be disclosed upon request. The names of the complainants, victims and witnesses will remain confidential.

(4) The Department will make available the names of the public and private official who made the report, the names of the witnesses, and the alleged elderly victim to any law enforcement agency, to any public agency which licenses or certifies residential facilities or licenses or certifies the persons practicing therein, to any public agency providing protective services for the elderly person, and to the Long-Term Care Ombudsman, if

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requested. The Department will also make the information available to any private non-profit agency providing protective services for the elderly person. The private agency must have confidentiality policy meeting requirements of ORS 124.050 to 124.090.

Stat. Auth.: ORS 410.070, 411.116 & 411.300

Stats. Implemented: ORS 124.090

Hist.: SSD 6-1982, f. 5-12-82, ef. 7-1-82; SSD 6-1983(Temp), f. & ef. 9-1-83; SSD 9-1983, f. 10-5-83, ef. 10-15-83; SSD 2-1986, f. 1-31-86, ef. 2-1-86; SPD 11-2006, f. 3-23-06, cert. ef. 4-1-06

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**Rule Caption:** Amendments to fees, provider bonuses and copy service.

**Adm. Order No.:** SPD 12-2006

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 411-200-0010, 411-200-0020, 411-200-0030, 411-200-0040

**Subject:** Amends language to reflect when a claimant fails to attend a scheduled consultative exam, the Department will now only pay a \$90.00 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—(503) 945-6398

## 411-200-0010

### General Policy

(1) The Department of Human Services, herein called the Department, does not have the authority to reimburse vendors for the cost of goods and services if the Department has not authorized payment before the provision of goods and services. The Department must reject all charges without such prior authorization.

(2) Except as provided in subsection (3) and (4) of this rule and OAR 411-200-0030, the amount that the Department pays vendors for previously authorized medical or psychological services must be the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) The maximum fee prescribed by the Oregon Medical Fee and Relative Value Schedule, Oregon Administrative Rules chapter 436, division 009.

(3) With prior written approval by a Disability Determination Services (DDS) manager, the Department may exceed the fee prescribed by subsection (2) of this rule when financial or human considerations outweigh the difference in cost.

(4) The Department will reimburse the health professional a fee of \$90.00 for the preparation time invested prior to a DDS scheduled examination if the claimant does not appear within 15 minutes of the scheduled start time and, as a result, the examination cannot be performed. No fee will be paid if a physician is not required to be in attendance (e.g. blood work only, x-ray, etc.) or if the DDS cancels an appointment more than 24 hours in advance of the appointed time.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511 - 344.690

Hist.: SDSD 4-2002, f. & cert. ef. 6-12-02; SPD 13-2003, f. & cert. ef. 7-1-03; SPD 7-2004, f. 3-23-04 cert. ef. 3-24-04; SPD 19-2004, f. & cert. ef. 6-23-04; SPD 12-2005, f. & cert. ef. 9-26-05; SPD 12-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-200-0020

### Definitions

(1) "Brief narrative" means a document from a treating vendor that summarizes client treatment to date and current status; responds briefly to 3–5 specific questions posed by the Department, if any; and is usually one or two pages.

(2) "Complete narrative" means a document from a treating vendor that describes an extended client history, addresses six or more specific topics, and is usually three or more pages.

(3) "Contractor" means a vendor that has signed a contract with the Department to perform examinations and additional related services.

(4) "Department" means the Oregon Department of Human Services.

(5) "DDS" means the Disability Determination Services program within the Department, funded by and subject to the disability rating rules of the Social Security Administration.

(6) "Vendor" means an entity that provides goods or services at the Department's request.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - 344.690

Hist.: SDSD 4-2002, f. & cert. ef. 6-12-02; SPD 12-2005, f. & cert. ef. 9-26-05; SPD 12-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-200-0030

### Medical Evidence of Record (MER) and Narrative Charges

(1) The department will pay the lesser of the following for existing medical records:

(a) The lowest fee that the vendor charges the general public or other state agencies for the records; or

(b) When the invoice itemizes the number of pages provided:

(A) \$18.00 for ten or fewer pages;

(B) \$0.25 per page for pages 11 to 20;

(C) \$0.10 per page for pages greater than 21; and

(D) A total maximum payment of \$22.50.

(c) When the invoice does not itemize the number of pages copied and provided, a total maximum payment of \$18.00.

(2) Additional payment will not be made for second or subsequent requests when the information to be provided was available to the vendor when the original request was processed.

(3) Records held by a provider from multiple sources regardless of whether they are electronic, paper or both will be paid as a single record request.

(4) When the Department receives copies of existing medical records within 10 days from the date recorded on the Department's record request, the Department must pay the vendor an additional \$5.00. Time must be measured from the date of the Department's written request to the date that the Department electronically receipts the copies.

(5) When purchasing a brief narrative, the Department must pay the amount billed up to a maximum payment of \$35.00.

(6) When purchasing a complete narrative, the Department must pay the amount billed up to a maximum payment of \$75.00.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - 344.690

Hist.: SDSD 4-2002, f. & cert. ef. 6-12-02; SPD 12-2005, f. & cert. ef. 9-26-05; SPD 12-2006, f. 3-23-06, cert. ef. 4-1-06

## 411-200-0040

### Limitations of Payments

(1) A price agreement or contract with one part of the Department requires the contractor to provide the contracted services, at the contracted rate, to additional part(s) of, or all of the Department if additional part(s) or all of the Department so requests.

(2) The vendor must accept the fees prescribed by chapter 411, division 200 as payment in full. If a vendor's usual and customary fee for a service exceeds the fee prescribed by chapter 411, division 200, the client or his or her family may not be liable to the vendor for any portion of a vendor's usual and customary fee unless the client or his or her family agrees in writing to assume the additional charges. Without such explicit agreement, the vendor must accept the Department's payment, as payment in full.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - 344.690

Hist.: SDSD 4-2002, f. & cert. ef. 6-12-02; SPD 12-2005, f. & cert. ef. 9-26-05; SPD 12-2006, f. 3-23-06, cert. ef. 4-1-06

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**Rule Caption:** Amending rules for housekeeping purposes only.

**Adm. Order No.:** SPD 13-2006

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**Rules Amended:** 411-310-0010, 411-310-0020, 411-310-0030, 411-310-0040, 411-310-0050, 411-310-0060, 411-310-0070

**Subject:** 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—(503) 945-6398

## 411-310-0010

### Statement of Purpose

The purpose of these rules is to:

(1) Prescribe the operational procedures for the Developmental Disabilities Community Housing Program and the Community Housing Fund; and

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(2) Implement and describe the acquisition, construction, rehabilitation, maintenance, and disposal of Community Housing established under the authority of ORS 427.330 to 427.345.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0020

### Definitions

(1) "Adult" means an individual 18 years or older with a developmental disability.

(2) "Care and Custody" means minimum services (which may include mortgage, insurance, utilities, phone) and property protection for vacant homes in which the Department has a financial interest.

(3) "Care Provider" means an individual, family member or entity that provides care for an individual with a developmental disability.

(4) "Change Order" means requested additional work on an approved project, which may increase the cost of the project.

(5) "Child" means an individual with a developmental disability who is less than 18 years of age.

(6) "Community Housing" means real property, including but not limited to buildings, structures, improvements to real property and related equipment that is used or could be used to house and provide care for individuals with a developmental disability. "Community housing" includes a single-family home or multiple-unit residential housing that an individual with a developmental disability shares with other inhabitants, including but not limited to family members, Care Providers or friends. "Community housing" does not include the Eastern Oregon Training Center.

(7) "Community Housing Trust Account" means a dedicated account within the Developmental Disabilities Community Housing Fund which includes proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the Department and used as a state training center, of which 95% of the sale or transfer amount will remain in the account in perpetuity. Interest earned in the account and 5% of the sale or transfer proceeds may be used for community housing.

(8) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate Community Housing. "Construct" includes the installation of equipment and preparation of a site for Community Housing.

(9) "Contract Work Order" means a document identifying specific responsibilities of a contractor and the Department concerning necessary work on Community Housing occupied by individuals with developmental disabilities.

(10) "Contractor" means an individual or business that is registered with the Oregon Construction Contractors Board who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building or improvement attached to real estate or any part thereof. "Contractor" includes general contractors and specialty contractors as defined in OAR 812-002-0100.

(11) "Department" means the Department of Human Services, Seniors and People with Disabilities, unless otherwise noted.

(12) "Development Project" means construction of new Community Housing or major renovation of Community Housing, where individuals with developmental disabilities live or intend to live and receive services. Specific responsibilities are defined in a Facility Plan.

(13) "Developmental Disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological handicapping condition or severe physical impairment that requires training similar to that required by mentally retarded persons, and the disability:

- (a) Originates before the person attains the age of 22 years;
- (b) Has continued or can be expected to continue indefinitely; and
- (c) Constitutes a substantial handicap to the ability of the person to function in society.

(14) "Developmental Disabilities Community Housing Fund" means a fund with the State Treasury, separate and distinct from the General Fund, which receives appropriations to the Department to pay expenses incurred in carrying out the provisions of ORS 427.330 and 427.335. Interest earned accrues to the fund.

(15) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or could be used to provide care in Community Housing.

(16) "Facility Plan" means a detailed scope of work, including costs, submitted by a Contractor, Housing Provider or Care Provider to the Department for approval, on a form prescribed by the Department, for the construction or major remodel of Community Housing for an individual with developmental disabilities.

(17) "Family Member" means a person who is related by blood or marriage to an individual with a developmental disability.

(18) "Financial Assistance" means a grant or loan from the Department to pay expenses incurred in providing Community Housing.

(19) "Housing Authority" means a public corporation created and chartered by the governmental authority of a city or county to provide safe, decent, sanitary and affordable housing for persons or families of lower income residing within the geographical jurisdiction of the Housing Authority.

(20) "Housing Provider" means an individual or entity that provides Community Housing.

(21) "Individual" means a person with a developmental disability for whom services are planned or provided.

(22) "Minor Housing Project" means small construction projects (under \$10,000.00) performed in residences that are leased or owned by organizations, individuals, Care Providers or private parties where individuals with developmental disabilities reside and receive services or where services are planned.

(23) "Mortgage" means a conditional and time limited pledge of property to the Department in exchange for funds expended to build, renovate or adapt real property for use by individuals with developmental disabilities.

(24) "Owner" means the organization or person owning the residence where individuals with developmental disabilities live or plan to live and receive services. Owners may include but are not limited to family members, licensed service providers, foster providers or housing development organizations.

(25) "Region" means a group of counties organized to provide efficient delivery of various services to individuals with developmental disabilities.

(26) "Regulatory Agreement" means a restrictive covenant running with real property that specifies the intent to use that property for the benefit and enjoyment of individuals with developmental disabilities for a length of time according to terms stated in the agreement.

(27) "Scope of Work" means a detailed outline of work to be performed, including any necessary drawings, suitable for Contractor bidding, and including all information that might be required to obtain a building permit.

(28) "Specifications" means a detailed list of the type and quality of materials (which may include brand names and model numbers) and standards of work for bidding or performing construction activities.

(29) "Surplus Property" means personal property, real property, vehicles and equipment excess to the State's needs that can be used in the activity of providing Community Housing.

(30) "Trust Deed" means an instrument which transfers (conveys) legal title of a property to a trustee, for the benefit of the beneficiary or grantee named therein, to be held pending fulfillment of obligations secured by such instrument.

(31) "Trust Deed Note" means a promissory note secured by a Trust Deed.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0030

### Development Projects

(1) Eligible Projects. Eligible development projects will be approved by the Department and must meet one or more of the following criteria:

- (a) Be initiated by the Department to fulfill an identified housing need for individuals whose services are licensed and funded by the Department;
- (b) Be required by implementation of new services for individuals eligible for funding by the Department;
- (c) Be identified by the Department as necessary for the health and safety of a child or an adult with developmental disabilities whose services are funded by the Department;

(d) To provide housing adaptations as part of a plan to develop or change services for an individual(s) requiring an immediate change in living circumstances due to a change in Care Providers or service needs; or

(e) Be requested by an individual, family member, Care Provider, or Housing Provider to fulfill identified housing needs that are necessary for the health, welfare, and safety of an individual, or to enable an individual to function with greater independence in the home.

(2) Ownership of properties. Individuals, families, service providers, not-for-profit Housing Providers, for-profit corporations or partnerships, or government entities, including the Department may own properties.

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(3) Types of Development. Development projects will be developed in one of the following ways:

(a) The Department may procure services from qualified not-for-profit Housing Providers or Housing Authorities that have successfully responded to a Request for Proposals. These Housing Providers will manage Development Projects as described in contracts with the Department; or

(b) The Department may procure services from pre-qualified building or specialty Contractors licensed by the Construction Contractors Board or the Landscape Contractors Board (pursuant to ORS 279.039 through 279.045) for work under \$75,000. As outlined in (3)(b)(A) through (E) of this rule, the Department will establish a list of eligible Contractors every two years who desire to provide cost estimates for work. The procedures for establishing a list of eligible contractors will:

(A) Identify the means by which advertisement will be made;

(B) Identify qualifications and other data requested from interested Contractors on a form provided by the Department;

(C) Describe the criteria for qualifying Contractors;

(D) Describe the process for Contractor selection for designated work; and

(E) Identify contract terms including payment procedures; or

(c) The Department may procure services through the formal bidding process (pursuant to ORS Chapter 279) for work over \$75,000.

(4) Requirements for Development Projects. Development projects will meet the following requirements:

(a) Work will be authorized by approval of a Facility Plan that is submitted on a form approved by the Department. The Facility Plan will include: legal description and address of the project; Specifications; an itemized project budget; start, finish and occupancy dates; and evidence that the project is insured as required by the Department;

(b) Projects will comply with the provisions of ORS 279.348 through 279.365 when applicable;

(c) When property is owned by entities other than the Department, a Mortgage or Trust Deed granted by the owner in favor of the Department for the amount of the estimated cost of the completed project will be required to protect the financial interest of the State of Oregon. If property acquisition is part of the project, the purchase price of the property will be included in the encumbrance. Required documents will be recorded prior to beginning construction. Upon project completion, the amount of the encumbrance will be adjusted to reflect actual cost;

(d) The Department may also require that the owner of a residence which has been constructed or remodeled for individuals with developmental disabilities enter into a Regulatory Agreement recorded with the property specifying a period of time during which the property must be used as housing for individuals with developmental disabilities;

(e) Work will be completed according to the Facility Plan, including any change orders, approved by the Department on or before the completion date identified on the Facility Plan, unless changed by mutual agreement; and

(f) Final payment will be made when all final inspections have been successfully completed, an occupancy permit issued according to local regulations and ordinances (if applicable), and the project accepted as complete following a walk through by the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0040

### Minor Housing Projects

(1) Minor housing projects or equipment, costing less than \$10,000, may be requested by Care Providers, Housing Providers or initiated by the Department to address a housing need of individuals receiving services approved and funded by the Department.

(2) The Department may procure services from qualified not-for-profit Housing Providers that have successfully responded to a Request for Proposals. These Housing Providers will manage Minor Housing Projects as described in contracts with the Department.

(3) The Department may procure services from pre-qualified building or specialty Contractors (pursuant to ORS 279.039 through 279.045) licensed by the Construction Contractors Board or the Landscape Contractors Board as described in OAR 411-310-0030(3)(b).

(4) The Department may procure personal services from Care Providers, Housing Providers or Contractors directly through negotiation when the contract price, including Change Orders, is not more than \$5,000.

(5) Project Approval. Minor Housing Projects will be approved by the Department on the basis of a Contract Work Order that identifies the project address, approved Contractor, Scope of Work, Specifications, itemized

budget, completion date, person responsible for project inspection, and payment method.

(6) State's Financial Interest. When the total cost of equipment or a housing adaptation, including change orders, is greater than \$5,000, the Department may secure the interest of the State by appropriate means, including, but not limited to, Mortgages, Trust Deeds and promissory notes. Security agreements will be executed prior to the beginning of construction.

(7) The Department may expend funds for Minor Housing Projects or equipment through any legal payment mechanism. The Department will expend funds only on the basis of requests that include invoices for work, materials or equipment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0050

### Maintenance of Qualified Properties

(1) Qualification. The following projects qualify for funding of maintenance and repair:

(a) The Department may pay for maintenance and repair of qualified homes in order to preserve and maintain the benefit of housing assets in which the State has a financial interest. Qualified homes are residences that were constructed or retrofitted for individuals leaving Fairview Training Center as part of the Community Integration Project (CIP), in which individuals with developmental disabilities live and receive licensed services, and which were financed by State of Oregon General Obligation Bonds; and

(b) The Assistant Director of the Department, may designate other homes to be included in the maintenance and repair program if they meet all the following criteria:

(A) Significant expenditure of State funds;

(B) Specialized features for individuals with developmental disabilities; and

(C) State control of the property through State ownership or through security agreements for a minimum of 30 years.

(2) Property Management Contracts. The Department will enter into Property Management Contracts with not-for-profit Housing Providers or Housing Authorities owning properties that qualify for maintenance and repair funding for the purpose of managing the property.

(3) Property Management Procedures. Qualified homes will be managed according to procedures written and distributed by the Department to owners of the homes. The procedures will outline maintenance and repair, care and custody, and renovations of qualified homes. The procedures may be updated as necessary by the Department.

(4) The Department may procure services from pre-qualified building or specialty Contractors as described in OAR 411-310-0030(3)(b).

(5) The Department may procure personal services as described in OAR 411-310-0040(4).

(6) The Project will comply with the provisions of ORS 279.348 through 279.365 when applicable.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0060

### Developmental Disability Housing Fund

(1) Composition of the Fund. There will be a Developmental Disabilities Community Housing Fund established with the State Treasury. The Fund will be comprised of the following components:

(a) Housing development account;

(b) Property management account;

(c) Debt service account; and

(d) Community Housing Trust Account.

(2) With the exception of the Community Housing Trust Account, funds may be transferred from one account to another. Interest earned is retained within the Housing Fund as assigned to the account where it was earned.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-310-0070

### Surplus Property

(1) Surplus real property, personal property, or equipment owned or controlled by the Department may be sold or ownership transferred to individuals, Care Providers (including families), not-for-profit Housing Providers, or government entities for the purpose of increasing the quality

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and quantity of Community Housing for individuals with developmental disabilities. Methods of distribution include but are not limited to:

- (a) Fixed price real estate sale;
  - (b) Sealed bid sales;
  - (c) Transfer of ownership; or
  - (d) Public auction.
- (2) Conduct of auctions or sealed bid sales:

(a) The Department will advertise the date, time and location of public auction or sealed bid sales. Interested persons may inspect property offered for sale at the time and place specified in the public invitation to bid;

(b) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State; and

(c) All items will be sold to the highest bidder. All property will be offered "As is — Where is" with no warranty or other guarantee as to its condition or fitness for use. A purchaser or disappointed bidder will have no recourse against the State, the Department, or any of their respective officers, employees or agents. All sales will be final.

(3) Payment:

(a) Full payment must be made on the day of the sale for all purchases except vehicles or other titled equipment. For titled equipment, a ten-percent down payment is required on the day of the sale. The time limit for making full payment and the place where payment will be made will be specified in public invitation to bid;

(b) Payment by personal check for amounts of \$1,000 or less may be accepted, at the discretion of the Department, when presented with two (2) pieces of acceptable identification, one of which must be a "photo ID." Other acceptable identification may include major credit cards, a valid driver's license, or valid voter's registration card. The Department reserves the right, in its discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier's check or money order; and

(c) Payment by personal check for amounts exceeding \$1,000 may be accepted, at the absolute discretion of the Department, when presented with two (2) pieces of acceptable identification, one of which must be a "photo ID" together with a letter from the financial institution on which the check is drawn guaranteeing payment of the full amount of the check. The Department reserves the right, in its discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier's check or money order.

(4) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions will be cancelled and bid security forfeited;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions will be considered abandoned and ownership will default to the State, unless prior approval is obtained from the Department;

(c) Title to personal property sold will be transferred to the purchaser when full payment has been made; and

(d) Proceeds from the sale of surplus personal property will be deposited in the Community Housing Fund.

(5) Transfer of Ownership. The Department may transfer ownership of property or equipment to individuals, Care Providers (including families), not-for-profit Housing Providers, or government entities. Property or equipment acquired through this means will be used for the purpose of providing care, or maintaining a program that provides care or housing for individuals with developmental disabilities. The recipient may not sell the equipment for a period of six months following sale. The following information concerning the equipment will be supplied to the Department on a form approved by the Department:

- (a) The name of the person or organization acquiring the equipment;
- (b) A description of the equipment;
- (c) The location where it will be used; and
- (d) An estimate of the value of the equipment.

(6) The equipment will remain with the real property unless it was modified or designed for a specific individual's use, in which case it will move with the individual if his or her residence changes.

(7) The care provider will notify the Department if the equipment ceases to be used for the approved purpose. The Department may recover the property at its discretion.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 7-2003, f. & cert. ef. 4-1-03; SPD 13-2006, f. 4-4-06, cert. ef. 4-5-06

**Rule Caption:** Amending rules for housekeeping purposes only

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**Subject:** 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—(503) 945-6398

## 411-315-0010

### Statement of Purpose

Purpose. These rules prescribe standards, responsibilities and procedures for operation of the Developmental Disabilities Housing Trust Account. The Community Housing Trust Account provides grants to perform construction activities and provide equipment in homes where children or adults with developmental disabilities live that enhance their opportunities to achieve well-being through community living.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0020

### Definitions

(1) "Adult" means an individual 18 years or older with a developmental disability.

(2) "Care Provider" means an individual, family member or entity that provides care for a person or persons with a developmental disability.

(3) "Change Order" means requested additional work on an approved project, which may increase the cost.

(4) "Child" means an individual with a developmental disability who is less than 18 years of age.

(5) "Community Housing" means real property, including but not limited to buildings, structures, improvements to real property and related equipment that is used, or could be used, to house and provide care for individuals with mental retardation or other developmental disability. "Community Housing" includes a single-family home or multiple-unit residential housing that an individual with a developmental disability shares with other inhabitants, including but not limited to family members, care providers or friends. "Community Housing" does not include the Eastern Oregon Training Center.

(6) "Community Housing Trust Account" or "Trust Account" means an account within the Developmental Disabilities Community Housing Fund which includes proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the Department and used as a state training center, of which 95% of the sale or transfer amount will remain in the account in perpetuity. Interest earned in the account and 5% of the sale or transfer proceeds may be used for Community Housing.

(7) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes installation equipment and preparation of a site.

(8) "Contractor" means an individual or business that is registered with the Oregon Construction Contractors Board who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building or improvement attached to real estate or any part thereof. "Contractor" includes general contractors and specialty contractors as defined in OAR 812-002-0100.

(9) "Department" means the Department of Human Services, Seniors and People with Disabilities, unless otherwise noted.

(10) "Developmental Disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological handicapping condition or severe physical impairment that requires training similar to that required by mentally retarded persons, and the disability:

(a) Originates before the person attains the age of 22 years;

(b) Has continued or can be expected to continue indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society.

(11) "Developmental Disabilities Community Housing Fund" means a fund in the Oregon State Treasury, separate and distinct from the General Fund, in which funds are deposited and disbursed to the Department to pay

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expenses incurred in carrying out the provisions of ORS 427.330 and 427.335. Interest earned accrues to the fund.

(12) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or could be used to provide care in Community Housing.

(13) "Family Member" means a person who is related by blood, marriage, or legal adoption to an individual with a developmental disability; or is in a domestic relationship where partners share:

(a) A residence;

(b) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses);

(c) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(14) "Financial Assistance" means a grant or loan to pay expenses incurred to provide Community Housing.

(15) "Grievance" means a formal or informal complaint from an individual or care provider regarding the disposition of a funding request for a Trust Fund Account project.

(16) "Grievance Officer" means an employee of the Department appointed by the Assistant Director of Seniors and People with Disabilities that hears a formal Grievance and makes a recommendation for determination to the Assistant Director of Seniors and People with Disabilities.

(17) "Housing Provider" means an individual or entity that provides Community Housing.

(18) "Individual" means a person with developmental disabilities for whom services are planned or provided.

(19) "Mortgage" means a conditional and time limited pledge of property to the Department in exchange for funds expended to build, renovate or adapt real property for use by individuals with developmental disabilities.

(20) "Owner" means the organization or person owning the residence where individuals with developmental disabilities live or plan to live and receive services. Owners may include, but are not limited to: families, licensed service providers, foster providers or housing development organizations.

(21) "Region" means a group of counties organized to provide efficient delivery of various services to individuals with developmental disabilities.

(22) "Scope of Work" means a detailed outline of work to be performed, including any necessary drawings suitable for contractor bidding, and including all information that might be required for obtaining a building permit.

(23) "Specifications" means a detailed list of the type and quality of materials (which may include brand names and model numbers) and standards of work necessary for bidding or performing work.

(24) "Support Plan" means a written document describing the assistance individuals require to maintain or increase independence and achieve well-being through community living.

(25) "Trust Deed" means an instrument which transfers (conveys) legal title of a property to a trustee, for the benefit of the beneficiary or grantee named therein, to be held pending fulfillment of obligations secured by such instrument.

(26) "Trust Deed Note" means a promissory note secured by a Trust Deed.

(27) "Trust Advisory Committee" means an advisory committee consisting of individuals, family members, advocates, Care Providers, case managers and Housing Providers that make recommendations to the Department about policy and procedures concerning the operation of the Community Housing Trust Account.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0030

### Eligible Recipients, Residences and Projects

(1) Non-discrimination. All eligible individuals will have access to resources governed by this rule, within available resources. Access to service will not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) Eligible recipient. An Oregon resident, child or adult, with a developmental disability, eligible for services prescribed by ORS 430.610 or a not-for-profit Housing Provider under conditions described in OAR 411-315-0050(3) are eligible recipients.

(3) Eligible residence. Any primary residence that is not a licensed site for services, where an individual with a developmental disability

resides or intends to reside is eligible as a location for funding. The residence may be owned by the individual with a developmental disability, family member, Care Provider, a corporation, government entity, partnership or private party.

(4) Eligible housing adaptations and equipment. Dwelling adaptations and equipment eligible for funding must meet the following criteria:

(a) Be necessary to ensure the health, welfare, and safety of the individual in the home or enable the individual to function with greater independence in the home;

(b) Be identified in a Support Plan; and

(c) Be a cost-effective solution to the support needs the adaptation is intended to address as determined by the Department.

(5) Determination of cost effectiveness will consider the wishes of the individual and Care Provider and be based on:

(a) Cost evaluation of alternative ways to accomplish the requested housing support;

(b) Commonly accepted standards of residential construction;

(c) Current cost data formatted according to the Construction Specifications Institute; and

(d) Average cost of commercially manufactured equipment and specialty products.

(6) Application may be made to the Community Housing Trust Account for adaptations that are contingent on securing other funds for a project. Approval of these projects will include a final date for project completion and disbursement of funds. If funds are not disbursed by the agreed upon date, and arrangements for an extension have not been made, the approval will be withdrawn. Approval and disbursement of funds will be subject to the same rules and conditions as other projects.

(7) Funds from the Housing Trust Account may not be used for rental assistance, routine maintenance and repair, or to make adaptations or improvements to the home that are not consistent with the authorized purposes of the program.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0050

### Allocation of Funds

(1) The Department will determine the amount of money to be allocated for Trust Account projects annually based on recommendations by the Trust Advisory Committee.

(a) The allocation will be designated by region in consideration of:

(A) The number of adults and children with developmental disabilities in each region; and

(B) Priorities for funding established by the Department in consultation with the Trust Advisory Committee.

(b) All county Developmental Disabilities offices and Regional offices will be notified of the funds available annually.

(2) The Department will reallocate funds unencumbered or unspent by regions annually on July 1. Allocation amounts and remaining funds will be published on the Department's web site and will be updated quarterly.

(3) Based on recommendation of the Trust Advisory Council, the Department may designate a portion of the Community Housing Trust Account allocation that was not encumbered or disbursed in the previous fiscal year to fund grants to not-for-profit Housing Providers for predevelopment activities for larger projects. Allocation of these funds will be statewide, and publicized on the Department's web site. Proposals must be consistent with the mission of the program and may be used for the following activities:

(a) Architectural design;

(b) Environmental studies;

(c) Appraisals;

(d) Federal or State application fees;

(e) Securing property; or

(f) Other development costs approved by the Department.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0060

### Application/Award/Disbursement Procedures

(1) Notification. The Department will write and publish procedures for making application for funding from the Housing Trust Account.

(a) Procedures will include:

(A) A description of the program and eligibility;

(B) The application form and instructions for completion;

(C) Proposal evaluation criteria; and



# ADMINISTRATIVE RULES

(D) A description of the grievance procedure.

(b) The Department will make effort to achieve a broad distribution of the program description, procedures, and application, including making it available to traditionally under-served and underrepresented populations.

(2) Application. Application for funding of a housing adaptation must be submitted on a form prescribed and distributed by the Department. Final applications to be considered for funding must be complete. If the project is in a home not owned by a Care Provider or by the individual for whom the adaptation is intended, the application must also include written permission by the owner of the property to make the adaptation. If an applicant is not able to provide all the information required on the application form, he or she may request technical assistance.

(3) Technical Assistance. Applicants may request assistance in completing any of the required information on the application by checking an appropriate box on the form. Applicants requesting technical assistance must describe the support needs requiring a housing modification or equipment and any solutions considered.

(a) Within the parameters of their workload, Department staff will provide technical assistance to individuals and Care Providers for:

- (A) Exploring possible solutions to housing problems;
- (B) Providing information about building products and practices;
- (C) Defining Scopes of Work for projects;
- (D) Writing Specifications; and
- (E) Completing applications.

(b) The Department may also arrange for technical assistance by architects, contractors or other experts in the construction and remodel of residences for individuals with developmental disabilities. Funding of technical assistance is an approved use of Trust Account resources.

(4) Determination. Completed applications for funding will be accepted and reviewed by an employee designated by the Assistant Director of the Department. Completed applications will be reviewed in the order they are received and applicants notified of the determination. Applications reviewed by the Department will receive the following determination:

- (a) Awarded subject to conditions outlined in the award letter;
- (b) Returned to the applicant with a request for additional information;
- (c) Deferred for consideration in the next quarter; or
- (d) Denied for reason(s) described in the notification.

(5) Award. Grants from the Community Housing Trust Account will be awarded in consideration of factors identified in OAR 411-315-0030(5), as well as consideration of:

- (a) The amount of funds requested in relation to the number of pending requests; and
- (b) Consideration of the most effective overall use of resources available.

(6) Availability of Funds. Applications reviewed and found acceptable will be awarded subject to the availability of funds.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0070

### Project Monitoring and Disbursement of Funds

(1) Housing adaptation must be performed by a Contractor that is licensed by the Oregon Construction Contractors Board. The Department will verify the license status of Contractors selected. Work must conform to all applicable statutes and building codes.

(2) The Department will identify the entity or person responsible to inspect the work and the method of payment in the award letter. When recorded security documents are required, the Department will identify the entity or person responsible to record those documents in the award letter.

(3) The person or entity to which the award has been made will notify the Department when authorized and funded work has been completed or approved equipment purchased and installed. The Department or its designee will inspect the work and determine if the work is satisfactory. Final payment will be made only for fully completed work accepted by the Department.

(4) The Department may make interim payments for housing projects based on:

- (a) Receipts for materials purchased for the project; or
- (b) Percent of work completed as verified by the Department.

(5) The Department may expend grant funds for minor home adaptations or equipment through any legal payment mechanism. Funds will be expended only on the basis of requests that include invoices for work, materials or equipment.

(6) Record Keeping. The Department will maintain records of available funds and all approved expenditures. Records will be updated quarterly. Current balances will be made available to each region.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0080

### Trust Advisory Committee

(1) Membership and Term. A Trust Advisory Committee will be formed consisting of not less than 8 members including at least one individual, family member, advocate for individuals with developmental disabilities, service broker, case manager, Department staff, and not-for-profit Housing Provider. The Assistant Director of the Department or his or her designee will appoint members. Members will be appointed for a four-year term, and may be re-appointed one time. The Assistant Director or his or her designee will appoint interim vacancies. A Department employee will serve as staff for the Trust Advisory Committee and will convene the meetings. The Department will provide clerical support to the Trust Advisory Committee.

(2) Meeting Schedule. The Trust Advisory Committee will meet not less than two times each year.

(3) Responsibilities. The Trust Advisory Committee will annually:

- (a) Recommend to the Department, a formula for distribution of available resources;
- (b) Recommend to the Department, allocation of funds by Region;
- (c) Recommend to the Department, the minimum and maximum amount of grant awards;
- (d) Conduct a review and evaluation of procedures and allocation of funds; and
- (e) Make policy recommendations concerning the operation of the program and funding priorities.

(4) Trust Advisory Committee members may hear informal Grievances upon request.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

## 411-315-0090

### Grievance Procedures

A decision not to fund an application to the Housing Trust Account may be grieved according to these grievance procedures.

(1) The applicant will be notified in writing of his or her grievance rights and procedure at the time of notification regarding funding. Individuals, Care Providers, or their legal representatives may file a Grievance concerning the determination that resulted in a denial of funding. Grievance procedures will be published in the procedure manual.

(2) Informal Procedures. An attempt to resolve a Grievance through informal procedures must be the first step in seeking resolution. The grievant may select one of the following methods:

- (a) Meet with a Department staff member;
- (b) Meet with a member or sub-committee of the Trust Advisory Committee; or
- (c) Meet with a designee of the Assistant Director of the Department.

(3) Informal procedures will result in a decision on the Grievance no later than 30 days from the date the Grievance is filed. The 30-day time period may be extended by mutual decision of the grievant and the Department. The grievant will receive written notice of the Grievance decision or outcome within 5 working days of the informal meeting selected in section (2) of this rule.

(4) If the result of the informal procedure is not acceptable to the grievant, a request for formal review may be made to the Assistant Director of the Department. The Assistant Director will appoint a Grievance Officer to conduct a formal review.

(5) The Grievance Officer will afford individuals the following rights:

- (a) The opportunity to review documents and other evidence relied upon in reaching the decision being grieved;

- (b) The opportunity to be heard in person and to be represented; and
- (c) The opportunity to present witnesses or documents to support their position and to question witnesses presented by other parties.

(6) Within 15 days after the conclusion of the hearing described in section (5)(b) and (c) of this rule, the Grievance Officer will provide written recommendations to the Assistant Director of the Department. The Assistant Director will make a decision and send written notification of the recommendations to all participants within 15 days of the receipt of the recommendations. The decision of the Assistant Director will be final.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.330 - 427.345

Hist. SPD 8-2003, f. & cert. ef. 4-1-03; SPD 14-2006, f. 4-4-06, cert. ef. 4-5-06

# ADMINISTRATIVE RULES

## Department of Oregon State Police Chapter 257

**Rule Caption:** To clarify policy and purpose of the Oregon State Police regarding towing needs of the Department for the non-preference tow program.

**Adm. Order No.:** OSP 1-2006

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 3-31-06

**Notice Publication Date:** 3-1-06

**Rules Adopted:** 257-050-0095, 257-050-0155, 257-050-0180

**Rules Amended:** 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

**Subject:** Adopt:

OAR 257-050-0095 - Letter of Appointment

257-050-0155 - Suspension or Revocation (for violation or crime)

257-050-0180 - Judicial Review

Amend:

OAR 257-050-0050(3, 9, 19, 24, 27): clarifying rules

257-050-0070(1-j, 3, 5): housekeeping

257-050-0090: clarifying rules

257-050-0100(1-4, 7, 9, 11): clarifying rules

257-050-0110: clarifying rules

257-050-0125(1-2a/b, 6): housekeeping

257-050-0140(4a): housekeeping

257-050-0145: housekeeping

257-050-0150(6): housekeeping

257-050-0157(1-d, 2): clarifying rules

257-050-0170(1, 2, 4, 5, 7): clarifying rules

257-050-0200(1): clarifying rules

**Rules Coordinator:** Audrey Shipman—(503) 378-3725, ext. 4206

### 257-050-0050

#### Definitions

(1) “Abandoned Auto” or “Abandoned Vehicle” — A vehicle that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) “Area Commander” or “Station Commander” — The local commanding officer of an area established by the Oregon State Police.

(3) “Tow business” — Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(4) “Business Records” — Those records maintained by the tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(5) “Certified” or “Certification” — The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(6) “Convicted” — An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7) “Denial” — Action taken by the Department in refusing to issue a letter of appointment to an applicant tow business.

(8) “Department” — The Department of State Police, also referred to as “Oregon State Police,” and its employees.

(9) “Employee” — Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(10) “Fencing” — Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(11) “Hazardous Vehicle” — the meaning as given in the Oregon State Highway Division Administrative Rule OAR 734-020-0147.

(12) “Hearings Officer” — A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(13) “Highway” — Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(14) “Inspector” — A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and tow businesses.

(15) “Letter of Appointment” — A letter issued by the Department that authorizes a licensed tow business to tow on a rotational or contractual basis for the Oregon State Police.

(16) “Non-Preference tow rotational List” or “Non-Preference List” — The list of authorized tow businesses maintained at Oregon State Police Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(17) “On Road Time” — The time it takes a tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(18) “Patrol Services Division” — The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

(19) “Place of Business” — A building that the registered tow business occupies, either continuously or at regular times, where tow business books and records are kept and tow business is transacted in each assigned tow zone. Separate businesses operating on the same business lot shall maintain individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department’s non-preference tow rotational list. “Qualified Tow Business” is a tow business with a current letter of appointment issued by the Department.

(20) “Region Commander” or “District Commander” — The commanding officer of the region as established by the Oregon State Police.

(21) “Recovery Vehicle” — A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and towline.

(22) “Response Time” — The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(23) “Revocation” and “revoked” — The withdrawal of a letter of appointment and the removal from the Oregon State Police’s non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(24) “Suspension” and “suspend” — The removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(25) “Tow Vehicle” — A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(26) “Tow Zone” — The geographical area designated by the area commander for the removal of vehicles.

(27) “Vehicle Storage Area” — The approved yard or enclosed building where towed vehicles are kept.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

### 257-050-0070

#### Application Requirements

(1) Application for placement on the non-preference tow rotational list shall be made on the forms furnished by the Department and shall be accompanied by an inspection report. The inspection report shall be furnished by the Department, and shall be completed by the applicant or the applicants authorized agent or representative. The application form shall establish or provide all of the following:

(a) The applicant has an established place of business at the address shown.

# ADMINISTRATIVE RULES

(b) The applicant's place of business has an office area that is accessible to the public without entering the storage area and that the storage area complies with these Administrative Rules and all local zoning rules and regulations.

(c) Each tow business is licensed as a separate legal entity with a separate place of business and a separate storage area. Only one tow business may be operated at any one place of business.

(d) The applicant or the applicant's agent has inspected and certifies, under penalty of perjury, suspension, revocation and/or criminal prosecution that all of the information supplied in the application form and inspection form is true and accurate and that the applicant's place of business and all tow truck equipment meet the minimum requirements established by these Administrative Rules.

(e) The applicant has proof of the following current, minimum insurance coverage (Proof of required current insurance coverage shall be submitted with applications and inspection forms.).

(A) \$750,000, or the minimum required by the Federal Motor Carrier Regulations, or the Oregon Department of Transportation (ODOT), which ever is greater when towing under authority of Federal Motor Carrier Regulations or ODOT, for liability, for bodily injury or property damage per occurrence;

(B) Garage keeper's legal liability (for care, custody and control) per occurrence in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$150,000;

(iii) Class C — \$200,000;

(iv) Class D (Note: Class "D" equipment is not considered to be recovery tow vehicles):

(I) Class D-A or Other Equipment under this classification — \$50,000;

(II) Class D-B or Other Equipment under this classification — \$75,000;

(III) Class D-C or Other Equipment under this classification — \$200,000.

(C) Insurance to protect against vehicle damage including, but not limited to fire and theft, from the time a vehicle comes into custody and control of the tow business and is hooked onto, throughout the recovery, and until that vehicle is reclaimed or sold.

(D) Insurance for cargo transported in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$100,000;

(iii) Class C — \$200,000;

(iv) Class D-A — or Other Equipment under this classification — \$50,000;

(v) Class D-B — or Other Equipment under this classification — \$100,000;

(vi) Class D-C — or Other Equipment under this classification — \$200,000.

(f) Nothing in this section will relieve a person from maintaining insurance in the amounts and providing coverage of the type for motor carriers in ORS Chapter 825 if the amounts exceed, or coverage is different from, that required by this section.

(g) A certificate of insurance from the insurance carrier to the Department that includes the type and amounts of coverage and provides for notification of cancellation of the tow business's insurance is mandatory.

(h) The information for the letter of appointment may be included in the inspection form that is completed by the applicant or the applicants authorized agent or representative.

(i) The applicant business owner has a minimum of three (3) years of documented experience in the towing industry, either as a business owner and/or tow vehicle driver for a tow business.

(j) The applicant has a dedicated recovery vehicle assigned to the tow zone applied for and capable of handling the classifications of tows requested in the application. A tow business may list a class B recovery vehicle to cover both class A and class B tows and a tow business may list a class C recovery vehicle to cover both class B and/or class A tows. If a larger recovery vehicle is listed by a tow business, that vehicle may only be listed for one tow zone for the smaller recovery tow classes it is used for, even if the larger tow vehicle tow zone overlaps with the other tow classification zones. Recovery Tow vehicles may only be listed for one tow zone. All tow vehicles approved must comply with these Administrative Rules for the classification of tow applied for. Only equipment approved through the letter of appointment to be used for the non-preference tow program for a specific tow zone can be used in that tow zone.

**NOTE:** A written waiver may be granted by the Oregon State Police based on local

non-preference towing operational needs.

(k) The names of all business drivers authorized to drive in the tow zone for which the tow business applied, and all business employees who will have contact with the towed/assisted vehicle(s) and/or the driver/owner of the towed/assisted vehicle(s) or other representative(s) of the towed/assisted vehicle(s) owner(s). The use of non-listed and/or unreported drivers shall not be permitted.

(2) Within 30 days of the receipt of a request for an application for a letter of appointment, the Patrol Services Division of the Oregon State Police shall send an application packet, and include a current copy of these Administrative Rules and all forms related to the self certification, inspection and certification of equipment, and other related information required by these Administrative Rules.

(3) The address the applicant lists on its application shall be the place of business where the tow business keeps business records. The application also shall list all locations of vehicle storage areas and places for redemption of vehicles. If there is a change in address of the tow business, the applicant immediately will notify the Patrol Services Division, and in no event will notification take longer than ten (10) days.

(4) All tow trucks shall display the tow business's name, city, and telephone number. This information shall be painted or permanently affixed to both sides of the vehicle and the lettering shall be at least 2 inches in height with 1/2 inch stroke and in a color that is in contrast with the tow truck's color.

(5) Any applicant in violation of this Administrative Rule may be denied a letter of appointment and shall be notified of the denial in writing. The Department may also deny a renewal application for any tow business with an existing letter of appointment that is in violation of this Administrative Rule and may have its existing letter of appointment immediately suspended, prior to any hearing and shall be notified of the suspension in writing. A suspension under this rule will be in effect until the violation is corrected and inspected. Other sanctions, up to revocation and/or criminal prosecution, may be applied to a qualified tow business upon finding by the Department that the qualified tow business is in violation of this Administrative Rule.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0090

### Inspections

The applicant shall self-certify on its application under penalty of False Swearing related to Regulation of Vehicles related to Businesses (ORS 822.605), penalty of Perjury (ORS 162.065), suspension or revocation from the non-preference tow rotational list that its tow business, employees and vehicles meet the minimum requirements as set forth in these Administrative Rules. This self-certification shall verify that the applicant's request for a letter of appointment complies with all applicable local laws and regulations as prescribed for the geographical area where the tow business will be established. If local zoning regulations are applicable, the applicant must include with the application a copy of the certification of approval from the local planning department, zoning commission or other authorized unit of local government, to the Department. A zoning certification will become part of the permanent record maintained on each approved tow business by the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0095

### Letter of Appointment

The letter of appointment shall be completed by the Department establishing that the applicant has met the requirements for a letter of appointment. The designated tow zone(s), class of tow vehicle(s), specific vehicles authorized to operate in each zone, and any waivers will be listed in the letter.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0100

### Issuance of Letter of Appointment

(1) No tow business shall be called upon to perform a non-preference towing service at the request of the Department unless such tow business has a valid letter of appointment from the Department, as described herein.

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A letter of appointment will not be issued by the Department unless the Department is satisfied that all qualifications set out in these Administrative Rules either have been met by the applicant or that a waiver of one or more qualifications has been granted by the Department.

(2) A letter of appointment will be valid only in the zone or zones assigned by the area commander and will identify specific vehicles authorized to operate in each zone. Applications for additional letters of appointment in other zones must be based on a complete and separate place of business capable of independent operation within the additional zone.

(3) A tow business may petition the Department for a waiver of a non-safety related requirement. The waiver shall be sent to the area commander who may make a recommendation regarding the waiver as an operational need. The Department may grant a waiver if, it finds that the towing services available to the Department are inadequate in the area to meet the needs of the public.

(4) In the event a qualified tow business that meets all requirements and qualifications receives a letter of appointment in the same zone as the tow business that has been granted a waiver, the tow business currently operating under a waiver, upon notification, will be advised that it has up to 30 days to come into compliance with these rules before removal from the affected non-preference tow zone. If that tow business fails to come into compliance within the time specified by the Department, it may have its letter of appointment suspended or revoked by the Department and will not be called for Department initiated tows.

(5) Every letter of appointment shall be issued in the name of the applicant and the holder thereof shall not allow any other person to use the letter of appointment.

(6) The letter of appointment will be valid only for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment shall be valid for one (1) year unless suspended or revoked by the Department.

(8) Each separate place of business will have a letter of appointment.

(9) Before a letter of appointment can be issued by the Department the applicant must have a tow vehicle meeting the minimum standards set forth in these Administrative Rules OAR 257-050-0020 to 257-050-0200.

(10) The letter of appointment shall state the zone the tow business is authorized to operate in. The zones will be determined by the area commander.

(11) All qualified tow businesses shall agree to tow abandoned vehicles in accordance with Chapter 819 of the Oregon Revised Statutes.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0110

### Suspension, Revocation and Voluntary Relinquishment of Letter of Appointment

(1) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with any requirement or provision of these Administrative Rules or that the tow business or applicant has falsified any documentation or certification related to these Administrative Rules, the Department shall suspend or revoke the letter of appointment. The Department may suspend or revoke the letter of appointment at any time once the tow business has been given notice in accordance with these Administrative Rules. A tow business whose letter of appointment has been suspended or revoked may request an administrative hearing as outlined in these Administrative Rules.

(2) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with the requirements of these Administrative Rules, the tow business's letter of appointment shall be suspended or revoked by the Department.

(3) The qualified tow business may voluntarily relinquish his/her appointment. The Department will be advised in writing of this voluntary relinquishment. After receiving written notice the Department will cause an inspector to obtain the original letter of appointment and forward the same to the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0125

### Reinspection/Certification

(1) Self Certification/re-inspections will be conducted at least once a year by all qualified tow businesses. Unscheduled inspections of the tow business may be conducted without notice by any Oregon State Police inspector to determine the fitness of tow trucks, facilities, and business records. These inspections shall be done during business hours.

(2)(a) In the event of missing or defective tow truck equipment that is not safety related, but that was required for initial approval, the Oregon State Police shall advise the tow business of the defect. If the tow business fails or refuses to repair the defect within 15 days of the notice, the defective truck will be suspended from the non-preference list for the duration of the letter of appointment without renewal, until after the last day of authorization of the letter of appointment and the defect is repaired.

(b) In the event of a violation of these Administrative Rules by a tow business relating to the tow business's facilities, records or other conditions required for initial approval, the Oregon State Police shall advise the tow business of the violation. If the tow business fails or refuses to fix the violation within 15 days of the notice, the tow business's letter of appointment will be suspended for its duration without renewal until after the last day of authorization of the letter of appointment and the violation is fixed.

(c) A tow business may avoid suspension under this section by voluntarily removing the involved tow or recovery vehicle from the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon 97310, advising the Oregon State Police of the tow business's voluntary removal of the vehicle from service on non-preference calls for the Oregon State Police. This voluntary removal of defective equipment letter shall be received by the Oregon State Police, Patrol Services Division no later than 15 days after the initial notification of the defect.

(3)(a) In the event of a safety related violation which renders the tow truck a safety hazard upon a public highway, the tow truck shall be immediately suspended. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow truck shall be reinstated on the tow business's letter of appointment. If the defect is not corrected and reinspected within 30 days, the suspension will continue without reinstatement until after the last day of the authorization of the letter of appointment and the defect is repaired and reinspected.

(b) In the event of a safety related violation which renders a tow business's facilities unsafe, the tow business shall immediately be suspended for the duration of the letter of appointment from the Department's non-preference tow rotational list, without renewal until after the last day of the authorization of the letter of appointment and the defect is repaired. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow business's letter of appointment shall be reinstated.

(c) A tow business may avoid immediate suspension under this section by voluntarily removing the tow or recovery vehicle from the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon, 97310, advising of the tow business's voluntary removal of the vehicle from service or the business on non-preference calls for the Oregon State Police. This voluntary removal safety hazard letter shall be received by the Oregon State Police, Patrol Services Division no later than 30 days after the initial notification of the defect.

(4) Upon repair or correction of a defect of a voluntarily removed tow truck or a defect related to a tow business, an Oregon State Police inspector, upon written request from the affected tow business, shall reinspect the equipment/facility which was found to be defective or missing. If the defects have been satisfactorily corrected, the inspector shall reinstate the tow truck to the non-preference list and/or shall reinstate a tow business's letter of appointment. In the event an Oregon State Police inspector is not readily available to reinspect, another officer appointed by the inspector's supervisor may reinspect and re-instate the tow truck/tow business. The reinspection shall be completed as soon as possible after a written request from the tow business has been received by the Patrol Services Division, advising that the defect has been repaired. In no event shall a reinspection take longer than ten (10) business days after the written request for inspection has been received by the Patrol Services Division.

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(5) Upon revocation, suspension, expiration or voluntary relinquishment of a letter of appointment, a tow business's right to conduct towing services at the request of the Department is terminated, unless the call for service is a preference tow made by the owner and/or driver of a vehicle.

(6) Upon sale or transfer by the tow business of a truck approved for use on the non-preference tow list, the tow business shall advise the department so that the truck may be removed from the non-preference list. This notification must be made immediately and in no event may exceed ten (10) days after the sale or transfer.

(7) Upon the purchase or acquisition of any additional tow truck(s) to be used pursuant to this rule, the tow business shall immediately notify the Department. The tow business shall make a self-certified inspection of the new unit and submit this inspection to the Department, prior to the tow truck being used for non-preference towing.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0140

### Place of Business Requirement and Business Hours

A tow business's hours for the purpose of inspection of business records and towing equipment shall be 8AM-5PM, excluding weekends and holidays:

(1) When a tow business is not open and does not have personnel present at the place of business, the tow business shall post a clearly visible telephone number at the place of business for the purpose of public contact for the release of vehicles or personal property.

(2) The tow business shall maintain personnel who can be contacted 24 hours a day to release impounded vehicles within a 30-minute period of time.

(3) The tow business must post and maintain its letter of appointment at its place of business.

(4)(a) Dispatch service. The tow business shall provide dispatch services 24 hours a day, 365 days a year. Each tow vehicle used shall be equipped with a two-way radio (not a citizen's band radio) or cellular phone capable of direct communications with the tow business's dispatch center. Equipment provided shall be subject to approval of the Oregon State Police. Equipment shall be maintained in proper working condition at all times.

(b) Failure to respond to a call:

(A) Refusal or failure of the tow business to respond to calls from the Department for towing services may result in the suspension or revocation of the tow business's letter of appointment;

(B) The tow business shall advise the appropriate Oregon State Police Dispatch Center when the tow business is temporarily unavailable to respond to non-preference tow calls. Unavailability may occur due to conditions which include, but are not limited to, a disabled tow truck or a tow truck under repair, or unforeseen driver shortage due to illness or vacation. The tow business shall advise the Oregon State Police Dispatch Center once the business is available to resume its normal operation;

(C) Regardless of the unavailability of any tow business, the non-preference list rotation shall continue as if the business was available.

(5) Service call response time. Response times are mandatory. Class A and D-A tow trucks shall be on the road within fifteen minutes. Class B, C, D-B and D-C tow trucks shall be on the road within thirty minutes. At the time of the dispatch, all classes of tow trucks shall provide an estimated time of arrival at the scene. The station commander may waive this requirement due to inclement weather or unusual circumstances that might exist.

(6) For abandoned vehicles not deemed to be a hazard, tow requests will be made during business hours, defined as 8 A.M. to 5 P.M., seven (7) days a week, including holidays. Requested tow businesses may tow abandoned vehicles at the business's convenience during business hours on the date of the tow request. Once a vehicle is removed from the roadway and in possession of the tow business, the business shall notify the requesting Oregon State Police Office Dispatch Center as soon as possible on the date of the tow request of its possession of the abandoned vehicle. Notification of possession of the abandoned vehicle should be made immediately by the requested tow business. In no case will notification to the Oregon State Police be made more than two hours after the abandoned vehicle comes into the possession of the responding tow business.

(7) At the time a response is requested, the Department will provide the location, make, model, year of car license plate and estimated gross vehicle weight (if necessary) to the tow business. Also, the Department will inform the tow business about any condition or circumstances that may require special handling or assistance. The tow business shall transmit the information to the person driving the tow truck.

(8) Tow business's record requirement: At its place of business of each tow zone, tow businesses shall maintain the following records on each vehicle towed for a period of three years:

(a) Vehicle description;

(b) License number;

(c) Issuing state;

(d) Make;

(e) Model;

(f) Year;

(g) Vehicle identification number;

(h) Towing location;

(i) Location vehicle was towed from;

(j) Location to where the vehicle was towed;

(k) Tow Business, Name, Address and Phone Number;

(l) Name of tow truck driver;

(m) Reasons for towing and/or service;

(n) Time and date of service include storage dates as applicable;

(o) Class of tow truck or truck number;

(p) OSP Impound Forms;

(q) All invoices for abandoned vehicles towed;

(r) All invoices for all OSP non-preference tows.

(9) All fees for service shall be itemized. A copy of voided invoices shall be filed by invoice number at the place of business and shall be retained in a file for a period of three years.

(10) All vehicles shall be handled and returned in substantially the same condition that they were in before being towed.

(11) All employees who operate tow truck(s) shall have an operator's license with the proper class or type for vehicle combinations. As prescribed by the state issuing the license, Oregon licensees shall comply with all applicable Oregon laws.

(12) Any person who shows proof of ownership or written authorization from the owner of the impounded vehicle may inspect and view the vehicle without charge during normal business hours. This does not apply to a vehicle seized and stored as evidence.

(13) All towing receipts on impounded vehicles, or confiscated vehicles, shall be made available by the tow business to the nearest Department office after the tow has been completed.

(14) The tow business shall notify the Oregon State Police Dispatch Center immediately when any person seeks to redeem any vehicle towed as abandoned or where a police hold has been placed on the vehicle. Release of vehicle under temporary or formal hold shall require written release from the Department. When a person entitled to take possession of the vehicle subject to a hold presents the tow business with an official Oregon State Police release form, the tow business shall release the vehicle to the person named.

(15) When inspection or reinspection of a tow truck is necessary, the area commander shall designate a location and time for the inspection to be conducted. When practical the inspection or reinspection shall be made within ten (10) days following the request by the tow business.

(16) The tow business shall provide either locked outside storage or locked, secure indoor storage, or both, which meets the following requirements:

(a) The tow business's storage facility shall be in conformance with all zoning requirements of all applicable governments. Storage shall be provided, and of sufficient size, for each class of vehicle towed for the Oregon State Police, including semi trucks and motor homes, except as provided in ORS 819.110. Storage shall be located within the contractual geographical service area described as zones. The vehicle storage area may be located up to five (5) miles from the original place of business, provided that both facilities are located within the appointed tow zone. Contact phone numbers and addresses are to be posted at both locations for the place of business and the storage area. When the towed vehicle storage area is not located at the place of business, employees shall be able to respond from one location to the other within 30 minutes or less.

(b) The storage area will be under the exclusive access and control of the individual tow business. The storage area cannot be shared with other businesses, including non-tow businesses not owned by the tow business owner(s).

(17) The tow business shall provide fencing around the outside storage area. The fencing must meet the following requirements:

(a) Fencing must comply with the requirements established in these Administrative Rules and all local zoning rules and regulations.

(b) Fencing shall be either made of a woven wire composition normally referred to as "cyclone fencing-chain link fencing," or made of a solid material, such as wood or concrete block, inclusive of a permanent

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natural barrier which would prevent access and unauthorized entry to the storage area. Fencing shall be topped by a minimum of three (3) strands of barbed wire. Fencing not meeting the requirements of these regulations as determined by the Oregon State Police will not be accepted. Tow businesses that are unable to comply with these fencing requirements due to local zoning requirements will be addressed on a case by case basis by the Department.

(c) Gates and entryways shall be of a solid frame, and the same minimum height as the other fencing material. All gates and entryways shall be designed to afford locking the gate or entryway securely to prevent unauthorized entry.

**NOTE:** Tow businesses holding a valid appointment letter for a specific tow zone as of the adoption date of this Administrative Rule, will have one (1) year from their renewal date in the year 2003 to comply with this rule for the tow zone listed in the appointment letter. New tow businesses applying for a letter of appointment for the non-preference tow program shall immediately comply with this Administrative Rule after the adoption date of this rule.

(18) The tow business shall allow the owner of a towed vehicle or anyone authorized in writing by the Oregon State Police, and/or an Oregon State Police Officer or other Department Member, to go to the vehicle and remove items of personal emergency nature, *e/g/* eyeglasses, medication, clothing, identification, wallets-purses (and their contents), credit cards, check books, any known money-currency, child safety car and booster seats, except as provided in ORS 819.110 and 819.160.

(19) The tow business shall be responsible for the contents, storage and disposal of all personal items, except items taken by authorized personnel in OAR 257-050-0140(18).

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0145 Application by Convicted Felon

The Oregon State Police in the interest of public safety and to avoid placing any tow company owner or employee in a position of being in violation of Oregon Revised Statutes shall deny, suspend and/or revoke the application and/or letter of appointment for the non-preference towing program of any person, business or business employee for any of the following:

(1) Any person, business, or business employee convicted of any felony charge, or any charge in any state, which in Oregon is considered to be a felony, within the last fifteen (15) years from the date the application is received by the Oregon State Police. This subsection is subject to the provisions set forth under ORS 166.270.

(2) Any person, business, or business employee convicted of two felony charges, regardless of when those felonies were committed.

(3) Any person convicted of a felony charge, or any charge from another state which in Oregon is considered to be a felony, where a weapon was used or threatened to be used in the commission of the crime, regardless of the date of the felony charge.

(4) Any person, business or business employee convicted of any of the sex crimes listed in ORS 181.594(2)(a)-(s) or the equivalent conviction of a sex crime from another jurisdiction regardless of the degree of the charge.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0150 Towing

(1) The Department shall not establish, recommend or in any way dictate the cost of a non-preference tow by a tow business.

(2) A tow business that conducts a non-preference tow under these administrative rules shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(3) The tow business shall furnish the Patrol Services Division with an itemized list of charges that can be incurred during a non-preference tow including, but not limited to:

- (a) Hookup charge;
- (b) Mileage fee;
- (c) Response fee.

(4) The tow business shall not charge for items not declared on the list relating to the towing of a vehicle. This does not include mechanical work, bodywork or other repair work conducted subsequent to the tow.

(5) Complaints of unfair charges against a tow business shall be referred to the Oregon Attorney General's Office.

(6) Tow businesses shall not transport passengers in any towed or carried vehicle(s).

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0155 Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)

(1) The following suspension periods or revocation apply when a tow business or any owner or employee of a tow business has been convicted of a violation of law charged as a Violation or Crime:

(a) "First Suspension" — any first violation shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitute grounds for suspension:

(a) A business that commits a violation or traffic crime of Oregon Law during the course and operation of the business.

(b) An owner or employee of a business that commits any violation of Oregon Law while in the performance of his or her duties of employment.

(3) The following constitutes grounds for revocation:

(a) A business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the business.

(b) An owner or employee of a business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0157 Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions or revocation of a letter of appointment, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension — A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment or a tow business from the non-preference rotational tow list.

(b) Level one suspension — any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension — any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Revocation — any third violation of these Administrative Rules that is committed within a three (3) year period of the date of any final order and shall result in a revocation of the letter of appointment.

(2) A suspension shall be in effect until the violation is corrected, or the Department orders reinstatement of the letter of appointment.

Stat. Auth.: ORS 181.440  
Stats. Implemented: ORS 181.440  
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0170 Hearings

(1) The Oregon Administrative Procedures Act shall govern the conduct of any hearing held pursuant to these regulations. The burden of proof in any hearing before the Hearing Officer shall be on the applicant seeking a letter of appointment, or on the tow business that has had its letter of appointment suspended or revoked by the Oregon State Police.

(2) A request for an administrative hearing must be in writing and be received by the Department no later than fifteen (15) days from the date of notice of denial, suspension and/or revocation as evidenced by the postmark. The Department may also initiate or request an administrative hearing, regarding a denial, suspension and/or revocation of a letter of appointment.

(3) An administrative hearing must be conducted within ninety (90) days from the date the written request is received by the Department or on

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the first business day thereafter if the 90th day is a weekend or holiday, unless the parties agree to an extension of time.

(4) Any request by a tow business for a continuance or reset of the hearing after the original scheduled date will result in the temporary suspension and/or extension of any temporary suspension of the tow business's letter of appointment until a ruling is issued from the hearing with no liability to the Department. If the Department requests a continuance or reset of a hearing, the tow business shall be left on the tow rotational list until a ruling is issued from the hearing unless a temporary suspension has been levied against the applicant's tow business.

(5) Oral proceedings shall be recorded on tape and such tape shall become part of the hearing record.

(6) The Department shall appoint a Hearing Officer to conduct the hearing. The Hearings Officer shall issue a proposed order that shall include written findings of facts based on the evidence and written conclusions of law based on the findings.

(7) Exceptions to proposed orders must be submitted to the Department in writing within ten (10) days of the date the proposed order is issued, or on the first business day thereafter if the 10th day is a weekend or holiday. Written argument submitted with the exceptions will be considered; no opportunity for oral argument will be allowed. The Department shall issue a final order.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0180

### Judicial Review

An applicant or tow business aggrieved by a final order of the Department denying, suspending, or revoking a letter of appointment may seek judicial review of such decision in the Oregon Court of Appeals. The denial, suspension or revocation shall remain in effect during the appeal.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

## 257-050-0200

### Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow vehicles operated under a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size.

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of at least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially manufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

NOTE: Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two "wreck ahead" signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall conform to all specifications as set forth in the Oregon Department of Transportation's publication "Traffic Control on State Highways for Short Term Work Zones" (Form 734-2272) and the "Manual Uniform of Traffic Control Devices."

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department's criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer's basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

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(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department's non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department's non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

(B) If the tower has the only "Class C" tow truck in a zone, then the tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06

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## Department of State Lands Chapter 141

**Rule Caption:** Include new procedures to implement State Programmatic General Permit and make other clarifications.

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**Rules Amended:** 141-085-0010, 141-085-0020, 141-085-0024, 141-085-0025, 141-085-0027, 141-085-0029, 141-085-0031, 141-085-0036, 141-085-0064, 141-085-0066, 141-085-0075, 141-085-0085, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0136, 141-085-0141, 141-085-0151, 141-085-0256, 141-085-0263, 141-085-0421

**Subject:** The rule was amended to clarify, revise and update to include language explaining new procedures to implement a new state-federal consolidated permitting process called a State Programmatic General Permit or SPGP (OAR 141-085).

The rules in OAR 141-085 have been in effect for 1 1/2 to 5 years. Some housekeeping and minor changes to procedures were needed as a result of lessons learned during implementation.

Also, the current water quality standards and conditions in OAR 141-085, especially those concerning turbidity, were revised to be consistent with new DEQ standards.

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### 141-085-0010

#### Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905

(1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(1)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris.

(2) "Adverse Effect" means the same as "reasonably expected adverse impacts".

(3) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization as evidenced by their signature on the application.

(4) "Department" means the Oregon Department of State Lands and the Director or designee.

(5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(6) "Artificially Created" means constructed by artificial means.

(7) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(8) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and ORS 196.850.

(9) "Authorization Holder" or "permittee" means the person holding a valid authorization from the Department.

(10) "Bank" means: (a) for perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and (b) for intermittent streams, the bank extends to the ordinary high water line; the line between the bed and bank may be indistinguishable during dry months.

(11) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(12) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(13) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(14) "Beds" means: (a) for the purpose of OAR 141-089-0245 to OAR 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(15) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(16) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.



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(17) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(18) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(19) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(20) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(21) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(22) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(23) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(24) "Channelized or Relocated Stream" means a natural stream that has been diverted, dredged, straightened or diked. Channelized or relocated streams can be characterized by the following:

(a) Have headwaters and may transport water from a spring or natural drainage;

(b) Is an integral part of a natural drainage;

(c) Have straight channels which may show signs of natural channel processes (e.g. meandering, pool and riffle development) if left undisturbed for a number of years;

(d) Typically flow along property or field boundaries; and

(e) May be perennial or intermittent.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation" means activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905 or these rules.

(34) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail proposed compensatory wetland mitigation.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government

that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(39) "Consent Order" means a formal, legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation. A Consent Order may not be contested by the violator.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.

(44) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(45) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(46) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(47) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(48) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(49) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(50) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(51) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

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(54) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters. Drainage ditches can be characterized by the following:

- (a) Typically have no headwaters;
- (b) Carry water from local surface areas or subsurface drains;
- (c) May be permanently or intermittently wet;
- (d) Primarily constructed to remove excess water
- (e) Dry ditches are typically dry in summer or early fall and are constructed primarily to carry away water during winter storm events;
- (f) Wet ditches are wet all year round and carry water for drainage or irrigation purposes.

(55) "Dolphin" is a cluster of piles or piling which is bound together.

(56) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(57) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(58) "Dredging" means removal of bed material using other than hand held tools.

(59) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(60) "Emergency Letter of Authorization" is an expedited authorization that the Department may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(61) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(62) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(63) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(64) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(65) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(66) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality.

(67) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(68) "Expiration Date" means the date the authorization to conduct the removal-fill specified in the authorization has ended. The authorization holder's obligation to comply with the Department's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(69) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(70) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(71) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(72) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of

obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(73) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(74) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(75) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(76) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(77) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(78) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(79) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(80) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(81) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(82) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(83) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(84) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) are those stream reaches that flow during a portion of every year, that contain food and game fish and all tributaries one stream order classification upstream. For example, if food and game fish are present in a second order stream, then all its first order upstream tributaries would be classified under this definition.

(85) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(86) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(87) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankful stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(88) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as

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“values.” For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(89) “General Authorization” means a rule adopted by the Department authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(90) “Geographic Region” for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(91) “Governmental Body” includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(92) “Gravel” is loose rounded rock, particle size between 2 and 64 mm in diameter.

(93) “Groins” is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(94) “Habitat Enhancement” means to improve habitat areas through habitat manipulation and management.

(95) “Harvesting” means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(96) “Hatchery” means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(97) “Headwater” means the source of a stream or river (e.g. a spring).

(98) “Hearing Officer Panel” means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(99) “Herbaceous Plants” are non-woody vegetation including forbs, grasses, rushes and sedges.

(100) “Highbanker” means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(101) “Highbanking” means the use of a highbanker for the recovery of minerals.

(102) “Highest Measured Tide” means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(103) “Hydraulicizing” means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(104) “Hydric Soil” is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(105) “Hydrophytic Vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(106) “Hydrogeomorphic Method” or “HGM” is a method of wetland classification and functional assessment based on a wetland’s location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(107) “Impact” or “Effect” means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

(108) “Impounded Waters,” means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(109) “Individual Removal-Fill Permit” is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(110) “Intergovernmental Agreement” means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovern-

mental agreement (IGA), or other forms of agreement between government entities.

(111) “Intermittent Stream” means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(112) “Intertidal or Tidal Marsh Area of an Estuary” means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 8).

(113) “Invasive Plants” mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(114) “Irrigation Ditches” are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(115) “Jetty or Jetties” means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(116) “Land and Water Conservation Fund Act” means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

(117) “Large Woody Material” means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(118) “Legally Protected Interest” means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(119) “Letter of Authorization” is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(120) “Levee” means a human-made feature that restricts movement of water into or through an area.

(121) “Line of Nonaquatic Vegetation” means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(122) “Listed Species” means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(123) “Location” as used in OAR 141-084-0010(76) means a physical place where a project is proposed, authorized or conducted.

(124) “Maintenance” means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the use of the structure. Maintenance includes expansion of a structure by not more than (20) twenty percent of its original footprint within the waters of the state.

(125) “Maintenance Dredging” means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(126) “Material” means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(127) “Maximum Pool Elevation” means the highest operating level of a reservoir.

(128) “Mining Access Road” means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(129) “Mitigation” means the reduction of adverse effects of a proposed project by considering, in the following order:

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

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

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

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

(130) “Mitigation Bank” or “Bank” means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland

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losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(131) "Mitigation Bank Credit" or "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600 (2) further defines this term.

(132) "Mitigation Bank Instrument" or "Instrument" means the legally binding and enforceable agreement between the Director and a mitigation bank sponsor that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Department makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(133) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Department. The Department uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(134) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Department and the Corps on wetland mitigation bank projects.

(135) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(136) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(137) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(138) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface within the waters of the state.

(139) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(140) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways as described in "Other Bodies of Water" (OAR 141-085-0015 (2)(e)).

(141) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(142) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(143) "Non-Motorized Methods or Activities" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(144) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Department for the latest listing of navigable waterways.

(145) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

(146) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(147) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(148) "Off-site compensatory wetland mitigation" or "off-site CWM" means activities conducted away from the project site to restore, create or enhance wetland function attributes in order to compensate for the adverse impacts to wetlands from project development.

(149) "On-site compensatory wetland mitigation" or "on-site CWM" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(150) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(151) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to ORS 496.192, administered by ODFW, and ORS 564.010 to ORS 564.994 administered by the Oregon Department of Agriculture (ODA).

(152) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(153) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(154) "Other Waters" means waters of the state other than wetlands.

(155) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(156) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Department or by agreement of the Department to an approved third party.

(157) "Perennial Stream" means a stream with flow that lasts throughout the year.

(158) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(159) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(160) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(161) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(162) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(163) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

## ADMINISTRATIVE RULES

(164) "Pond" means an artificially confined body of water.

(165) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(166) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(167) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(168) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(169) "Project" means the primary development or use intended to be accomplished (e.g. retail shopping complex, residential development).

(170) "Project Area" means the physical space in which the removal-fill takes place including any on site or off-site mitigation site. "Project Area" includes the entire area of ground disturbance, even though not within waters of the state, including all staging areas and access ways, both temporary and permanent.

(171) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Department to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(172) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(173) "Protection" means to prevent human activities from destroying or degrading functions of waters of state.

(174) "Public Body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(175) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(176) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e. pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a 'removal'). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(177) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(178) "Reasonably Expected Adverse Impacts" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(179) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Department.

(180) "Reconstruction" means to rebuild; to construct again.

(181) "Reference Site" means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular compensatory wetland mitigation plan.

(182) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(183) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(184) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(185) "Restoration of an Estuarine Area" means to revitalize or re-establish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.

NOTE: Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(186) "Restoration Order" means a legally binding order that requires a violator to restore water resources of the state or provide compensatory mitigation, and in addition may include payment of a civil penalty to the Common School Fund.

(187) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(188) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(189) "Riprap" means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(190) "Road Prism" means the excavation and embankment areas of roadbed within the waters of the state.

(191) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(192) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(193) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(194) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(195) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

(196) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(197) "Showing Before the Department" means to prove, make apparent, or make clear by presenting evidence to the Director of the Department of State Lands or designee.

(198) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(199) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(200) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(201) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(202) "Stormwater" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(203) "Stream" means a body of running water moving over the surface of the land in a channel or bed including stream types classified as perennial, intermittent and channelized or relocated streams.

(204) "Stream Order Classification" means a system to categorize streams. A small unbranched headwater tributary is a first order stream. Two first order streams join to make a second order stream. A third order stream has only first and second order tributaries and so forth.

(205) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(206) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose.

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Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(207) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(208) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(209) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation, compensatory wetland mitigation or permit conditions objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects). Also called "performance standards" or "success targets."

(210) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(211) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(212) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(213) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(214) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(215) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(216) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(217) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(218) "Uplands" are any land form that does not qualify as waters of the state.

(219) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(220) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(221) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(222) "Violation" means removing material from or placing fill in any waters of this state without an authorization or in a manner contrary to the conditions set out in an authorization issued under the Removal-Fill law or these rules.

(223) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(224) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(225) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(226) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(227) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

- (a) Measure or regulate the flow of water;
- (b) Divert fish into a trap; or
- (c) Raise the level of the waterway or divert stream flow into a water distribution system.

(228) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(229) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(230) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(231) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(232) "Woody Plants" means trees and shrubs.

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

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0020

### Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Department shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Department for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of the state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of the state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for construction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, streambank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to removal fill within waters of the state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging within navigational servitude channel). Disposal of dredged material within the ordinary high water line of the waterway containing the federally authorized navigation channel is considered to be an activity covered by this exemption.

(4) These rules do not apply to "normal farming and ranching activities" on converted wetlands, as defined in OAR 141-085-010. Such activities include the following:

- (a) Plowing;
- (b) Grazing;
- (c) Seeding;
- (d) Cultivating;
- (e) Conventional crop rotation;
- (f) Harvesting for the production of food and fiber; and
- (g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance.

- (a) Drainage or maintenance of farm or stock ponds;

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(b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of the state. Maintenance activities shall be confined to the same limits of the original-ly approved structure(s).

(c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal which involves changing any wetlands to a non-farm use.

(7) Exempt "activities customarily associated with agriculture". Fill or removal activities involving less than 50 cubic yards of material as defined in OAR 141-102 and 141-085-0010 for activities customarily associated with agriculture within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030) are exempt from these rules.

(8) Exempt maintenance or reconstruction of certain structures. Maintenance, or reconstruction of certain structures within waters of the state such as dikes, dams, levees, groins, riprap, tidesgates, drainage ditches, irrigation ditches, irrigation structures and tile drain systems are exempt from the requirements of these rules, provided that:

(a) The structure was serviceable within the past five (5) years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Exempt maintenance, repair, replacement or removal of culverts. These rules do not apply to removal-fill activities within waters of the state for the maintenance, reconstruction or removal of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

(a) The removal fill is limited to the extent of the existing road prism (as defined in OAR 141-085-0010) and may, consistent with OAR 141-085-0010(124), expand the original footprint of the structure by up to 20 percent if fish passage design requires removal or fill outside the road prism in order to successfully pass fish, the removal/fill volume and area of impact is limited to the minimum necessary to restore the function of the structure and provide fish passage but not more than 20 percent of the original footprint;

(b) The culvert was serviceable within the past five (5) years;

(c) The removal-fill does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert.

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural bank full width and replicating the stream's natural streambed configuration).

(10) Exempt push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of the state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

(a) It has been reconstructed and used within the past five (5) years; and

(b) It has the same impact as when it was first constructed (i.e., size, extent and location); and

(c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) On-going maintenance of push-up dams allowed. Once authorized by the Department, a post-1967 push-up dam within waters of the state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam's impact to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage). A push-up dam involving less than fifty (50) cubic yards, located within a stream designated as Essential Indigenous Anadromous Salmonid Habitat

(see OAR 141-102) and used for "activities customarily associated with agriculture" as defined in OAR 141-102 and 141-085 is exempt from authorization requirements.

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of the state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of the state at any site where fish eggs are present.

(14) Exempt fish passage and fish screening in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810 & 196.805

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0021

### Oregon State Programmatic General Permit

(1) The State Programmatic General Permit (SPGP) authorizes work in waters of the United States within the State of Oregon for activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions and limitations contained in the SPGP.

(2) The SPGP has been issued by the Portland District of the US Army Corps of Engineers as provided by 33 CFR 325.5 (c)(3), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the River and Harbor Act of 1899, as amended.

(3) The purpose of the SPGP is to reduce duplicative state and federal regulatory processes, by providing a single application process for applicants and make better use of limited government resources while enhancing protection and conservation of the water resources of the state.

(4) The SPGP is a type of general permit, issued by the Corps that provides federal authorization for certain activities that also are regulated by the Department under state law. This SPGP is based on the existing state Removal-Fill Law and the administrative rules promulgated to administer the law.

(5) The SPGP will be the only vehicle where removal fill applicants can simultaneously obtain approvals under all of these state and federal mandates in one, integrated package. With one exception, to be eligible for the SPGP, removal fill activities must be no larger than 0.5 acre of wetland fill and no more than 1,000 cubic yards of fill or removal (this is a cumulative total and not an additive total, i.e. wetland and other waters removal or fill cannot exceed 0.5 ac. or 1000 cu. yds. combined) and be one of the following categories: The thresholds do not apply to wetland restoration.

(a) Streambank protection;

(b) Road construction, repair, and improvements;

(c) Site preparation for construction of buildings and related features;

(d) Stream and wetland restoration;

(e) Minor fills and removals;

(f) Water control structures (repair of existing structures and necessary; improvements to provide or improve fish passage);

(g) Utility lines; and/or

(h) Piling installation and removal.

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(6) The Department will advise applicants as to how to qualify a project for the SPGP. A project that is approved by the Department under the SPGP will be in compliance with the federal Endangered Species Act.

Stat. Auth.: ORS 196.600 - 196.905, other auth. Art. VIII, Sec. 5 of the Oregon Constitution  
Stats. Implemented: ORS 196.600 - 196.905  
Hist.: DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0024

### Pre-Application Conference

(1) A person contemplating conducting an activity subject to removal-fill authorization requirements (including projects that require a federal permit or involve federal funding) may request a pre-application conference with the Department.

(2) At a pre-application conference, the Department will address pertinent factors based upon the information presented by the applicant, including:

- (a) Whether the proposed project will require an authorization;
- (b) The application requirements and type of authorization needed;
- (c) Ways to avoid and minimize adverse impacts to the water resources and navigation, fishing and public recreation uses;
- (d) The authorization review standards that will be applied to the proposed project;
- (e) The proposed compensatory mitigation plan;
- (f) The need to provide additional information with the application;

and/or

- (g) The need to coordinate with certain agencies or public interests.  
Stat. Auth.: ORS 196.825  
Stats. Implemented: ORS 196.800 - 196.990  
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0025

### Application for Individual Removal-Fill Permits

(1) Any person planning a project subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Department before conducting the removal fill. Persons may submit an application in order for the Department to determine if a removal fill is subject to these rules and requires an authorization.

(2) To obtain an individual permit, a complete application is required in order for the Department to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of the state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of the state that involve listed species.

(3) A completed and signed application on forms provided by the Department along with any maps, photos and drawings, as required, that includes the following information:

- (a) Applicant and property owner information including name, address and phone number;
- (b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;
- (c) Location of any off-site disposal or borrow sites if these sites contain waters of the state;
- (d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of the state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);
- (e) Description of the purpose and need for the project;
- (f) Identification of the limits (area) of the waters of the state (e.g. wetland delineation or determination) and the proposed impact to waters of the state associated with the project;
- (g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes. Adverse effects to be considered include but are not limited to:
  - (A) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);
  - (B) Increasing water flows from the project;
  - (C) Relocating water or redirecting water flow;
  - (D) Causing flooding or erosion downstream of the project.
- (h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;
  - (i) A description of the navigation, fishing and public recreation uses, if any, at the project site;
  - (j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize impacts to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capable of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or managed to fulfill the project purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. An alternatives analysis is needed for any estuarine fills. Circumstances when an alternatives analysis is required in an application include but are not limited to projects involving conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:
    - (A) Those located in waters of the state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.
    - (B) Small in size; in relationship to the affected waters of the state.
    - (C) Those that cause only temporary impacts.
  - (k) Names and addresses of adjoining property owners (including those across a stream or street from the project as required by the Department);
    - (l) Local government land use information (as shown on the application form);
    - (m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);
    - (n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:
      - (A) A site survey;
      - (B) A database query completed by the Oregon Natural Heritage Program; or
      - (C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;
    - (o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.
  - (4) If reasonably expected adverse impacts to the water resources cannot be avoided, minimized, rectified or reduced, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 thru 0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary impacts to waters of the state, as required in OAR 141-085-0171.
  - (5) If the proposed removal fill involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 thru 0055 shall be submitted by the applicant or required by the Department:
    - (a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed impacts (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Department may conclude that a wetland determination is sufficient to identify wetland impacts or to establish the extent, if any, of wetland impacts.
    - (b) Whenever possible, wetland determination or delineation reports should be submitted to the Department for a jurisdictional determination well in advance of a permit application (i.e., within 90 days of submitting an application) to ensure that the project design is based upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.
    - (6) If the proposed removal fill involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.
    - (7) If the proposed removal fill will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:



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(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4)); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

(A) The public use of the proposed project;

(B) The public need for the proposed project;

(C) The availability of alternative, non-estuarine sites for the proposed use; and

(D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) An applicant for fill and removal of material at locations not more than one mile apart shall combine them into one application. Applicants for linear transportation or utility corridor projects shall apply on a single application if the projects:

(a) Consist of integrally-related activities; and

(b) Are planned, phased, designed and budgeted as a discrete construction unit.

(9) The Department may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) A complete application shall include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815, 196.825, 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0027

### Determination of Complete Application for Individual Removal-Fill Permit

(1) Within 30 days of Department's receipt of an application, the Department shall finish the completeness initial review and provide written results of the review to the applicant. The Department shall review the application materials to determine whether all the forms, plans, maps and other information required in OAR 141-085-0025 are present. During the review, the Department will determine:

(a) If the project, as described in the complete application, is exempt from these rules as described in OAR 141-085-0015 or 141-085-0020. If the Department determines that the application is for an activity that is not subject to these rules, it shall notify the applicant in writing and state the reasons for the determination. If there is insufficient information to make this determination, the Department will provide a list of the information deficiencies to the applicant as part of the results of the initial completeness review.

(b) If the project, as described in the application, is eligible for approval under the General Authorization (GA) as described in OAR 141-089. If the project is eligible for a GA, the Department will continue to process the application as a General Authorization.

(c) If the application is complete in accordance with OAR 141-085-0025.

(d) If the application is incomplete.

(2) If the Department fails to make the completeness determination within the 30 (thirty) calendar day time period and fails to so notify the applicant, the application shall be deemed a complete application and shall proceed to the public review process as described in OAR 141-085-0028.

(3) The Department will accept a preliminary wetland delineation or preliminary wetland determination report along with the application in accordance with OAR 141-085-0025(5). A jurisdictional determination in accordance with OAR 141-090 will be completed prior to or at the time of the permit decision. The Department shall not deem an application incomplete because it lacks a Department-approved wetland delineation or wetland determination report.

(4) When the Department deems the application complete, the Department shall process the application in accordance with OAR 141-085-0028(6).

(5) If the Department determines that the application does not meet the requirements of OAR 141-085-0025 and is therefore deficient and incomplete, the Department shall, within a reasonable time, but no later than thirty (30) days after the initial receipt of the application, notify the applicant in writing and list the missing information. The Department will take no action on the incomplete application until the required information is resubmitted. The applicant must resubmit the entire amended package for reconsideration, unless instructed by the Department to do otherwise. Submission of a new application package starts a new 30-day completeness

review period. Examples of information that may be cause for rejection of the application include, but are not limited to, the following:

(a) Major errors, omissions or inconsistencies in the application;

(b) Major errors, omissions or inconsistencies in the wetland delineation or determination report, if one is required;

(c) Lack of a wetland delineation or wetland determination where wetlands are affected by the project;

(d) Unclear, illegible maps and drawings;

(e) Lack of a compensatory wetland mitigation plan;

(f) Lack of an analysis of the adverse effects of the project on the water resources or the navigation, fishing and public recreation uses; or

(g) Lack of payment of fees.

(6) Minor errors, omissions or inconsistencies, as determined by the Department, will not be cause for rejection.

Stat. Auth.: ORS 196.815, 196.825 & 196.845

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0029

### Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Department shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval To issue an individual removal-fill permit the Department must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Department may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Department will not issue an individual removal-fill permit for a project that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Department may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering practicable mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis The Department will issue a permit only upon the Department's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses.

(5) In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Department will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The appli-

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cant bears the burden of providing the Department with all information necessary to make this determination.

(6) An alternatives analysis is required for all estuarine fills. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and

(c) The project meets all other review standards of these rules.

(7) Mitigation The Department will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Department's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Department shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Department determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Department shall then consider whether limiting the degree or magnitude of the removal fill and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Department determines that project impacts to the waters of the state cannot be further minimized, the Department shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the removal fill impact area can rectify the impact;

(d) Reduction or elimination. When removal fill impacts have been minimized and rectified to the maximum extent practicable, the Department will consider whether the impacts can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Department shall then consider how the applicant's project would compensate for reasonably expected adverse impacts of project development by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(8) Direct and Indirect Effects The Department shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development to waters of the state.

(9) Permit Conditions If the project meets the requirements of this section, the Department shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development to waters of the state. The Department may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order to mitigate for the reasonably expected adverse impacts of project development to waters of the state. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The removal fill shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. removal fill conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be

authorized by the Department based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Department.

(e) The removal fill shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction to waters of the state, the permit holder shall immediately cease work at the discovery site and contact the Department and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Department, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Department may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill in waters of the state any material defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use in waters of the state any fill material such as chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0031

### Documentation of Individual Removal-Fill Permit Decision; Term of Certain Individual Removal-Fill Permits

(1) The Department shall prepare written findings documenting and supporting any decision to deny an individual removal-fill permit. In addition, the Department shall prepare written findings to support any decision to issue an individual removal-fill permit for the following:

(a) Projects involving fill of two acres or more in freshwater wetlands.

(b) Projects involving fill in estuaries (except cable crossings, pipelines, or bridge construction).

(c) Projects involving the removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging).

(d) Projects involving placement of greater than 2,500 cubic yards riprap in coastal streams and estuaries.

(e) Projects in the Oregon territorial sea in accordance with Statewide Planning Goal 19 — Ocean Resources.

(2) The Department shall prepare written findings documenting and supporting a permit decision that is contrary to the recommendation of a state agency.

(3) Terms of Permits The term for individual removal-fill authorizations shall be as described.

(a) The Department may issue an individual removal-fill authorization for up to five (5) years for projects that occur on a continuing basis or will take more than one year to complete as follows:

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(A) For commercial aggregate removal including dredging and bar scalping when the Department determines that:

(i) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(ii) The applicant has conducted removal in compliance with any individual removal-fill authorization conditions for the same site for at least one year preceding the pending application.

(B) For projects associated with flood event recovery (e.g. stream-bank stabilization) when the Department determines that the project(s) are part of a comprehensive multidisciplinary flood recovery plan that specifically addresses and supports the type of treatment that is proposed in the removal-fill authorization application.

(C) For projects that are for the purpose of watershed restoration that are developed from a watershed assessment and identified as a priority in a watershed action plan.

(D) For other types of projects, when the Department determines that:

(i) The project is expected to require more than one year to complete;

(ii) The project purpose requires annual activity or reconstruction (e.g. irrigation diversions); and

(iii) The project purpose, location or methods of construction or operation described in the application are not expected to change during the course of the project.

(E) Fees for a multi-year period permit, in accordance with ORS 196.9159(5), shall be paid annually on the anniversary date of the permit as established by the Department.

(F) The Department may modify conditions of a multi-year authorization based upon new information or project monitoring that indicate a need for different operating conditions.

(G) Before modifying any condition that significantly affects the scope and extent of the removal fill (e.g. amount of material to be filled/removed) of any individual removal-fill authorization authorized for more than one year, the Department shall give notice as described in OAR 141-085-0028(4) and treat the proposed notification in the same manner as described in OAR 141-085-0028(6) thru (12).

(H) If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Department may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Department under the Removal-Fill Law and these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0036

### Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Department under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Department shall notify the permit holder of the expiration date and request that the applicant report to the Department in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Department may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for an additional time period but less than the original term, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Department may extend the expiration date of the permit for not more than 120 days, if:

(a) The permit holder makes a written request to the Department prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) The Department may require a new permit application or additional information if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse impacts of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse impacts of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse impacts than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse impacts may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.825

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0064

### Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied by a base fee in accordance with the following schedule:

(a) For a removal by a private operator, or a person contracting to perform services for a private operator, \$50.

(b) For a removal by a public body: \$150.

(c) For a removal by a commercial operator: \$150.

(d) For a fill by a private operator, or a person contracting to perform services for a private operator: \$150.

(e) For a fill by a public body: \$375.

(f) For a fill by a commercial operator: \$375.

(g) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons: no fee.

(2) In addition to the base fee for removal established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities involving 500 to 4,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 5,000 to 50,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities over 50,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(3) In addition to the base fee for fill established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities of 500 to 2,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 3,000 to 10,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities of over 10,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(4) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher, per ORS 196.815(4), according to the fee schedule described in section (1) to (3) of this rule.

(5) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1) of this rule. Fees for a multi-year period permit, in accordance with ORS 196.815(5), shall be paid annually on the anniversary date of the permit. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(6) There shall be no application fee for the issuance of an Emergency Authorization (OAR 141-085-0010(59)) or Letter of Authorization (OAR 141-085-0010(119)).

(7) Fees received under this section shall be credited to the Common School Fund for use by the Department in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

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## 141-085-0066

### Emergency Authorization for Removal-Fill

(1) In the event an emergency exists, as described in OAR 141-085-0010, the Department may issue an emergency authorization. Activities covered by OAR 141-085-0020 are exempt from this section.

(2) Any person requesting an emergency authorization may apply orally or in writing. Written applications may be submitted in the same manner as described in OAR 141-085-0025 and sent via facsimile, e-mail or via U.S. mail. Any request submitted orally must be documented, in writing, by the Department and provided to the applicant.

(3) The application and review requirements described in OAR 141-085-0025, 0027, and 0028 do not apply to emergency authorizations. An application for an emergency authorization shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request.

(4) Applications for an emergency authorization shall contain enough information for the Department to determine:

(a) The applicant and responsible party planning and carrying out the activity;

(b) The physical area of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) The approximate volume of material to be removed and/or filled;

(e) The schedule for doing the work;

(f) The date and approximate time when the event that caused the emergency took place;

(g) The area of impact of the emergency and the proposed emergency action;

(h) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(i) A description of how the work will be accomplished.

(5) In order to make a timely and legally defensible determination, the Department may request additional information from the applicant. The Department may authorize a Department employee or other person to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(6) In determining whether or not to approve the application, the Department shall determine, as quickly as is reasonable and feasible, whether:

(a) An emergency, as defined in OAR 141-085-0010 exists, and the factual circumstances indicate:

(A) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, farm or cropland;

(B) Some prompt removal-fill is required to reduce or eliminate the threat; and

(C) The nature of the threat does not allow the time necessary to obtain some other form of authorization as described in these rules.

(b) The removal-fill is planned for waters of the state, including wetlands and is an activity subject to these rules; and

(c) The planned minimizes, to the extent practicable, adverse impacts to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state; and

(7) Based upon the review of the application as described in OAR 141-085-0066(6) the Department may:

(a) Approve the emergency authorization as requested;

(b) Approve the emergency authorization with conditions;

(c) Request additional information from the applicant and make a decision to reject, approve with conditions or approve the application without conditions; or

(d) Deny issuance of the emergency application.

(8) An emergency authorization shall contain conditions designed to minimize the reasonably expected adverse impacts of the activity to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state while taking into account the impact of the emergency on persons and property. The Department may also require compensatory mitigation or compensatory wetland mitigation in some cases where significant loss of water resources and/or navigation, fishing and public recreation uses has resulted directly from the authorized removal fill.

(9) All conditions of an emergency authorization are enforceable on the permit holder beyond the expiration date of authorization.

(10) If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authoriza-

tion or general authorization in accordance with the procedures set out in these rules.

(11) If an emergency authorization is issued orally, the written form of the emergency authorization shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation.

(12) The term of the emergency authorization shall be limited to the time necessary to complete the planned removal-fill activity and be specifically stated in the authorization. In no case shall the term exceed 60 days. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0075

### Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Department may request the Department enter into an alternative dispute resolution process. The Department and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been deemed incomplete, denied, or who objects to any of the conditions imposed by the Department under OAR 141-085-0029, may, within twenty-one (21) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Department. The request shall include the reasons for the appeal hearing.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Department may file a written request for a hearing with the Department within twenty-one (21) calendar days after the date the authorization was granted. The request shall include the reasons for the appeal hearing.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Department's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill to the Department.

(5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Department shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in

# ADMINISTRATIVE RULES

removal/fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Department delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Department shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Department's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Department offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0085

### Enforcement Actions and Procedures

(1) The Department is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870 and 196.890):

(a) Consent orders;

(b) Consent agreements (used for violations that do not require compensatory mitigation or compensatory wetland mitigation and are easily resolved);

(c) Cease and desist orders;

(d) Restoration orders;

(e) Civil penalties; and

(f) Liens.

(2) The Department shall give notice of any proposed order (except Consent Agreements or Consent Orders) relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the Department may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Department may take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Department under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Department shall set forth if applicable the dates of notice and hearing

and the specific rule or order of the Department, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Department may enter an order requiring any person to cease and desist from any violation if the Department determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Department shall hold a contested case hearing before a hearing officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Department nor any duly authorized representative of the Department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Department's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

Stat. Auth.: ORS 196.860, 196.870 & 196.875

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0115

### Compensatory Mitigation

(1) The Department may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public recreation uses on waters of the state other than freshwater wetlands or estuarine areas. Such conditions impose obligations on the permit holder beyond the expiration of the authorization.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Offsite or onsite enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Offsite or onsite improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Department, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Department, may contract with a third party to construct, monitor or maintain the compensatory mitigation site. The permit holder remains responsible for compliance with the compensatory mitigation conditions unless the authorization is transferred to another entity in accordance with these rules.

(3) The Department may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

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(4) The Department may require some form of long term protection for the compensatory mitigation site.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0121

### Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR-141-085-0121 to OAR-141-085-0151, apply to removal-fill that occur within freshwater wetlands and do not apply to removal-fill:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR-141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse impacts of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland. The requirements to provide CWM impose obligations on the permit holder that extend beyond the expiration date of the authorization.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that on-site CWM is impracticable. The applicant may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site CWM to provide the replacement of the functional attributes of the lost wetland. If on-site CWM is impracticable as documented by the applicant, off-site CWM shall be utilized. In considering off-site CWM, the applicant may create, restore or enhance a wetland or if the project development occurs within the service area of an established wetland mitigation bank, the applicant may purchase credits, if available, from the bank to fulfill CWM requirements so long as the functional attributes of the lost wetland are replaced. If no mitigation bank is available, CWM may be fulfilled through payment to provide as described in OAR 141-085-0131.

(5) The Department will review the CWM plan for sufficiency and compliance with these rules. The Department may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Department will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Department may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Department shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes. The assessment shall assess:

(a) Existing functional attributes of the entire wetland at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) A functional assessment of the impact site is not needed if the proposed CWM plan utilizes payment to provide or the purchase of credits

from a wetland mitigation bank to satisfy all the compensatory wetland mitigation requirements.

(10) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(11) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Department, the "Judgmental Method" in the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(12) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(13) Additional assessments or data may be required by the Department if the functional assessment results, public/agency review comments, or the Department's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0126

### Requirements for All CWM

(1) CWM shall replace:

(a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system and class (e.g., palustrine forested); and

(b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands 2001); and

(c) The functional attributes of the lost wetland (impact wetland).

(2) The Department may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Department, may at any time contract with a third party to construct, monitor or maintain the CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.

(5) CWM:

(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136.

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) CWM sites may fulfill multiple purposes including stormwater retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

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(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) CWM using wetland enhancement must conform to the following additional requirements. The CWM shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;

(c) Not replace or diminish existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a CWM plan.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0131

### Requirements for CWM Involving Wetland Mitigation Banks, Payment-to-Provide or Conservation

(1) The requirements in this section are in addition to the general requirements in OAR 141-084-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment to provide mitigation. The Department will approve the bank option only after on-site mitigation has been examined and found to be impracticable. Documentation of the purchase of the required number of mitigation bank credits must be received by the Department prior to issuance of the authorization.

(3) Payment to provide mitigation:

(a) The individual removal-fill permit or letter of authorization for an activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Department. Once an approved removal-fill permit activity has begun as proposed, the payment to provide mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Department to provide CWM shall be the average cost of credits available from all active mitigation banks in the state as compiled annually by the Department.

(4) Conservation in lieu:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation in lieu should be encouraged as the preferred CWM option when the impact site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for indirect CWM using conservation in lieu. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Department.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0136

### Ratio Requirements for CWM

(1) The purpose of CWM ratios is to:

(a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;

(b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, impacted wetland);

(c) Replace wetland functions that may be size dependent; and

(d) Compensate for the likelihood of success in the different CWM methods (creation, restoration, enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the impacted wetland.

(2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:

(a) Restoration: One (1) acre of restored wetland for one (1) acre of impacted wetland.

(b) Creation: One and one-half (1.5) acres of created wetland for one (1) acre of impacted wetland.

(c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of impacted wetland.

(d) Enhancement of cropped wetland as determined by the Department: Two (2) acres of enhanced cropped wetland for one (1) acre of impacted wetland. Cropped wetland is converted wetland that is regularly plowed, seeded and harvested in order to produce a crop for market. Pasture, including lands determined by the Natural Resources and Conservation Service to be "farmed wetland pasture," is not cropped wetland.

(e) Conservation in Lieu: Variable: See OAR 141-085-0131(4).

(3) The Department shall double the minimum ratio requirements for project development impacting existing CWM sites; for example, using enhancement to compensate for impacts to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre impacted.

(4) The Department may increase the ratios when:

(a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or

(b) Mitigation is not proposed for implementation concurrently with the authorized impact.

(5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland impacted;

(b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland impacted;

(c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland impacted.

(6) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(b) Based on the value the Department determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Department, to pay the entire cost of CWM:

(A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or

(B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0141

### Requirements for All CWM Plans/Application Requirements

(1) On-site or off-site CWM involving the creation, restoration and/or enhancement of wetlands by the applicant. A CWM plan shall, at a minimum, include:

(a) CWM site information including:

(A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Physical Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

# ADMINISTRATIVE RULES

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment, except when PTP or purchase of credits from a wetland mitigation bank is proposed, of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR 141-085-0176), if the impact is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(M) Plans for vegetated buffers, if needed, to protect the viability and functions of the CWM site.

(N) Plans for the long term protection of the CWM site:

(i) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(ii) The applicant shall offer a preferred method and justification.

(iii) The Department will make the final determination for the need and type of long-term protection.

(2) Other CWM. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR 141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement); and

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0151

### Monitoring Requirements for CWM Plans Involving On-site or Off-site Creation, Restoration or Enhancement of Wetlands

(1) The purpose of the CWM monitoring requirement is to provide information for the Department to:

(a) Determine if the CWM complies with the conditions of the authorization;

(b) Evaluate whether the CWM meets the goals, objectives and success criteria of the CWM plan; and

(c) Provide information for removal/fill program monitoring.

(2) The permit holder shall monitor the CWM site and provide to the Department:

(a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Department, the post construction report shall be submitted within ninety (90) calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and success in meeting the CWM goals. These data may include photographs, topographic surveys, plant survival data, botanical surveys, results from functional assessment, hydrologic data and other information as required to demonstrate compliance. The report shall include the following sections:

(A) Introduction;

(B) Goals, objectives and success criteria;

(C) Methods;

(D) Results;

(E) Summary and recommendations;

(F) Figures;

(G) Appendices with data and photographs.

(3) Monitoring shall be conducted for 5 years unless otherwise specified by the Department.

(4) The Department may require modifications to the CWM plan as well as require additional monitoring any time the CWM is failing to meet the CWM goals.

(5) At the end of the five (5) year monitoring period, the Department shall determine if the mitigation project meets the CWM success criteria. If it fails to meet the success criteria, the Department may require modifications to the CWM site as well as additional site monitoring.

(6) When the CWM complies with the compensatory mitigation success criteria, as described in the approved removal-fill authorization, the Department shall notify the permit holder in writing of compliance with the authorization's conditions and that additional monitoring is not required. If the Department fails to notify the permit holder within ninety (90) calendar days of the Department's receipt of the final monitoring report, the permit shall be deemed in compliance and no further monitoring required.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06



# ADMINISTRATIVE RULES

141-085-0256

## Mitigation Policy Generally

Mitigation means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality:

(1) No mitigation proposal may be inconsistent with an acknowledged comprehensive land use plan and implementing ordinances for the area where the removal-fill activity will occur or where the mitigative action is located.

(2) Mitigation must occur in the same estuary as the intertidal removal or fill activity except when the alternative is a partial waiver of mitigation under ORS 196.830(4).

(3) Mitigation shall restore or enhance estuarine lands and resources in an area proportionate to the area affected by the intertidal removal or fill activity. The area affected shall include the actual area where material is removed or filled and any surrounding intertidal or tidal marsh area adversely affected by the activity. At minimum, the mitigation action shall offset the adverse effects of the intertidal or tidal marsh removal-fill activity.

(4) Mitigation shall "maintain" (replace) the natural biological productivity and diversity of native species of the intertidal removal-fill site by creation, restoration or enhancement of an appropriate area of another estuarine habitat. Any shallow subtidal or intertidal or tidal marsh estuarine habitat may be used to "replace" the habitat lost to intertidal removal-fill, but the area will be proportionate to the Relative Value of the habitats involved. As an alternative to the Relative Value method described below, another method of determining the amount of mitigation area necessary may be approved by the Director if it meets the objectives of this section. The surface area of a mitigation site may not be smaller than the surface area of the development site.

**NOTE:** The purpose of this policy statement is to ensure conservation of estuarine surface area. However, a mitigation proposal shall not fail because the mitigation surface area is slightly less than the intertidal removal-fill area and no other mitigation area is available or the next alternative would be far more expensive.

(5) Habitat types found in Oregon estuaries have been evaluated and compared in terms of natural biological productivity and diversity of native species by trained scientists and natural resource managers knowledgeable and familiar with the physical, biological, and chemical processes of estuaries. The result of this evaluation is a set of Relative Values that can be used to determine how much area of one habitat is needed to mitigate each acre of another habitat lost to intertidal removal-fill. Figures 3 and 3A (Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 16) are a matrix of habitat characteristics and Relative Values for habitats found in Oregon estuaries:

(a) The base Relative Values for estuarine habitats shall range from 1.0 to 6.0;

(b) The Department may adjust the Relative Value of any habitat type (except for relative values already established in a mitigation bank agreement) if site conditions and characteristics such as very low or exceptionally high resource values warrant such adjustment to carry out the provisions of the Removal-Fill Law. Such adjustment may not exceed 25 percent of base Relative Value in either direction.

(6) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

$AM = (RVd/RVm) (AD)$  where  
AM = Area of mitigation site  
RVd = Adjusted Relative Value of the development site  
RVm = Adjusted Relative Value of the mitigation site  
AD = Area of development site

(7) The equation for determining how much shallow subtidal area is required for mitigation shall be:

$AM = 2.0(RVd/RVm) (AD)$

(8) Note that if shallow subtidal habitats are offered as mitigation, the required surface area is twice the size of the surface area required if an intertidal or tidal marsh area of equal Relative Value is offered. The surface area of the mitigation site (AM) may not be smaller than the surface area of the development site (AD).

(9) Figure 4 (*Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 17*) shows the relationship between the adjusted Relative Values of the development and mitigation sites and the ratio of the Mitigation Area to the Development Area (AM/AD) when the habitat replacement occurs under OAR 141-085-0256(4) of this rule.

(10) The Mitigation Credits attributable to any created or restored habitat may be obtained by multiplying the adjusted Relative Value of the created or restored habitat by the number of acres affected.

(11) The Mitigation Credits attributable to any enhanced habitat may be obtained as follows:

(a) Obtain the base Relative Value of the existing habitat from Figures 3 or 3A (*Estuarine Mitigation The Oregon Process, Department of State Lands, April 1984, p 16*) and adjust appropriately;

(b) Estimate or otherwise determine what the adjusted Relative Value of the affected habitat will be after mitigation occurs;

(c) Subtract (a) from (b) to obtain enhancement Relative Value;

(d) Multiply the enhancement Relative Value (c) times the number of acres enhanced.

(12) Mitigation shall "maintain" the unique features of estuaries that may be affected by intertidal removal-fill projects. The term "unique features" is defined in OAR 141-085-0010;

(a) The Department intends to rely upon acknowledged comprehensive land use plans for guidance in identifying "unique features" for mitigation purposes. Proposed intertidal removal-fill activities involving unique features shall be scrutinized carefully to determine whether or not a permit should be issued. If a permit is issued, mitigation shall be in-kind to the maximum extent possible and shall include the habitat replacement required under OAR 141-085-0256(4) of this rule;

(b) The objective of mitigation involving unique features shall be to replace lost habitat by substituting and, additionally, to replace or relocate as much of the unique feature as possible.

(13) Mitigation shall "maintain" habitats and diversity of native species. The law does not mandate that every habitat and species affected by intertidal removal and fill be replicated in the mitigation proposal. However, the law does require consideration of whether or not habitat or diversity of native species of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the impact. The Department will maintain habitats and diversity of native species through habitat replacement required under OAR 141-085-0256(4) of this rule;

(a) "In-kind" or "like-kind" mitigation will be encouraged whenever possible by approving mitigation proposals and mitigation banks that involve a diversity of resource-habitat types. The Department will maintain a record, by estuary, of the amounts and types of habitats involved in intertidal removal-fill sites and mitigation sites. No additional mitigation is required under this subsection unless the Department determines that a mitigation proposal under OAR 141-085-0256(4) of this rule would reduce or impair habitats and diversity of native species.

(14) Mitigation shall maintain "water quality" through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(a) Oregon has stringent water quality standards that the Department routinely incorporates into removal-fill permits. The Department will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Department approve a mitigation proposal that would degrade water quality. The Department will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(b) A mitigation proposal that produces an identifiable enhancement in estuarine water quality may be used to offset a portion of the resource losses of an intertidal removal-fill activity provided that the mitigation proposal also includes habitat replacement under OAR 141-085-0256(4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(c) A mitigation proposal claiming water quality enhancement as a mitigative action shall describe the action in detail and explain why and how the project will enhance water quality. The proposal shall identify the nature and areas extent of habitats affected by the water quality enhancements. A water quality enhancement activity mandated by a state or federal agency to raise water quality to state or federal standards is not mitigation under this section;

(d) If the Department determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in OAR 141-085-0256(9) of this rule.

**NOTE:** An acceptable mitigation must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. Mitigation that enhances water quality may serve as mitigation once sufficient estuarine area has been created, restored, or enhanced to meet the conservation of surface area requirement.

(15) Activities that do not require mitigation even though they may involve intertidal removal include:

(a) Maintenance dredging — Provided that the applicant can show that the site has been dredged before and is part of a regularly used project. First time dredging activities that remove intertidal lands to obtain water depth will require mitigation;

(b) Aggregate mining — Provided that the site has been used historically for aggregate removal on a periodic basis.

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(16) Examples of activities that are not considered mitigation within the meaning of ORS 196.830 except when mitigation would otherwise be waived in part under ORS 196.830:

- (a) The transfer of private intertidal estuarine lands to public ownership (Att. Gen. Op. 3774, 1976);
- (b) The dedication of intertidal estuarine lands for natural uses;
- (c) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;
- (d) Creation of subtidal lands except when the area was originally upland. In general, creation, restoration, and enhancement of subtidal lands produce less mitigation credit than similar actions relating to intertidal lands. Less credit is given because habitat replacement is not "in-kind," i.e., not intertidal as are the lands affected by the removal-fill activity. For purposes of these rules, the creation, restoration, or enhancement of a subtidal habitat will produce one-half the mitigation credits produced by an intertidal area of the Relative Value.

**NOTE:** The Relative Values for subtidal habitats may be adjusted up to 25 percent up or down in the same manner as intertidal habitats.

(17) Examples of areas and activities considered suitable for restoration and enhancement activities include:

- (a) Areas where poor water quality, or similar degradation, limits fish and shellfish production and harvest or public recreation;
- (b) "Dredge spoil islands" which could be lowered to create or restore intertidal surface area;
- (c) Tide flat or tidal marsh areas suitable for restoration;
- (d) Areas where circulation or flushing can be restored or enhanced by breaching dikes or roadfills or removing pile groups or structures.

(18) Mitigation sites and activities need not be fully developed biologically at the time of acceptance, but there must be a high probability of success associated with the proposed action. There is no penalty assessed for a mitigative action that takes time to produce the anticipated resources and habitats;

(a) The Department may require bonding in an amount sufficient to cover the costs of site acquisition, any necessary physical alterations, monitoring and contingencies. The need for bonding will be considered especially carefully in cases where mitigation actions will be taken after the development project, or in cases where the results of the mitigation action will not occur for several years.

**NOTE:** Late maturing projects are not as acceptable as those where good results may be anticipated in one or two years.

(19) The Department will require monitoring of a mitigative action to determine performance over time in the same manner as described in OAR 141-085-0151.

(20) The Department may require funding for research in cases where the ramifications of a given mitigation action are uncertain. Such requirement shall be set out in detail in the authorization.

(21) The procedures described in this section are suitable for estimating the mitigation liabilities and credits of a proposed intertidal or tidal marsh removal-fill project and the attendant mitigative action. In most cases, these guidelines will produce a mitigation proposal acceptable to the Department and interested parties;

(a) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Department to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Department.

(22) The Department shall require security bonding for estuarine mitigation in the same manner as described in OAR 141-085-0176.

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

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0263

### Estuarine Mitigation Banks

(1) Credits from an estuarine mitigation bank may be used only as a condition imposed on an authorization or to resolve a violation of ORS 196.800 to 196.905 or these rules approved within the same estuarine ecological system.

(2) The mitigation needs of an intertidal removal-fill can be met using mitigation "credits" stored in a "mitigation bank." Mitigation credits result from a mitigative action accomplished under agreement with the Department. Such credits can be used to offset the mitigation needs of projects that occur at some time after the mitigation bank is created.

(3) "Mitigation Credits," the currency of a mitigation bank, can be established by using:

(a) The product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s).

(b) Any other credit accounting system based on an alternative wetland function assessment method approved by the Department, which provides that credits within a bank are determined by the difference between the baseline functions of the bank prior to restoration, enhancement, creation, or conservation activities, and the increased wetland functional attributes that result, or are expected to result, from the activities.

(4) The following rules are established for the creation and use of mitigation banks and are to be used in conjunction with OAR 141-085-0421.

(a) A mitigation bank may be created in any estuary to provide mitigation for one or more development projects in that estuary. More than one bank may be created in any estuary. Any legal entity may create a bank;

(b) Mitigation banks shall be created by written agreement with the Department and may be administered by the Department. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

(A) The exact physical location of affected real property;

(B) Proof of ownership or control, i.e., deed, title report;

(C) The nature and extent of the mitigative action. This analysis will require information about site salinity, elevation, wave and current actions, substrate, and other physical and biological characteristics;

(D) How and when the mitigative action will be performed;

(E) A statement of informed opinion as to what habitat types will result from the action and a statement as to Relative Value of each anticipated type;

(F) How the resulting habitat changes will be monitored and evaluated;

(G) How the mitigation site will be protected, i.e., dedication, conservation easement, deed; and

(H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding.

(5) The Department may authorize creation of mitigation banks making use of restoration of estuarine lands caused by a naturally occurring or human activity that occurred after July 21, 1979, even though mitigation through restoration was not the intent of the action. Such mitigation banks shall be created under the procedures set out in OAR 141-085-0263(2) of this rule.

(6) Applicants for removal and fill permits requiring mitigation are not obligated, or automatically entitled, to use an existing mitigation bank to meet the mitigation needs of any project. Permit applicants must negotiate directly with the owner of a bank to secure the right to use the bank. Agreements between the owner of a bank and a permit applicant are subject to the Department's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS 196.600 - 196.665 & 196.825

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-085-0421

### Requirements to Establish a Mitigation Bank

(1) All persons proposing to establish a mitigation bank shall:

(a) Meet with the Department to discuss their proposed bank and the content of their Mitigation Bank Prospectus.

(b) Prepare and submit a Mitigation Bank Prospectus to the Department.

(2) The Mitigation Bank Instrument shall contain the following elements, as applicable:

(a) The physical location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).

(b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.

(c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.

(d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.

(e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas

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where grading will be required, location of buffers, vegetation planting plan, etc.

(f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.

(g) Description of the ecological goals and objectives of the bank.

(h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.

(i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.

(j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.

(k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.

(l) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.

(m) A site assessment of the proposed bank area providing information on the:

(A) Hydrogeomorphic and Cowardin wetland classes;

(B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), using a standardized regionally-appropriate function assessment method (such as the Willamette HGM) as well as vegetation, soils, hydrology, and wildlife habitat and usage; and

(C) Results of a wetland determination or delineation.

(n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.

(o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Department will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Department that does not provide sufficient information for review, or that appears to present a proposal in which the Department will not participate, will be returned to the sponsor with a written explanation.

(5) The Department reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

(a) Need for the mitigation credits; or that

(b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Department shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Department shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Department shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Department and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Department may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Department and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Department and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Department concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Department throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Department, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Department.

(b) Be approved and signed by the Department and the sponsor, at the discretion of the Department.

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(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Department shall notify city and county planning departments where the bank is located and affected state agencies, adjacent landowners, and persons who have requested to be notified.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665  
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990  
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

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**Rule Caption:** Repeal provisions that allow recreational placer mining in scenic waterways (Chapter Law 499, Oregon Laws 2001).

**Adm. Order No.:** DSL 2-2006

**Filed with Sec. of State:** 3-21-2006

**Certified to be Effective:** 3-27-06

**Notice Publication Date:** 11-1-05

**Rules Amended:** 141-100-0000, 141-100-0020, 141-100-0030, 141-100-0050, 141-100-0055, 141-100-0060, 141-100-0070, 141-100-0080

**Subject:** Amendments to these rules are proposed to clarify rule language and to repeal provisions that allow recreational placer mining in scenic waterways as per Section 3 and 4, Chapter Law 499, Oregon Laws 2001, found in ORS 390.835. These revised rules also reflect the name change of the Division of State Lands to the Department of State Lands (Chapter 253, Oregon Laws 2003).

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3805, ext. 239

## 141-100-0000

### Definitions

For purposes of these rules, the definitions contained in ORS 390.805 apply. In addition, the following definitions apply:

(1) "Activity" means any action(s) or project(s) involving the filling, removal or alteration of the bed or banks of the waters of a Scenic Waterway, regardless of the amount of material involved or area disturbed. Types of Activities<sup>1</sup> include:

- (a) Riverbank Erosion Control/Wetland Restoration;
- (b) Bridge;
- (c) Pipeline;
- (d) Sand and Gravel Removal;
- (e) Irrigation Diversion Work (permanent and temporary);
- (f) Fishery Enhancement Structure<sup>2</sup>;
- (g) Temporary Construction Works (e.g., cofferdams);
- (h) Dredge Material Disposal;
- (i) Stream Gauging Station<sup>3</sup>;
- (j) Oil and Gas Exploration and Development;
- (k) Bulkhead;
- (l) Utility Crossing;
- (m) Boat Ramp;
- (n) Water Intake;
- (o) Channel Access Dredging;
- (p) Boat Dock;
- (q) Road Fill;
- (r) Fills for Structures;
- (s) Underwater Blasting;
- (t) Riverbank Excavation (e.g., bank sloping/reshaping);
- (u) Stormwater, Waste Water;
- (v) Sewer Outfall;
- (w) Prospecting;
- (x) Recreational Placer Mining (except any dredging).

**NOTES:** -1- This is not an exhaustive list of activities that could result in fill, removal, or alteration of the bed and banks of a Scenic Waterway. -2- ORS 390.835(5) allows the Oregon Department of Fish and Wildlife to undertake these projects without Scenic Waterway review. However, a removal/fill permit, lease, easement, or license may be needed. -3- ORS 390.835(6) allows the Water Resources Commission to undertake these projects without Scenic Waterway review. However, a removal/fill permit, and/or lease, easement, or license may be needed.

(2) "Bed and/or Banks" means the land lying beneath the waters of the Scenic Waterway and extending to the Ordinary High Water Line.

(3) "Demonstrated Need" means the proposed activity is clearly and convincingly required.

(4) "Director" is the Director of the Department of State Lands (ORS 196.800(3)) or designate.

(5) "Department" means the Oregon Department of State Lands and/or its Director or designate.

(6) "Easement" is a property right granted by the Department to use state-owned land for a specific purpose and time period.

(7) "Emergency Circumstances" are immediate natural or human caused events such as, but not limited to fire, flood, or hazardous substance spills, the effects of which require prompt action to prevent irreparable harm, injury or damage to persons or property.

(8) "Filling" is the act of depositing material onto the bed and/or banks of a Scenic Waterway.

(9) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition which cannot be corrected.

(10) "Lease" is an agreement between a person and the Department allowing a specific use of state-owned land for a specific period of time, subject to specified terms and conditions.

(11) "License" is a temporary, short-term (usually less than one year) authorization from the Department for a particular use or activity on state-owned land.

(12) "Material" is rock, gravel, sand, silt and other substances, organic or inorganic, removed from or used to fill waters of this state.

(13) "Navigable Waterway" is any waterbody within the State of Oregon that has been declared navigable for purposes of state ownership by a federal court, or meets the following criteria generally established by federal courts to determine title navigability:

(a) The waterbody must be capable of, or susceptible to, use as a highway for the transportation of people or goods;

(b) Transportation must be conducted in customary modes of trade and travel on water;

(c) Waters must be navigable in their natural and ordinary condition;

(d) Title navigability is determined as of the date of statehood (February 14, 1859).

(14) "Ordinary High Water" is the line on the bank or shore of a waterway to which the water ordinarily rise annually. Ordinary high water is established by the Department by reference to historical data, vegetation, field observations, survey, or other generally accepted methods under OAR 141-085-0010.

(15) "Person" is an individual, political subdivision, or government agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

(16) "Prospecting/Recreational Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, from among small quantities of aggregate.

(17) "Recreational Placer Mining" includes, but is not limited to, the use of nonmotorized equipment and motorized equipment except any dredging. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(18) "Related Adjacent Land" is all land within 1/4 of one mile of the bank of Waldo Lake, or any river or segment of river within a Scenic Waterway, except land that, in the Oregon Parks and Recreation Department's (OPRD) judgment, does not affect the view from the waters within a Scenic Waterway.

(19) "Removal" is the taking or movement of material from the bed and/or banks of a Scenic Waterway.

(20) "Repair" means to restore or reconstruct to a safe, sound, or original condition in order to protect persons or property from loss as a result of an unforeseeable event, such as, but not limited to, fire, flood, or hazardous substance spills.

(21) "Scenic Waterway" as described in ORS 390.805(3) includes Waldo Lake, or any river segment that has been designated under ORS 390.805 to 390.925 or any subsequent act, and includes related adjacent lands.

(22) "Scenic Waterway Emergency Removal/Fill Permit" is an authorization issued by the Director for temporary, emergency-specific removal/fill activity in a Scenic Waterway upon a finding of emergency circumstances.

(23) "Scenic Waterway Removal/Fill Permit" is an authorization issued by the Department for any removal, filling or alteration of the bed and banks of a Scenic Waterway.

(24) "Special Attribute" means an aesthetic, scenic, environmental, scientific, recreational or similar feature(s) identified by OPRD in a Scenic Waterway Management Plan as the value that caused a particular waterway to be included in the Oregon Scenic Waterway Program. (ORS 390.845)

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(25) "Waters of a Scenic Waterway" are any waters within a designated Scenic Waterway, including its related adjacent lands, that are subject to the jurisdiction of the Department.

(26) "Wet Perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0020

### Policy

The Department shall:

(1) Preserve and protect the natural setting, water quality, and free flowing condition of Scenic Waterways. ORS 390.815

(2) Recognize recreation, fish and wildlife uses as the highest and best uses of the waters of a Scenic Waterway. ORS 390.835(1)

(3) Protect and enhance scenic, aesthetic, natural, historic, archaeologic, recreation, scientific, and fish and wildlife values along Scenic Waterways by protecting the special attributes (as listed in each Scenic Waterway Management Plan prepared by OPRD) that caused the waterway to be included in the Scenic Waterway system.

(4) Not authorize activities prohibited by the Scenic Waterway Act (dams, reservoirs, impoundments, and all types of large scale placer mining).

(5) Require applicants to employ streambank stabilization and rehabilitation techniques utilizing native riparian vegetation and other non-structural alternatives, unless it can be demonstrated such approaches are unlikely to be effective for the given situation under consideration by the Department.

(6) Prohibit filling, removal, or alteration of the beds and banks of Scenic Waterways except as permitted by the Director as provided in these rules.

(7) Recognize the interrelated nature of regulatory activities affecting Scenic Waterways and the need to achieve coordinated management and protection of Scenic Waterway values. The Department shall work in close cooperation with state, local, and federal agencies, particularly OPRD, Water Resources Department (WRD), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (COE), affected Tribes, and local government land use planning agencies.

(8) Recognize the high level of public interest in Oregon Scenic Waterway management by providing opportunities for comment on proposed policies or rules and individual applications.

(9) Adhere to the Department's State Agency Coordination Program (OAR 141-095-0000), to assure compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive land use plans.

(10) Review and evaluate the effectiveness of this rule on a biennial basis. The review shall include a report of actions taken, identification and definition of issues/problems raised over the biennium, and recommendations, if any, for changes to make the program more effective.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0030

### Coordination with Key Agencies Involved in Scenic Waterway Management

(1) Managing the Scenic Waterway Program is a cooperative effort of the OPRD, WRD and the Department. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the Department shall:

(a) Coordinate the review and issuance of all Scenic Waterway removal/fill permits with the affected state agencies;

(b) Coordinate the investigation of alleged Scenic Waterway removal/fill violations with affected agencies;

(c) Advise applicants of the need to obtain concurrence from OPRD for projects on related adjacent lands; and

(d) Seek to utilize the expertise of other agency staff.

(2) Because many Scenic Waterways are also included in the federal Wild and Scenic River system or similar designations on tribal lands, the Department will work closely with the appropriate federal agencies (U.S. Forest Service (USFS), Bureau of Land Management (BLM), and COE) and affected Tribes as follows:

(a) Fully coordinate the review and issuance of all Scenic Waterway removal/fill permits with the analysis outlined in the Review Procedures for Scenic Waterway Removal/Fill Permits (OAR 141-100-0050(2)), and participate in National Environmental Protection Act review or any similar evaluations conducted by federal agencies; and

(b) Immediately notify the appropriate federal agency or affected Tribe of alleged Scenic Waterway removal/fill violations.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0050

### Scenic Waterway Removal/Fill Permits (except for dredging)

(1) Application Procedures. Applications for approval of removal/fill activities in Scenic Waterways shall be submitted to the Department in writing, in advance of the proposed activity, and shall include all information needed to evaluate the request. The application shall be submitted on the Joint Permit Application Form of the COE and the Department and must meet the standards for completed applications in OAR 141-085-0025.

(2) Review Standards. The Department shall issue Scenic Waterway removal/fill permits only upon written findings that:

(a) The proposed activity is consistent with:

(A) The Scenic Waterway Act (ORS 390.805 to 390.925) (i.e., maintenance of free-flowing character, and highest and best uses of the water for fish, wildlife, and recreation), and these rules;

(B) Any applicable OPRD Scenic Waterway Management Plan or interim classification. The Department shall coordinate with OPRD and WRD prior to making this determination.

(b) The proposed activity is consistent with ORS 196.800 to 196.825 and 196.840 to 196.870, as well as associated rules related to removal of materials from the beds and/or banks and filling of any waters of this state, for projects greater than or equal to 50 cubic yards in volume;

(c) The proposed activity meets a demonstrated need and minimizes adverse impacts to special attributes of designated Scenic Waterways;

(d) The proposed activity, individually or collectively, would not degrade fish, wildlife or recreation values; and

(e) For activities within navigable waterways, any required lease, license, easement, or right of entry has been or shall be obtained from the Department.

(3) Review Procedures:

(a) Applications shall be reviewed and processed in a manner consistent with OAR 141-085, the Department rules for individual removal and fill permits;

(b) In reviewing an application, the Department shall conduct the necessary investigations to develop a rational basis for a decision consistent with the requirements of the Review Standards and policies of this rule;

(c) The Department may consult with any person, group, or agency interested in or affected by a permit decision. Recommendations and comments regarding the project shall generally be required to be submitted in writing to the Director within 21 calendar days from the date the application notice is mailed by the Department;

(d) The Department shall provide application notice for comment to the Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, Water Resources Department, Economic Development Department, State Parks and Recreation Department, State Historic Preservation Office, Department of Geology and Mineral Industries, Department of Transportation, Department of Forestry, and any other affected state or federal agency and Tribe. The Department shall also provide application notice to adjacent property owners listed on the application and interested persons who request notice;

(e) In accordance with the procedures in the Department State Agency Coordination Program, the Department shall provide application notice to the appropriate local government planning department(s) for a determination of the proposed activity's compatibility or non-compatibility with the affected city and county comprehensive plan(s) and land use regulations. If it is necessary to adopt findings of compliance with the statewide planning goals, the Department will act in accordance with Coordination Procedure III.A.2. of its State Agency Coordination Program;

(f) The Department shall give reasonable consideration to permit conditions or comments offered by any person;

(g) The Director shall deny any permit application, based upon written findings, if the proposed activity does not comply with one or more of the Review Standards in this rule;

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(h) Permits may be issued for multi-year projects in the same manner as OAR 141-085-0031.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & ORS 223, 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0055

### Scenic Waterway Removal/Fill Permit (Recreational Placer Mining)

(1) To be eligible for a Scenic Waterway removal/fill permit, recreational placer mining operations must conform to the following:

(a) The activity must be for recreational placer mining as defined in these rules;

(b) The activity shall not dam or divert a waterway or obstruct fish passage;

(c) Nozzling, sluicing, or digging shall not occur outside the wet perimeter, nor extend the wet perimeter;

(d) The activity shall not involve disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars);

(e) The activity shall not include excavation from the streambank (i.e., between the edge of the wet perimeter and the Ordinary High Water Line.);

(f) The activity shall not include movement of boulders, logs, stumps, or other woody material from the wet perimeter other than movement by hand and non-motorized equipment;

(g) Upon completion of the mining activity all piles, pits, furrows or potholes outside the main channel of the waterway created by the activity shall be leveled.

(h) The recreational placer miner shall obtain landowner permission before operating on private property;

(i) The recreational placer miner shall obtain prior permission, as applicable, before operating on public lands;

(j) The activity shall occur only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources";

(k) The activity must comply with other applicable local, state, and federal laws and regulations, including the federal Endangered Species Act;

(l) The activity shall not impede recreational boating;

(m) Use of motorized equipment shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site; and

(n) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(2) To qualify for a Scenic Waterway removal/fill permit for recreational placer mining under these rules, the applicant shall, before beginning operation, submit to the Department an application on a form provided by the Department, or in a letter that includes the following information:

(a) The stream(s) and the location(s) the operator will be working;

(b) The type of equipment to be used; and

(c) The approximate amount of material to be moved by the activity and the anticipated number of days per year the activity will occur at each location.

(3) Within fifteen (15) working days of receipt of a completed application, the Department will review the application for compliance with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules and notify the applicant of approval, denial, or modification. Where it determines that a proposed recreational placer mining activity qualifies for approval the Department will approve the application by letter. Where it determines that a proposed recreational placer mining activity does not meet the eligibility requirements the Department will:

(a) Deny the application and inform the applicant; or

(b) Request that the applicant modify the activity to conform with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules.

(4) No permit approval for recreational placer mining will be issued with an expiration date greater than five (5) years from issue date.

(5) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(6) For the purposes of review and issuance of Scenic Waterway removal/fill permits for recreational placer mining, "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(7) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 Law

Hist.: DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0060

### Scenic Waterway Emergency Removal/Fill Permits

(1) Application Procedures. Applications for a Scenic Waterway emergency removal/fill permit may be made verbally (e.g., by phone), or by written application, including facsimile, by the following procedures:

(a) Applicants shall provide the Department the following information:

(A) Location of emergency;

(B) A description of the emergency;

(C) The proposed action to be taken; and

(D) The potential consequences of taking no action.

(b) Within five days of receiving a verbal confirmation of an emergency permit for removal/fill activities, the applicant shall submit to the Department a written emergency permit application, in accord with the procedures herein.

(2) Review Standards. The Director shall issue Scenic Waterway emergency removal/fill permits only after determination that:

(a) Natural or human-caused situation(s) exist which cause the emergency circumstance(s), such as, but not limited to, flooding, landslides, wildfire, and hazardous substance spills;

(b) It is necessary to make repairs or take action to prevent irreparable harm, injury, or damage to persons or property.

(3) Review Procedures. The Director shall conduct the review of Scenic Waterway emergency removal/fill permit applications by:

(a) Consulting with ODFW and OPRD prior to issuance of a temporary permit as provided by ORS 390.835(3)(a) and DEQ, and WRD (if applicable). Consultation may be achieved by Memorandum of Agreement with the applicable agencies and/or case-by-case permit review;

(b) Completing an investigation sufficient to develop a rational basis for a decision consistent with the requirements of the Review Standards;

(c) Consulting with others — such as Tribes, federal land managers and regulators (e.g., if the proposed activity is within a Wild and Scenic River) — depending upon circumstances and time constraints, and by reasonable consideration to recommendations for temporary permit conditions; and

(d) Assuring compatibility of the project, to the extent practical, with the affected local government(s) comprehensive plan and land use regulations.

(4) Permit Decisions:

(a) The Director may issue an emergency permit, only if all the Review Standards for emergency permits are met. Emergency permit issuance by the Director may be made by written confirmation to the applicant, verbally (to be followed by written confirmation), or through procedures established in Memoranda of Agreement with other agencies (e.g., through the Oregon Emergency Response System);

(b) The Department shall visit the site of the emergency permitted activity as soon as practical following permit issuance;

(c) Following the issuance of an emergency permit, the Department shall review the emergency permit and determine if any further action is necessary to modify the permit conditions after the emergency has passed.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0070

### Appeals

(1) Any applicant whose application to the Department for a permit has been denied, or who objects to any of the permit conditions imposed by the Director, may, within ten days of the denial of the permit or the imposition of any condition, request a hearing from the Director. The hearing shall be conducted as a contested case hearing in accordance with ORS 196.825(6).

(2) Any person, excluding permit applicants, aggrieved or adversely affected by issuance or denial of permits by the Director may request a con-

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tested case hearing within 60 days after the date of the permit decision in the manner provided by ORS 196.835.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223  
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL  
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

## 141-100-0080 Enforcement

The Director is authorized to take civil, criminal, or administrative action to enforce the Removal/Fill Law as provide in ORS 196.860 to 196.875:

(1) In the event of unauthorized removal/fill activities greater than or equal to 50 cubic yards in volume, all the policies and procedures of the Removal/Fill Law concerning enforcement of removal/fill violations apply in Scenic Waterways. However, for Scenic Waterway violations, restoration of the affected area to predisturbance conditions, to the maximum extent practicable, shall be required.

(2) In the event of removal/fill activities less than 50 cubic yards in volume:

(a) A Cease and Desist Order may be issued to halt activity as provided in ORS 196.860(2), if the Department determines the removal/fill activity threatens to exceed 50 cubic yards in volume;

(b) The Department may coordinate with and assist other state agencies with explicit enforcement authority for Scenic Waterway violations by executing an Interagency Memoranda of Agreement for enforcement.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223  
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL  
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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

**Rule Caption:** Requires that all testing for Commercial Driver Licenses and endorsements be conducted in English.

**Adm. Order No.:** DMV 3-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 4-15-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 735-060-0110, 735-060-0120, 735-062-0075

**Subject:** DMV previously offered the knowledge test for a Commercial Driver License (CDL) in English and Spanish and allowed the drive test to be conducted in other languages. ODOT has adopted the federal Motor Carrier Safety Administration regulations which establish the qualifications for drivers of commercial motor vehicles, including the requirement that a driver must "read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." 49 CFR § 391.11. Consistent with this qualification requirement, DMV amended OAR 735-062-0075 to include a provision that all knowledge and skills tests given for a commercial driver license or endorsement must be offered and conducted only in the English language. OAR 735-060-0120 establishes requirements for third party testing. DMV amended OAR 735-060-0120 to require that a CDL Third Party Examiner conduct both the pre-trip inspection test and the on-road drive test only in English and OAR 735-060-0110 Table 2 to include a sanction for any violation of this requirement.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-060-0110

### Matrix Third Party Examiner Sanctions

DMV adopts the matrix of sanctions in Table 2 for CDL third party examiner violations. Table 2, Examiner Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Examiner was notified in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense.

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

Stat. Auth.: ORS 184.616, 814.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0690; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06

## 735-060-0120

### The Certification Drive Test

(1) DMV adopts the following Federal Motor Carrier Safety Administration regulations effective July 1, 2005 and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

(a) 49 CFR § 383.75, Third Party Testing; and

(b) 49 CFR § 383.131 through § 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program shall be by a CDL Third Party Examiner. The CDL Third Party Examiner shall:

(a) Be certified by DMV; and

(b) Not conduct more than eight CDL Class A, B, or C pre-trip inspection tests and on-road drive tests within a single calendar day;

(c) Begin and end all pre-trip inspection and on-road drive tests during daylight hours;

(d) Conduct all pre-trip inspection and on-road drive tests within the State of Oregon;

(e) Conduct both the pre-trip inspection and on-road drive tests in the same type and class of commercial vehicle. Both the pre-trip inspection and on-road drive tests must be completed on the same calendar day unless the person tested has previously failed the on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(5) has passed, if the person fails a pre-trip inspection test or an on-road drive test;

(g) Conduct the same pre-trip inspection tests and on-road drive tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the Federal Motor Carrier Safety Administration or the person being tested to observe or participate in CDL pre-trip inspection tests or the on-road drive tests without the prior approval of DMV; and

(i) Conduct both the pre-trip inspection and on-road drive tests in English as required by OAR 735-062-0075(2)(d) and (e).

(3) The CDL Third Party Examiner shall do the following before administering a drive test:

(a) Ensure the person being tested has a valid CDL instruction permit or CDL and, if the driver does not have a CDL, an Oregon driver license that was issued at least 21 days prior to the test as required by OAR 735-060-0105(3)(i). A drive test shall not be administered if the CDL Examiner has reason to believe that the driver's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View a Medical Certificate or a Medical Waiver as described in OAR 735-074-0280 issued to the person being tested that meets the requirements of OAR 735-074-0260.

(4) The certification drive test shall be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test shall include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the tested driver's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual; and

(b) An on-road drive test. This test is designed to evaluate the tested driver's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The tested driver must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:

(A) It shall be conducted on a drive test route approved by DMV and meeting the specifications set forth in section (5) of this rule;

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the tested driver seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the tested driver for an on-road test, but shall not

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conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test shall be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road drive test route shall:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the driver to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road drive test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirement for the pre-trip inspection and on-road drive test for applicants for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

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

Stat. Auth.: ORS 184.616, 814.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06

## 735-062-0075

### Driver Tests, Additional Provisions

(1) In addition to the requirements of any other law or rule, the following apply to driver license, permit or endorsement tests provided by the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV):

(a) Any required fee for a test must be paid prior to taking the test. DMV will not refund a test fee if the applicant fails the test.

(b) Test scores are valid for two years from the date the test is passed. After two years the applicant must retake and pass the applicable tests to be issued the license, permit or endorsement.

(2) The following apply to commercial driver licenses (CDL) only:

(a) Applicants for a Class A commercial driver license must pass a "combination vehicle" knowledge test for combination vehicles.

(b) A restriction prohibiting the operation of vehicles with air brakes will be included on any CDL unless the applicant:

(A) Passes the air-brake knowledge test; and

(B) Passes the skills test in a vehicle equipped with air brakes, when a skills test is required.

(c) For purposes of application for and issuance of a commercial driver license (CDL), DMV may accept CDL knowledge and skills test results from another state if the state sends the test scores directly to DMV.

(d) All knowledge and skills tests administered to meet the requirements for issuance of a commercial driver license or endorsements to a commercial driver license will be offered or conducted in English. All examiner questions and responses to an applicant's questions during the testing process, both verbal and written, must be communicated in the English language and may not be interpreted into the applicant's native language by the examiner or an interpreter.

(e) An applicant must respond in English to any test question during a knowledge or skills test or to an examiner's request for information that is part of the normal testing process. An applicant may not use a language interpreter during the testing process.

(3) If a CDL skills test is not provided due to vehicle equipment failure (the vehicle does not have the necessary safety equipment or is not in proper working order), the required test fee will remain on the DMV customer record for when the test is provided. If there are three postponements due to equipment failure it will be considered a test failure and the test fee will be forfeited. An additional test fee will be required for subsequent tests.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.045, 807.050, 807.070, 807.120 & 807.170

Stats. Implemented: ORS 807.031, 807.045, 807.070 & 807.120

Hist.: MV 58-1989, f. 12-29-89, cert. ef. 1-1-90; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 4-1992, f. & cert. ef. 4-16-92; DMV 23-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06

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

**Rule Caption:** Adoption of Federal safety and hazardous materials transportation regulations affecting motor carriers.

**Adm. Order No.:** MCTD 2-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010

**Rules Repealed:** 740-100-0010(T)

**Subject:** These rules cover the national adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Other changes: incorporate recently enacted federal requirements contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act — A Legacy for Users (SAFETEA-LU) related to hours of service regulations for utility service vehicle drivers; clarify that Oregon intrastate hours of service requirements apply to certain drivers that operate commercial motor vehicles that do not require the driver to have a Commercial Driver License; provide uniformity; and update form titles. The Maximum Fine Schedule adopted under OAR 740-100-0100 is readopted to reflect current national standards.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 740-100-0010

### Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in **Title 49, Code of Federal Regulations (CFR), Parts 380** (Special Training Requirements), **382** (Controlled Substances and Alcohol Use and Testing), **383** (Commercial Driver's License Standards Requirements and Penalties), **385** (Safety Fitness Procedures), **387** (Minimum Levels of Financial Responsibility for Motor Carriers), **390** (Federal Motor Carrier Safety Regulations: General), **391** (Qualification of Drivers), **392** (Driving of Motor Vehicles), **393** (Parts and Accessories Necessary for Safe Operation), **395** (Hours of Service of Drivers), **396** (Inspection, Repair, and Maintenance), **398** (Transportation of Migrant Workers), **399** (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2006, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of **Part 387** shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.

(b) With reference to **Part 390.21**, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver.

(c) The rules in **Part 391.11(b)(1)** regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce.

(d) The rules in **Part 391** (except **Part 391.11(b)(5)**), **Valid Operator's License**, and **Part 391.15**, **Disqualification of Drivers** do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with **Title 49, CFR, Part 177.823**, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less.

(e) Notwithstanding **Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations)** the Department may, upon receipt of a favorable recommendation from the State Health Division or a licensed health care professional under contract to ODOT, issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Department and who is in compliance with motor carrier safety regulations applicable to drivers.



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(f) With reference to **Part 395.5**, motor carriers conducting intrastate transportation of passengers may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period after being on-duty for 16 hours following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days.

(g) With reference to **Part 395.3**, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days, except any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days, except any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(h) Notwithstanding the provisions of **Part 395.1(e)** relating to 100-airmile radius drivers, such drivers need not maintain a daily driver's record-of-duty status, as described in **Part 395.8**, if:

(A) The driver operates within a 100-airmile radius of the normal work reporting location;

(B) The driver returns to the work reporting location and is released from work within 16 consecutive hours;

(C) The driver has at least eight consecutive hours off duty between each 16 hours on duty;

(D) The driver does not exceed 12 hours maximum driving time following eight consecutive hours off duty; and

(E) The motor carrier maintains and retains for a period of six months accurate and true driver time records showing:

- (i) The time the driver reports for duty each day;
- (ii) The total number of hours the driver is on duty each day;
- (iii) The time the driver is released from duty each day; and
- (iv) The total time for the preceding seven days in accordance with **Part 395.8(j)(2)**, for such drivers used for the first time or intermittently.

(i) Drivers need not maintain a daily driver's record-of-duty status, as described in **Part 395.8**, and are not subject to the provisions of subsection (h) of this section, if all of the following apply:

(A) The driver operates a property-carrying commercial motor vehicle for which a commercial driver's license is not required under **Part 383**;

(B) The driver operates within a 150 air-mile radius of the location where the driver reports to and is released from work, i.e., the normal work reporting location;

(C) The driver returns to the normal work reporting location at the end of each duty tour;

(D) The driver has at least eight consecutive hours off duty separating each on-duty period;

(E) The driver does not drive more than twelve hours following at least eight consecutive hours off duty;

(F) The driver does not drive for any period after the end of the 16th hour following eight consecutive hours off duty;

- (G) The driver does not drive:
- (i) After having been on duty for 70 hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours;
  - (ii) After having been on duty for 80 hours in eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(H) The motor carrier that employs the driver maintains and retains for a period of six months accurate and true time records showing:

- (i) The time the driver reports for duty each day;
- (ii) The total number of hours the driver is on duty each day;
- (iii) The time the driver is released from duty each day;

(iv) The total time for the preceding seven days in accordance with **Part 395.8(j)(2)**, for drivers used for the first time or intermittently.

(j) The provisions of subsections (g) through (i) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with **Part 395**.

(k) Drivers operating utility service vehicles as defined in **Part 395.2** are relieved from the drivers' hours-of-service requirements and restrictions.

(1) The provisions of **Parts 396.17** through **396.23** (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of **Part 386.83(a)(1)** and **Part 386.84(a)(1)**, related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and are subject to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in **Part 391.62** is not adopted and prescribed.

(5) Wherever reference is made in **Title 49** of the **CFR** as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252

Stats. Implemented: ORS 825.210, 825.250 & 825.252

Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987 (Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 5-2005(Temp), f. 9-16-05, cert. ef. 10-1-05 thru 3-29-06; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-100-0060

### Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

(1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (**North American Standard Vehicle Out-of-Service Criteria.**)

(2) In addition to the requirements of section (1) of this rule, a vehicle transporting hazardous materials also shall be free from each defect listed in OAR 740-100-0080. (**North American Standard Hazardous Material Out-of-Service Criteria.**)

(3) Except as provided in section (4) of this rule, in addition to the requirements of sections (1) and (2) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (**North American Standard Driver Out-of-Service Criteria.**)

(4) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0010(2)(f) through (j).

(5) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.210 & 825.252

# ADMINISTRATIVE RULES

Hist.: PUC 1-1987(Temp), f. & cert. 1-5-87 (Order No. 87-006); PUC 3-1987, f. & cert. 3-24-87 (Order No. 87-359); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1990, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0028; MCT 2-1997, f. & cert. ef. 5-9-97; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-100-0070

### North American Standard Vehicle Out-of-Service Criteria

(1) **Appendix A of the North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2006, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) **Out-of-Service Condition**: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) **Other**: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 3-1986, f. & cert. ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-100-0080

### North American Standard Hazardous Material Out-of-Service Criteria

(1) **Appendix A of the North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2006, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with **Title 49, CFR**. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.258

Hist.: PUC 3-1986, f. & cert. ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-100-0090

### North American Standard Driver Out-of-Service Criteria

(1) **Appendix A of the North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2006, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) **Out-of-Service Violation**: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) **Other**: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.252 & 825.260

Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-100-0100

### Maximum Fine Schedule

(1) **Appendix B, Maximum Fine Schedule**, published by the Commercial Vehicle Safety Alliance, revised April 2005, is adopted and incorporated in this rule.

(2) Except as provided in sections (3) and (4) of this rule, the foundation fine for a violation described in **Appendix B** shall be the lesser of the amount specified in **Appendix B** for One Driver Violation or 40 percent of the maximum fine for a Class A traffic violation established in ORS 153.018.

(3) Violations of OAR 740-100-0040 related to failure to carry traction devices shall have a minimum foundation fine of \$60. Violations of OAR 740-100-0040, related to failure to use traction devices when required, shall be subject to the fine established in section (5) of this rule.

(4) Except as provided in section (3) of this rule, violations of commercial motor carrier safety regulations found in OAR 740-100, 740-105 and 740-110, not specifically addressed in **Appendix B** shall carry a foundation penalty equal to the amount for a Group 3 violation contained in **Appendix B**.

(5) In the event that a violation was a substantial contributing factor to an accident or created substantial risk of injury to another person, the foundation fine shall be 60 percent of the maximum fine for a Class A traffic violation.

(6) Unitary assessments and county assessments required by ORS 137.290 and 137.309 are in addition to foundation fines specified in this rule.

(7) Copies of **Appendix B** are available from the Commercial Vehicle Safety Alliance: 1101 17th St. NW, Suite 803, Washington DC 20036.

Stat. Auth.: ORS 153.022, 823.011, 825.252 & 825.990

Stats. Implemented: ORS 825.252

Hist.: PUC 4-1995, f. & cert. ef. 6-19-95 (Order No. 95-517); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-065-0050; MCT 3-1996, f. & cert. ef. 3-14-96; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 4-1999(Temp), f. 12-21-99, cert. ef. 1-1-00 thru 6-28-00; MCTB 2-2000, f. & cert. ef. 4-28-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

## 740-110-0010

### Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in **Title 49, Code of Federal Regulations, Part 397** and such portions of **Parts 107-178 and 180** as are applicable, and amendments thereto, in effect on April 1, 2006.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 825.258

Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & cert. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & cert. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & cert. 10-13-80

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(Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06

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## Department of Veterans' Affairs Chapter 274

**Rule Caption:** Monthly Assistance Amount Payable from the Covered Care Program.

**Adm. Order No.:** DVA 3-2006(Temp)

**Filed with Sec. of State:** 3-31-2006

**Certified to be Effective:** 3-31-06 thru 9-25-06

**Notice Publication Date:**

**Rules Amended:** 274-040-0030

**Subject:** The maximum monthly amount of financial assistance payable from the Covered Care Program account for the care received by an Oregon Veterans' Home (OVH) resident is being deleted to provide the Oregon Department of Veterans' Affairs (ODVA) more flexibility in determining the amount of the Program's financial assistance to OVH residents.

Housekeeping changes are a result of the passage of ORS 406.005 in the 2005 Legislature which establishes the Department of Veterans' Affairs. Text is being amended to replace "Director" with "Department."

**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

### 274-040-0030

#### Covered Care

(1) It is the expressed policy of the Department of Veterans' Affairs (Department) to make the Oregon Veterans' Home (OVH) financially available to current or potential OVH resident by means of the Department's Covered Care Program described more fully below.

(2) Within the fund established by the Department pursuant to ORS 406.050, an account is designated for donations to be used by the Department consistent with this Covered Care Program. Funds held within this account will be used by the Department exclusively for the purpose of assisting OVH residents whose income, Medicare benefits, Medicaid benefits, and any other assets, as determined by the Department, are insufficient to meet the financial requirements necessary for the cost of OVH care.

(3) When determining to whom Covered Care Program assistance will be made available, the Department may take into consideration various factors, including but not limited to:

(a) The amount of funds in the Covered Care Program account available for this purpose;

(b) The anticipated future deposits into the Covered Care Program account;

(c) The amount of any present commitments from the Covered Care Program account;

(d) All available sources of revenue or income to a particular resident, including but not limited to:

(A) United States Department of Veterans Affairs (USDVA) payments;

(B) Social Security benefits;

(C) Other pensions;

(D) Millennium Bill benefits;

(E) Medicare benefits;

(F) Medicaid benefits;

(G) Annuities;

(H) Savings; and

(I) Investments.

(e) The amount of funds available to a particular or potential resident from members of his/her family, or others who are willing to provide financial assistance and agree to be legally obligated to meet such financial obligations of the resident;

(f) Whether or not the available Covered Care Program assistance will satisfy the entire gap in necessary funding for OVH care on behalf of the resident or potential resident;

(g) Whether or not the intended beneficiary of the Covered Care Program assistance is a current OVH resident.

(4) The payment of Covered Care Program assistance on behalf of any OVH resident is subject to the sole discretion of the Department. The Department may refuse, terminate, or suspend Covered Care Program assistance to any OVH resident at any time without notice. The Department shall be under no obligation to provide Covered Care Program assistance to any OVH resident or to solicit funds to meet the financial needs of the OVH resident, his/her family, or others.

(5) When determining to terminate or suspend Covered Care Program assistance to any current recipient, the Department may take into consideration various factors, including by not limited to:

(a) Any reported change in the financial status of the recipient or other OVH care payment provider;

(b) Any misrepresentation or omission of material facts in the application for the Covered Care Program assistance or otherwise;

(c) The behavior of the recipient while in the OVH;

(d) The feasibility of appropriate care for the recipient at the OVH;

(e) The availability of funds in the Covered Care Program account.

(6) If all of the funding of an OVH resident, or potential resident, cannot be met with allowable assistance from the Covered Care Program, no amounts will be committed by the Department or paid from the Covered Care Program account.

(7) Applications for assistance from the Covered Care Program account shall be made in such manner and detail, and on such forms, as the Department shall determine.

(8) Applications generally will be prioritized for consideration based on the date of completed receipt by the Department. The Department may, however, consider applications in such other order and at such other times as deemed reasonable.

Stat. Auth.: ORS 406.050, 408.360, 408.365 & 408.368

Stats. Implemented: ORS 408.365 & 408.368

Hist.: DVA 4-2002(Temp), f. & cert. ef. 4-5-02 thru 10-2-02; DVA 7-2002, f. & cert. ef. 9-24-02; DVA 10-2002(Temp), f. 12-27-02, cert. ef. 1-1-03 thru 6-27-03; DVA 9-2003(Temp), f. & cert. ef. 8-21-03 thru 2-17-03; DVA 12-2003(Temp), f. & cert. ef. 10-1-03 thru 2-17-04; DVA 14-2003(Temp), f. & cert. ef. 11-14-03 thru 2-14-04; DVA 15-2003, f. & cert. ef. 12-31-03; DVA 3-2006(Temp), f. & cert. ef. 3-31-06 thru 9-25-06

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## Employment Department, Child Care Division Chapter 414

**Rule Caption:** OAR 414-061-0070 Procedures for Conducting State Police Criminal Records Checks.

**Adm. Order No.:** CCD 1-2006(Temp)

**Filed with Sec. of State:** 3-16-2006

**Certified to be Effective:** 3-16-06 thru 9-12-06

**Notice Publication Date:**

**Rules Amended:** 414-061-0070

**Subject:** Removing 414-061-0070(5)(a) language. The Criminal History Registry fee will no longer be included in the application fee.

**Rules Coordinator:** Lynn M. Nelson—(503) 947-1724

### 414-061-0070

**Procedures for Conducting Oregon State Police Criminal Records Checks and Department of Human Services Child Protective Services Record Checks**

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Criminal History Registry.

(2) Criminal History Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.537 and 657A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. Information includes:

(a) A properly completed and signed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry;

(b) For a subject individual who acknowledges a prior conviction of a criminal offense, as listed in OAR 414-061-0050, an explanation of the

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relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided by the individual; and

(c) On the application for enrollment in the Criminal History Registry, CCD may request subject individuals to consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Criminal History Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) CCD will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Criminal History Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for CCD employees; and

(b) All other requests for criminal record checks and child protective services checks and enrollment in the Criminal History Registry will cost \$3 per person.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06

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## Land Conservation and Development Department Chapter 660

**Rule Caption:** Amend OAR 660-034-0035 to clarify uses allowed in state parks on agriculture and forest land and make housekeeping amendments to other rules under Division 034.

**Adm. Order No.:** LCDD 3-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 660-034-0000, 660-034-0010, 660-034-0015, 660-034-0020, 660-034-0025, 660-034-0030, 660-034-0035, 660-034-0040

**Subject:** 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 "housekeeping" amendments to other rules under OAR chapter 660, division 034. These amendments are intended to make existing requirements more clear; they do not amend the intent of existing rule provisions and do not create new requirements.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

### 660-034-0000

#### Purpose

(1) The purpose of this division is to establish policies and procedures for the planning and zoning of state and local parks in order to address the recreational needs of the citizens of the state. This division is intended to interpret and carry out requirements of Statewide Planning Goal 8 and ORS 195.120 to 195.125.

(2) In general, this division directs local government planning and zoning activities regarding state and local park master plans. OAR chapter 736, division 18, directs the Oregon Parks and Recreation Department (OPRD) with respect to state park master planning, and does not apply to local governments except where specified by this division.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2006, f. & cert. ef. 4-14-06

### 660-034-0010

#### Definitions

As used in this division, unless the context requires otherwise:

(1) "Administrative site" is property owned or managed by OPRD that is used solely for state park administration or maintenance facilities, or both, and which is not within or contiguous to a state park.

(2) "Agricultural land" shall have the same meaning as OAR 660-033-0020(1).

(3) "Camper cabin" is a camp structure with no permanent foundations or plumbing, located within a camping area and intended for occupancy by one to eight persons.

(4) "Camp store" is an enclosed building not exceeding 1500 square feet for the sale of sundries to registered campers in camping areas within the park.

(5) "Endowment property" is property owned by OPRD which has no known outstanding resources or recreational values that would support the state park system mission and role, and which is intended for sale, lease, trade or donation to a different entity or for management for a purpose which does not directly support the state park system mission and role.

(6) "Forest land" shall have the same meaning as provided in Goal 4.

(7) "Group shelter" is an open sided or enclosed permanent building that does not include bedrooms, but may include plumbing, fireplace, barbecue, and picnic tables, for use by registered campers in a group camping area.

(8) "Local park" is a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance.

(9) "Open play field" is a large, grassy area with no structural improvements intended for outdoor games and activities by park visitors. The term does not include developed ball fields, golf courses or courts for racquet sports.

(10) "OPRD" means the Oregon Parks and Recreation Department.

(11) "PAPA" is a "post acknowledgment plan amendment" conducted according to the requirements of ORS 197.610 to 197.625. The term includes amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation.

(12) "Park retreat" is an area of a state park designated for organized gatherings. Facilities within a park retreat are for use only by registered retreat guests. A park retreat must include a meeting hall and designated parking, and may also include other park amenities and support facilities.

(13) "Park visitor" is any member of the public who enters a state or local park for the primary purpose of enjoying or learning about the natural, historic or prehistoric, or scenic resources associated with the park setting.

(14) "Preliminary draft master plan" is a proposal for a state park master plan which has been prepared for adoption as an administrative rule by OPRD under the provisions of OAR chapter 736, division 18, and which is provided to local governments and the public for review and comment.

(15) "Recreation shop" is an open or enclosed building not exceeding 500 square feet of floor area for the rental of horses or recreational equipment such as bicycles and boats and for the sale of incidental related items such as bait and fishing flies.

(16) "State park" is any property owned or managed by OPRD and that OPRD has determined possesses outstanding natural, cultural, scenic or recreational resource values that support the state park system mission and role. The following OPRD properties are not state parks for purposes of this division: endowment properties and administrative sites.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

### 660-034-0015

#### State Park Master Plans and Allowable Uses

(1) OPRD adopts state park master plans as administrative rules pursuant to OAR chapter 736, division 18 and ORS 390.180. In order to facilitate the implementation of state park master plans through local government land use plans, this division provides procedures and criteria for park master planning and coordination.

(2) Each state park master plan shall describe, through maps and text as appropriate, the type, size and location of all land uses intended to occur in the park. Uses listed in ORS 195.120(3) and any other uses determined by OPRD may be authorized in a state park master plan provided all aspects of such uses comply with statewide planning goals, ORS 215.296, 390.180, and OAR 736-018-0020 on July 15, 1998, and all other applicable laws. State park master plans shall include findings of compliance with statewide planning goals and ORS 215.296.

(3) Except where the context specifies otherwise, the requirements in this division do not apply to state park master plans adopted as state rules prior to July 15, 1998. However, the requirements in this division do apply to amendments to such master plans when the amendments are adopted after July 15, 1998.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

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## 660-034-0020

### Coordination Procedures for Development of State Park Master Plans

(1) For each state park master plan developed after July 15, 1998, OPRD shall submit a preliminary draft master plan to DLCD and all local governments with land use authority over the subject state park property. This submittal shall occur prior to or simultaneously with OPRD's initiation of the administrative rule procedure for master plan adoption. At the time of the submittal, OPRD shall consult with local planning officials to determine whether the proposed uses in the park master plan are allowed by the acknowledged local comprehensive plan, as follows:

(a) If the local government determines that all of the proposed uses are allowed by the acknowledged local plan, OPRD may proceed with consideration and adoption of the master plan. In this case, the procedures in OAR 660-034-0020(2) to 660-034-0030(6) do not apply. However, if the proposed uses are allowable, but only by application of local conditional approval criteria that are not clear or objective, OPRD may seek to amend such criteria by proceeding as described in subsection (b) of this section. Upon request from OPRD, the local government shall provide written confirmation that the proposed master plan is compatible with the local plan.

(b) If the local government determines that any of the proposed uses described in the master plan are not allowed by the acknowledged local plan or implementing regulations, OPRD shall submit the preliminary master plan to the local government as an application for a post-acknowledgment plan amendment (PAPA).

(2) Upon receipt of a PAPA application from OPRD, a local government shall follow applicable PAPA procedures and requirements, except as described in subsections (a) through (c) of this section:

(a) The local government shall notify interested citizens and conduct at least one public hearing on the preliminary master plan within 90 days following submittal of a complete PAPA application. This may be conducted as a joint hearing of the local government and OPRD;

(b) Within 120 days following submittal of OPRD's complete application, the local government shall forward to OPRD any recommendations for changes to the master plan. The recommendations shall be in writing and shall include any suggested conditions or changes to the master plan;

(c) The local government shall not take final action on the PAPA application until OPRD has adopted the park master plan as an administrative rule and submitted it to the local government in accordance with OAR 660-034-0030.

(3) Within 60 days of receiving written recommendations from a local government pursuant to OAR 660-034-0020(2)(b), OPRD shall provide a written response to the local government addressing each recommendation. The response shall describe any changes to the draft park master plan that OPRD would propose in response to the local recommendations.

(4) OPRD's response shall also provide a second comment period not less than 30 days during which the local government may:

(a) Review any changes to the park master plan proposed by OPRD in response to the local government's previous recommendations; and

(b) Based on this review, either concur with or object to OPRD's pending adoption of the proposed master plan.

(5) If no objections are raised by the local government during the 30 day comment period, OPRD may proceed with consideration and adoption of the state park master plan. If OPRD receives a timely objection from the local government, and if the objection meets the requirements of OAR 660-034-0020(6), OPRD shall delay final consideration and adoption of the master plan in order to engage in formal or informal dispute resolution with the local government pursuant to OAR 660-034-0025. This delay of adoption shall continue for at least 60 days following the receipt of the objection, or until the issues in the objection are resolved and the objection is withdrawn, whichever occurs first. At the end of the 60 day delay period OPRD may proceed with consideration and adoption of the state park master plan.

(6) OPRD may choose to engage in dispute resolution for all issues raised by an objection. However, the mandatory 60 day delay specified in OAR 660-034-0020(5) shall only apply to an objection that meets the following requirements:

(a) The objection shall be described in a letter from the local governing body to the OPRD director received within the 30 day time period specified in OAR 660-034-0020(4); and

(b) The objection letter shall indicate the reasons why the local government believes the proposed master plan is inconsistent with the statewide planning goals, ORS 215.296, or OPRD's state park master planning criteria in OAR 736-018-0020.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

## 660-034-0025

### Dispute Resolution

(1) If a local government objects to a proposed state park master plan, as described in OAR 660-034-0020(4) to 660-034-0020(6), OPRD shall attempt to resolve the objections during the 60 day delay period specified in OAR 660-034-0020(5), either through informal discussions with the local government or through formal mediation.

(2) OPRD or the local government may request mediation through the Oregon Consensus Program in order to resolve a disagreement about uses in a preliminary draft state park master plan. Such mediation shall be conducted according to the provisions of ORS 183.502.

(3) If OPRD and the local government engage in mediation pursuant to OAR 660-034-0025(2), and if this mediation does not result in timely resolution of the objection, either OPRD or the local government may request a nonbinding determination by the Land Conservation and Development Commission (LCDC). This determination shall be limited to issues involving the compliance of OPRD's proposed state park master plan with the statewide goals or related statutes or rules. Such a request shall be submitted by the end of the 60-day delay period specified in OAR 660-034-0020(5), or within 15 days following a withdrawal by either party from the mediation proceedings described under section (2) of this rule, whichever occurs last. LCDC may either agree or not agree to consider a request to issue a nonbinding determination regarding the dispute.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

## 660-034-0030

### Local Government Implementation of State Park Master Plans

(1) Within 60 days following the effective date of the state park master plan administrative rule adopted by OPRD, unless an appeal of the rule is filed, OPRD shall submit the adopted master plan to all local governments with land use authority over the subject state park. The submittal shall include a request that the local governments take final action on the PAPA application previously filed pursuant to OAR 660-034-0020(1)(b).

(2) Within 150 days after receipt of an adopted master plan from OPRD, the local governments shall take final action necessary to conclude the PAPA initiated under OAR 660-034-0020(1)(b). Final action shall include amendments to the plan, implementing ordinances, plan map and zoning map, as necessary, to:

(a) Indicate the existence of the state park and its boundaries on the appropriate maps;

(b) Apply appropriate plan and zone categories (a "park" zone or overlay zone is recommended); and

(c) Provide objective land use and siting review criteria in order to allow development of the uses indicated in the state park master plan.

(3) Amendments to the local plan intended to implement the state park master plan shall be consistent with all statewide planning goals. If the local action includes only such amendments as are necessary and sufficient to implement the park master plan, the local government may rely on goal findings that are included in the park master plan (see OAR 660-034-0015(2)) in order to comply with statewide planning goal requirements.

(4) The final local action shall include findings addressing ORS 215.296 for all uses and activities in or adjacent to an agricultural or forest zone. The local government may rely on the ORS 215.296 findings in the state park master plan (see OAR 660-034-0015(2)) in order to comply with this requirement. The analysis required under ORS 215.296 shall concern farm or forest practices occurring on lands surrounding the state park that are devoted to farm or forest use, and shall not concern farm or forest practices occurring on farm or forest land within the state park itself.

(5) The local government may decide to alter or disallow the state park master plan provided the local government determines that adoption of the state park master plan would not comply with a statewide planning goal or ORS 215.296, or both. The local government shall alter or disallow uses described in the park plan only to the extent necessary to comply with statewide goals or ORS 215.296, or both. If the local government alters or disallows the state park master plan, OPRD may pursue any of the following options:

(a) Take no action;

(b) Modify the state park master plan to be compatible with the final PAPA action taken by the local government;

(c) Appeal the local decision.

(6) If the local government takes no final action on the PAPA within 150 days from receipt of the adopted state parks master plan from OPRD, the master plan, rather than the local plan:

# ADMINISTRATIVE RULES

(a) Shall be deemed the controlling land use regulation for the subject state park with respect to uses described in the state parks master plan;

(b) Shall supersede local zoning ordinances with respect to review and approval of uses described in the state parks master plan; and

(c) The provisions of this section shall remain in effect until the local government takes final action on the PAPA application.

(7) OPRD may submit a state park master plan that OPRD adopted prior to July 15, 1998 to a local government as a PAPA. Upon receipt of such a previously adopted state park master plan, the local government shall consider conforming amendments to local planning and zoning measures, and may adopt such amendments provided the proposed uses in the park master plan comply with statewide planning goals and ORS 215.296.

(8) The OPRD director may continue any use or facility that existed in a state park on July 25, 1997. Furthermore, the following uses and activities shall be approved by local government subject only to clear and objective siting criteria that shall not, either individually or cumulatively, prohibit the use or activity

(a) The repair and renovation of facilities in existence on July 25, 1997;

(b) The replacement of facilities and services in existence on July 25, 1997, including minor location changes; and

(c) The minor expansion of uses and facilities in existence on July 25, 1997.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

## 660-034-0035

### Park Uses On Agricultural and Forest Land

(1) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a state park, and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a state park, provided such uses are also allowed under OAR chapter 736, division 18 and all other applicable laws, goals, and rules. Local governments may allow state parks and park uses as provided in OAR chapter 660, division 33, and ORS 215.213 or 215.283 on agricultural lands, or as provided in OAR 660-006-0025(4) on forest lands, regardless of whether such uses are provided for in a state park master plan.

(2) The park uses listed in subsection (a) through (i) of this section are allowed in a state park subject to the requirements of this division, OAR chapter 736, division 18, and other applicable laws. Although some of the uses listed in these subsections are generally not allowed on agricultural lands or forest lands without exceptions to Statewide Planning Goals 3 or 4, a local government is not required to adopt such exceptions in order to allow these uses on agricultural or forest land within a state park provided the uses, alone or in combination, meet all other applicable requirements of statewide goals and are authorized in a state park master plan adopted by OPRD, including a state park master plan adopted by OPRD prior to July 15, 1998:

(a) Campground areas: recreational vehicle sites; tent sites; camper cabins; yurts; teepees; covered wagons; group shelters; campfire program areas; camp stores;

(b) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;

(c) Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;

(d) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pumpout stations;

(e) Amenities related to park use intended only for park visitors and employees: laundry facilities; recreation shops; snack shops not exceeding 1500 square feet of floor area;

(f) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;

(g) Park Maintenance and Management Facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging;

(h) Natural and cultural resource interpretative, educational and informational facilities in state parks: interpretative centers, information/orientation centers, self-supporting interpretative and informational kiosks, natural history or cultural resource museums, natural history or cultural educational facilities, reconstructed historic structures for cultural resource

interpretation, retail stores not exceeding 1500 square feet for sale of books and other materials that support park resource interpretation and education;

(i) Visitor lodging and retreat facilities in state parks: historic lodges, houses or inns and the following associated uses in a state park retreat area only:

(A) Meeting halls not exceeding 2000 square feet of floor area;

(B) Dining halls (not restaurants).

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

## 660-034-0040

### Planning for Local Parks

(1) Local park providers may prepare local park master plans, and local governments may amend acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

(b) Appropriate zoning categories and map designations (a "local park" zone or overlay zone is recommended), including objective land use and siting review criteria, in order to authorize the existing and planned park uses described in local park master plan.

(2) Unless the context requires otherwise, this rule does not require changes to:

(a) Local park plans that were adopted as part of an acknowledged local land use plan prior to July 15, 1998; or

(b) Lawful uses in existence within local parks on July 15, 1998.

(3) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a local park and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a local park, in accordance with applicable laws, statewide goals, and rules.

(4) Although some of the uses listed in OAR 660-034-0035(2)(a) to (g) are not allowed on agricultural or forest land without an exception to Goal 3 or Goal 4, a local government is not required to take an exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in combination, meet all other statewide goals and are described and authorized in a local park master plan that:

(a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and consistent with all statewide goals;

(b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under OAR chapter 736, division 18; and

(c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on or adjacent to land zoned for farm or forest use.

Stat. Auth.: ORS 195.120 & 197.040

Stats. Implemented: ORS 195.120 - 195.125

Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2006, f. & cert. ef. 4-14-06

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## Landscape Architect Board

### Chapter 804

**Rule Caption:** Add or revise four different fees; allow Board to assess civil penalty less than \$5000.

**Adm. Order No.:** LAB 1-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 3-17-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 804-030-0020, 804-040-0000

**Subject:** The Board is including on the fee list the application fee for initial Landscape Architect registration and the application fee for business registration, each being \$100.00. These processing fees have been assessed but not listed in the fee schedule. The fee of \$50.00 charged for a registrant list is also being included in the fee listing. The Board is increasing the initial Landscape Architect registration

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fee by \$25.00 so that it becomes the same amount as the annual renewal fee of \$250.00.

The Board is rewording the Civil Penalty language so they can assess less than the \$5000 amount currently required by rule.

**Rules Coordinator:** Susanna R. Knight—(503) 589-0093

## 804-030-0020

### Civil Penalties

Civil Penalties may be assessed up to \$5,000 for each offense. Such offenses include, but are not limited to:

(1) Unregistered individuals representing themselves as landscape architects.

(2) Registered landscape architects violating any of the provisions of ORS 671.310 through 671.459 or any rule adopted by the board.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.435

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2006, f. & cert. ef. 3-17-06

## 804-040-0000

### Fees

The following are fees established by the board:

(1) Landscape Architect Registration Examination: an amount equal to the cost of purchasing the exam, or portions of the exam, from CLARB, plus the cost of postage, handling, examination site facilities and staff time for administration of the exam.

(2) Initial Landscape Architect registration: \$250.00.

(3) Initial Landscape Architect in Training registration: \$50.00.

(4) Registration renewal for Landscape Architect: \$250.00.

(5) Registration renewal for Landscape Architect in Training: \$50.00.

(6) Exam application fee (required to review qualifications to sit for each exam): \$50.00.

(7) Reciprocity application fee: \$100.00.

(8) Duplicate certificate: \$50.00.

(9) Late renewal fee: \$100.00: Lapsed Registration Fee to equal the full renewal fee plus late fee for each year the license has lapsed.

(10) Initial certification as an Authorized Business Entity in Landscape Architecture: \$225.00.

(11) Renewal fee for an Authorized Business Entity in Landscape Architecture: \$225.00.

(12) Emeritus Annual fee: \$25.00.

(13) Application fee for initial Landscape Architect registration: \$100.00.

(14) Application fee for business registration: \$100.00.

(15) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.365

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06

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## Landscape Contractors Board

### Chapter 808

**Rule Caption:** Amends operating budget of the LCB, which can be done by rule because of the semi-independent status.

**Adm. Order No.:** LCB 1-2006

**Filed with Sec. of State:** 3-27-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 808-001-0008

**Subject:** 808-001-0008 — updates the rule adoption date of the Board's operating budget. The LCB is a semi-independent state agency and therefore can amend its budget by rule hearing.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 986-6570

## 808-001-0008

### Operating Budget

Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2005, and ending June 30, 2007, as approved at the Regular Board Meeting held March 17, 2006. The Board Administrator will amend budgeted accounts as necessary, within the approved budget for the

effective operation of the Board. Copies of the budget are available at the Board's office.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 182.462

Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 3-2005, f. & cert. ef. 6-1-05; LCB 1-2006, f. 3-27-06, cert. ef. 4-1-06

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## Oregon Board of Dentistry

### Chapter 818

**Rule Caption:** Creates or amends rules regarding Specialties, Advertising, Unprofessional Conduct, Certification, Dental Assistants, Licensing, and Anesthesia.

**Adm. Order No.:** OBD 1-2006

**Filed with Sec. of State:** 3-17-2006

**Certified to be Effective:** 4-1-06

**Notice Publication Date:** 2-1-06

**Rules Adopted:** 818-021-0026

**Rules Amended:** 818-001-0002, 818-012-0030, 818-015-0007, 818-021-0011, 818-021-0012, 818-021-0025, 818-026-0080, 818-042-0115, 818-042-0116, 818-042-0117

**Subject:** OAR 818-001-0002, Definitions, includes the definition of Oral and Maxillofacial Radiology as a specialty.

OAR 818-012-0030, Unprofessional Conduct, regarding sexual misconduct, is amended.

OAR 818-015-0007, Specialty Advertising, includes Oral and Maxillofacial Radiology as a specialty for advertising purposes.

OAR 818-021-0011, Application for License to Practice Dentistry Without Further Examination, eliminates the rule regarding background checks.

OAR 818-021-0012, Specialties Recognized, adds Oral and Maxillofacial Radiology as a specialty of the Board.

OAR 818-021-0025, Application for License to Practice Dental Hygiene Without Further Examination, eliminates the rule regarding background checks.

OAR 818-021-0026, State and Nationwide Criminal Background Checks, Fitness Determinations, is adopted to bring the Board's rules into compliance with the new law (HB 2157) that will allow for nationwide criminal background checks on all applicants and also licensees who may be under Board investigation.

OAR 818-026-0080, Standards Applicable when a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia, allows a dentist who does not hold a Class 1 (Nitrous Oxide) Anesthesia Permit to perform dental procedures on a patient who receives anesthesia induced by a dental hygienist who holds a Class 1 (Nitrous Oxide) Anesthesia Permit.

OAR 818-042-0115, Expanded Functions – Oral Surgery Assistant, changes the name to Certified Anesthesia Dental Assistant.

OAR 818-042-0116, Certification – Oral Surgery Assistant, changes the name to Anesthesia Dental Assistant.

OAR 818-042-0117, Initiation of IV Line, changes the name Oral Surgery Assistant to Anesthesia Dental Assistant.

**Rules Coordinator:** Sharon Ingram—(503) 229-5520

## 818-001-0002

### Definitions

As used in OAR Chapter 818:

(1) "Board" means the Oregon Board of Dentistry, the members of the Board, its employees, its agents, and its consultants.

(2) "Dental Practice Act" means ORS Chapter 679 and 680.010 to 680.170 and the rules adopted pursuant thereto.

(3) "Dentist" means a person licensed pursuant to ORS Chapter 679 to practice dentistry.

(4) "Direct Supervision" means supervision requiring that a dentist diagnose the condition to be treated, that a dentist authorize the procedure to be performed, and that a dentist remain in the dental treatment room while the procedures are performed.

(5) "General Supervision" means supervision requiring that a dentist authorize the procedures, but not requiring that a dentist be present when the authorized procedures are performed. The authorized procedures may

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also be performed at a place other than the usual place of practice of the dentist.

(6) "Hygienist" means a person licensed pursuant to ORS 680.010 to 680.170 to practice dental hygiene.

(7) "Indirect Supervision" means supervision requiring that a dentist authorize the procedures and that a dentist be on the premises while the procedures are performed.

(8) "Informed Consent" means the consent obtained following a thorough and easily understood explanation to the patient, or patient's guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient's guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to all questions asked.

(9) "Licensee" means a dentist or hygienist.

(a) "Volunteer Licensee" is a dentist or dental hygienist licensed according to rule to provide dental health care without receiving or expecting to receive compensation.

(10) "Limited Access Patient" means a patient who, due to age, infirmity, or handicap is unable to receive regular dental hygiene treatment in a dental office.

(11) "Specialty." Specialty areas of dentistry are as defined by the American Dental Association, Council on Dental Education. The specialty definitions are added to more clearly define the scope of the practice as it pertains to the specialty areas of dentistry.

(a) "Dental Public Health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(b) "Endodontics" is the branch of dentistry which is concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

(c) "Oral Pathology" is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations.

(d) "Oral and Maxillofacial Radiology" is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

(e) "Oral and Maxillofacial Surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(f) "Orthodontics" is the area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structures.

(g) "Pediatric Dentistry" is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(h) "Periodontics" is the specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of these structures and tissues.

(i) "Prosthodontics" is the branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance and health of the patient by the restoration of natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.010 & 680.010

Hist.: DE 11-1984, f. & ef. 5-17-84; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0001; DE 3-1997, f. & cert. ef. 8-27-97; OBD 7-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-012-0030

### Unprofessional Conduct

The Board finds that in addition to the conduct set forth in ORS 679.140(2), a licensee engages in unprofessional conduct if the licensee does or permits any person to:

(1) Attempt to obtain a fee by fraud or misrepresentation.

(2) Offer rebates, split fees, or commissions for services rendered to a patient to any person other than a partner, employee, or employer.

(3) Accept rebates, split fees, or commissions for services rendered to a patient from any person other than a partner, employee, or employer.

(4) Initiate, or engage in, with a patient, any behavior with sexual connotations. The behavior can include but is not limited to, inappropriate physical touching; kissing of a sexual nature; gestures or expressions, any of which are sexualized or sexually demeaning to a patient; inappropriate procedures, including, but not limited to, disrobing and draping practices that reflect a lack of respect for the patient's privacy; or initiating inappropriate communication, verbal or written, including, but not limited to, references to a patient's body or clothing that are sexualized or sexually demeaning to a patient; and inappropriate comments or queries about the professional's or patient's sexual orientation, sexual performance, sexual fantasies, sexual problems, or sexual preferences.

(5) Engage in an unlawful trade practice as defined in ORS 646.605 to 646.608.

(6) Fail to present a treatment plan with estimated costs to a patient upon request of the patient or to a patient's guardian upon request of the patient's guardian.

(7) Misrepresent any facts to a patient concerning treatment or fees.

(8)(a) Fail to provide a patient or patient's guardian within 14 days of written request:

(A) Legible copies of records; and

(B) Duplicates of study models and radiographs or legible copies thereof if the radiographs or study models have been paid for.

(b) The dentist may require the patient or guardian to pay in advance a fee reasonably calculated to cover the costs of making the copies or duplicates. The dentist may charge a fee not to exceed \$0.25 per page (or \$0.50 for records copied from microfilm), plus any reasonable clerical costs incurred in the duplication of records. The actual cost of duplicating X-rays may also be charged to the patient. Patient records or summaries may not be withheld from the patient because of any prior unpaid bills, except as provided in (8)(a)(B) of this rule.

(9) Fail to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders services.

(10) Use prescription forms pre-printed with any Drug Enforcement Administration number, name of controlled substances, or facsimile of a signature.

(11) Use a rubber stamp or like device to reproduce a signature on a prescription form or sign a blank prescription form.

(12) Order drugs listed on Schedule II of the Drug Abuse Prevention and Control Act, 21 U.S.C. Sec. 812, for office use on a prescription form.

(13) Violate any Federal or State law regarding controlled substances.

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

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.140(1)(c), 679.140(2), 679.170(6) & 680.100

Hist.: DE 6, f. 8-9-63, ef. 9-11-63; DE 14, f. 1-20-72, ef. 2-10-72; DE 5-1980, f. & ef. 12-26-80; DE 2-1982, f. & ef. 3-19-82; DE 5-1982, f. & ef. 5-26-82; DE 9-1984, f. & ef. 5-17-84; Renumbered from 818-010-0080; DE 3-1986, f. & ef. 3-31-86; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-011-0020; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 2-1997, f. & cert. ef. 2-20-97; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-015-0007

### Specialty Advertising

(1) The Board recognizes the following specialties:

(a) Endodontics;

(b) Oral and Maxillofacial Surgery;

(c) Oral and Maxillofacial Radiology;

(d) Oral Pathology;



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- (e) Orthodontics;
- (f) Pediatric Dentistry;
- (g) Periodontics;
- (h) Prosthodontics; and
- (i) Public Health Dentistry.

(2) A dentist may only advertise as a specialist or as specializing in an area of dentistry which is recognized by the Board and in which the dentist is licensed or certified by the Board.

(3) A dentist whose license is not limited to the practice of a specialty under OAR 818-021-0017 may advertise that the dentist performs or limits practice to specialty services even if the dentist is not a specialist in the advertised area of practice so long as the dentist clearly discloses that the dentist is a general dentist or a specialist in a different specialty. For example, the following disclosures would be in compliance with this rule for dentists except those licensed pursuant to 818-021-0017: "Jane Doe, DDS, General Dentist, practice limited to pediatric dentistry." "John Doe, DMD, Endodontist, practice includes prosthodontics."

(4) A hygienist may not advertise as a specialist in any area of dentistry or dental hygiene.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.140(2)(e)  
Hist.: DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE1-1989, f. 1-27-89, cert. ef. 2-1-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 3-1997, f. & cert. ef. 8-27-97; OBD 5-2001, f. & cert. ef. 1-8-01; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-021-0011

### Application for License to Practice Dentistry Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dentist who holds a license to practice dentistry in another state or states if the dentist meets the requirements set forth in ORS 679.060 and 679.065 and submits to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or completion of a postdoctoral General Dentistry Residency program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Having passed the dental clinical examination conducted by a regional testing agency or by a state dental licensing authority; and

(d) Holding an active license to practice dentistry, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dentistry, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 40 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A dental license granted under this rule will be the same as the license held in another state; i.e., if the dentist holds a general dentistry license, the Oregon Board will issue a general (unlimited) dentistry license. If the dentist holds a license limited to the practice of a specialty, the Oregon Board will issue a license limited to the practice of that specialty. If the dentist holds more than one license, the Oregon Board will issue a dental license which is least restrictive.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.060, 679.065, 679.070, 679.080 & 679.090  
Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-021-0012

### Specialties Recognized

(1) A dentist may advertise that the dentist is an endodontist, oral pathologist, oral and maxillofacial surgeon, oral and maxillofacial radiologist, orthodontist, pediatric dentist, periodontist, prosthodontist or public

health dentist only if the dentist is licensed or certified by the Board in the specialty in accordance with Board rules.

(2) A dentist may advertise that the dentist specializes in or is a specialist in endodontics, oral pathology, oral and maxillofacial surgery, oral and maxillofacial radiology, orthodontics, pediatric dentistry, periodontics, prosthodontics or public health dentistry only if the dentist is licensed or certified by the Board in the specialty in accordance with Board rules.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.140  
Hist.: DE 5-1997, f. & cert. ef. 12-31-97; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-021-0025

### Application for License to Practice Dental Hygiene Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dental hygienist who holds a license to practice dental hygiene in another state or states if the dental hygienist meets the requirements set forth in ORS 680.040 and 680.050 and submits to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Evidence of having passed the dental hygiene examination conducted by a regional testing agency or by a state dental or dental hygiene licensing authority; and

(d) Holding an active license to practice dental hygiene, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dental hygiene, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately prior to application; and

(f) Having completed 24 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

Stat. Auth.: ORS 680  
Stats. Implemented: ORS 680.040, 680.050, 680.060, 680.070 & 680.072  
Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-021-0026

### State and Nationwide Criminal Background Checks, Fitness Determinations

(1) The Board requires fingerprints of all applicants for a dental or dental hygiene license to determine the fitness of an applicant. These will be provided on prescribed forms provided by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board. The Board will submit fingerprints to the Oregon Department of State Police for checks against state and national data sources. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police.

(2) These rules are to be applied when evaluating the criminal history of all licensees and applicants for a dental or dental hygiene license and conducting fitness determinations based upon such history. The fact that the applicant has cleared the criminal history check does not guarantee the granting of a license.

(3) Except as otherwise provided in section (1), 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 indicates 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, or permit; and

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

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- (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.
- (4) The Board may require fingerprints of any licensed Oregon dentist or dental hygienist, who is the subject of a complaint or investigation for the purpose of requesting a state or nationwide criminal records background check.
- (5) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

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

(7) Criminal offender information is confidential. Dissemination of information received under 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 or licensee and as such is confidential pursuant to ORS 676.175(1).

(8) The Board will permit the 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.

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

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests and court records that may be indicative of a person's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license or permit, they are entitled to a contested case process pursuant to ORS 183.414-470. Challenges to the accuracy of completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

Stat. Auth.: ORS 679 & 680  
Stats. Implemented: ORS 181, 183, 670.280, 679.060, 679.115, 679.140, 679.160, 680.050, 680.082 & 680.100  
Hist.: OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-026-0080 Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia

(1) A dentist who does not hold an anesthesia permit may perform dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist licensed by the Oregon Board of Medical Examiners, another Oregon licensed dentist holding an appropriate anesthesia permit, or a Certified Registered Nurse Anesthetist (CRNA) licensed by the Oregon Board of Nursing.

(2) A dentist who does not hold a Class 1 Permit for nitrous oxide sedation may perform dental procedures on a patient who receives nitrous oxide induced by an Oregon licensed dental hygienist holding a Class 1 (nitrous oxide sedation) Permit.

(3) A dentist who performs dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist, another dentist holding an anesthesia permit, a CRNA, or a dental hygienist who induces nitrous oxide sedation, shall hold a current and valid Health Care Provider BLS/CPR level certificate, or equivalent, and have the same personnel, facilities, equipment and drugs available during the procedure and during recovery as required of a dentist who has a permit for the level of anesthesia being provided.

(4) The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of anesthesia being induced. The anesthesia record shall be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures.

(5) A dentist who intends to use the services of a qualified anesthesia provider as described in section 1 above, shall notify the Board in writing of his/her intent. Such notification need only be submitted once every licensing period.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.250(7) & (10)  
Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-042-0115 Expanded Functions – Certified Anesthesia Dental Assistant

(1) A dentist holding the appropriate anesthesia permit may verbally authorize a Certified Anesthesia Dental Assistant to:

(a) Administer medications into an existing intravenous (IV) line of a patient under sedation or anesthesia under direct visual supervision.

(b) Administer emergency medications to a patient in order to assist the licensee in an emergent situation under direct visual supervision.

(2) A dentist holding the appropriate anesthesia permit may verbally authorize a Certified Anesthesia Dental Assistant to dispense to a patient, oral medications that have been prepared by the dentist and given to the anesthesia dental assistant by the supervising dentist for oral administration to a patient under Indirect Supervision.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.020(1), 679.025(1) & 679.250(7)  
Hist.: OBD 1-2001, f. & cert. ef. 1-8-01; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-042-0116 Certification – Anesthesia Dental Assistant

The Board may certify a person as an Anesthesia Dental Assistant if the applicant submits a completed application, pays the certification fee and shows satisfactory evidence of:

(1) Successful completion of:

(a) The "Oral and Maxillofacial Surgery Anesthesia Assistants Program" or successor program, conducted by the American Association of Oral and Maxillofacial Surgeons; or

(b) The "Oral and Maxillofacial Surgery Assistants Course" or successor course, conducted by the California Association of Oral and Maxillofacial Surgeons (CALAOMS), or a successor entity; or

(c) The "Certified Oral and Maxillofacial Surgery Assistant" examination, or successor examination, conducted by the Dental Assisting National Board or other Board approved examination; and

(2) Holding valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course, or its equivalent.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.250(7)  
Hist.: OBD 1-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## 818-042-0117 Initiation of IV Line

Upon successful completion of a course in intravenous access or phlebotomy approved by the Board, a Certified Anesthesia Dental Assistant may initiate an intravenous (IV) infusion line for a patient being prepared for IV medications, sedation, or general anesthesia under the Indirect Supervision of a dentist holding the appropriate anesthesia permit.

Stat. Auth.: ORS 679  
Stats. Implemented: ORS 679.020(1), 679.025(1) & 679.250(7)  
Hist.: OBD 1-2001, f. & cert. ef. 1-8-01; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06

## Oregon Criminal Justice Commission Chapter 213

**Rule Caption:** Amend Oregon Sentencing Guidelines in light of 2005 legislative changes.

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**Adm. Order No.:** CJC 1-2006

**Filed with Sec. of State:** 4-12-2006

**Certified to be Effective:** 4-12-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 213-001-0000, 213-003-0001, 213-005-0002, 213-013-0001, 213-017-0005, 213-017-0006, 213-017-0007, 213-017-0008, 213-019-0008, 213-019-0010, 213-019-0012, 213-019-0015

**Subject:** Sets Custodial Sexual Misconduct in the first degree as a person felony crime category 7

Sets Custodial Sexual Misconduct in the second degree as a person Class A misdemeanor

Allows sentencing information to be transmitted electronically in format approved by the Chief Justice

Sets Maintaining a Dangerous Dog (ORS 609.990(3)(b)) as a person felony crime category 5

Sets Maintaining a Dangerous Dog (ORS 609.990(3)(a)) as a person Class A misdemeanor

Sets Child Neglect in the First Degree as a crime category 6

Incorporates by reference ORS 475.900 and the included drug crime subcategories

Sets crime of Possessing or Disposing of Methamphetamine Manufacturing Waste as a crime category 4

Sets ORS 475.962 as a crime category 8

Sets ORS 163.476 as a person class A misdemeanor

Sets crime of Unlawful Contact with a child as a person felony crime category 7

Sets Disorderly Conduct in the First Degree as a crime category 4

Amends definition of presumptive sentence

**Rules Coordinator:** Craig Prins—(503) 378-4858

## 213-001-0000

### Notice Rule for Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the chairperson of the Criminal Justice Commission or designee shall give notice of the proposed action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 28 days prior to the effective date of the proposed rule.

(2) By furnishing a copy of the notice to persons on the Criminal Justice Commission mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date of the proposed rule.

(3) By furnishing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days prior to the effective date of the proposed rule.

(4) By furnishing a copy of the notice at least 28 days prior to the effective date of the proposed rule to:

- (a) Associated Press;
- (b) The Oregonian, Portland, Oregon;
- (c) East Oregonian, Pendleton, Oregon;
- (d) Statesman Journal, Salem, Oregon;
- (e) Medford Mail Tribune, Medford, Oregon;
- (f) The Register Guard, Eugene, Oregon;
- (g) The Bulletin, Bend, Oregon;
- (h) Oregon State Bar Bulletin;
- (i) Chief Justice, Oregon Supreme Court;
- (j) Chief Judge, Oregon Court of Appeals;
- (k) Oregon Circuit Judges Association;
- (l) Office of the Attorney General;
- (m) State Court Administrator;
- (n) American Civil Liberties Union;
- (o) Association of Oregon Counties;
- (p) Crime Victims United;
- (q) Oregon Association Chiefs of Police;
- (r) Oregon Community Corrections Directors Association;
- (s) Oregon Criminal Defense Lawyers Association;
- (t) Oregon District Attorneys Association;
- (u) Oregon State Sheriffs Association;
- (v) Office of Public Defense Services;
- (w) Rules Coordinator, Department of Corrections;
- (x) Association of Municipal Court Judges;
- (y) Justices of the Peace Association; and
- (z) Board of Parole and Post-Prison Supervision.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669

Hist.: SSGB 1-1988, f. & cert. ef. 11-16-88; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1995(Temp), f. & cert. ef. 9-1-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-001-0000; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-003-0001

### Definitions

As used in these rules:

(1) "Bench probation" means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) "Board" means the State Board of Parole and Post-Prison Supervision.

(3) "Correctional supervision status" means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) "Department" means the Department of Corrections.

(5) "Departure" means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) "Dispositional departure" means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) "Dispositional line" means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions.

(8) "Durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) "Grid" means the Sentencing Guidelines Grid set forth as Appendix 1.

(10) "Grid block" means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender's criminal history classification.

(11) "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) "Non-person felonies" are any felonies not defined as a person felony in section (14) of this rule.

(13) "Optional probationary sentence" means any probationary sentence imposed pursuant to OAR 213-005-0006.

(14) "Person felonies" are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (OAR 213-018-0070(1) and (2)); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.160(3) Felony Domestic Assault; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; ORS 163.207 Female Genital Mutilation; ORS 163.208 Assaulting a Public Safety Officer; ORS 163.213 Use of Stun Gun, Tear Gas, Mace I; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (OAR 213-018-0035(1)); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.465 Felony Public Indecency; ORS 163.479 Unlawful Contact with a Child; ORS 163.452 Custodial Sexual Misconduct in the First Degree; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.537 Buying/Selling Custody of a Minor; ORS 163.547 Child Neglect I; ORS 163.670 Using Child In Display of Sexual Conduct; ORS 163.684 Encouraging Child Sex Abuse I; ORS 163.686 Encouraging Child Sex Abuse II; ORS 163.688, Possession of Material Depicting Sexually Explicit Conduct of Child I; ORS 163.689, Possession of Material Depicting Sexually Explicit Conduct of Child II; ORS 163.732 Stalking; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (OAR 213-018-0075(1)); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (OAR 213-018-0025(1) and (2)); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS

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166.275 Inmate In Possession of Weapon; ORS 166.385(3), Felony Possession of a Hoax Destructive Device; ORS 166.643 Unlawful Possession of Soft Body Armor as defined in Crime Category 6 (OAR 213-018-0090(1)); ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 468.951 Environmental Endangerment; ORS 475.984 Causing Another to Ingest a Controlled Substance as defined in Crime Categories 8 and 9 (OAR 213-019-0007 and 0008); ORS 475.986 Unlawful Administration of a Controlled Substance as defined in Crime Categories 5, 8, and 9 (OAR 213-019-0007, 0008, and 0011); ORS 609.990(3)(b) Maintaining Dangerous Dog; ORS 811.705 Hit and Run Vehicle (Injury); ORS 813.010, Felony Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); ORS 830.475(2) Hit and Run Boat; and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.187 Strangulation; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.212 Use of Stun Gun, Tear Gas, Mace II; ORS 163.415 Sexual Abuse III; ORS 163.454 Custodial Sexual Misconduct in the Second Degree; ORS 163.465, Public Indecency; ORS 163.467 Private Indecency; ORS 163.476 Unlawfully Being in a Location Where Children Regularly Congregate; ORS 163.545 Child Neglect II; ORS 163.575 Endanger Welfare of Minor; ORS 163.687 Encouraging Child Sex Abuse III; ORS 163.700 Invasion of Personal Privacy; ORS 163.709 Unlawfully Directing a Laser Pointer; ORS 163.732(1) Stalking; ORS 163.750(1) Violating Court's Stalking Order; ORS 165.572 Interfering with Making a Police Report; ORS 166.065(4) Harassment/Offensive Sexual Contact; ORS 166.155 Intimidation II; ORS 166.385(2) Misdemeanor Possession of a Hoax Destructive Device; ORS 475.986(1)(d) Unlawful Administration of a Controlled Substance; ORS 609.990(3)(a) Maintaining Dangerous Dog; ORS 813.010, Driving Under the Influence of Intoxicants (as provided in OAR 213-004-0009); and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history or a sentence designated as a presumptive sentence by statute.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) "Supervisory agent" means the local community corrections agency responsible for supervising the offender.

(19) "Supervisory authority" means the state and local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

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

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 387, 510, 635, 828, 857, 884 & 2003 OL Ch. 453, 577

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 2-1995, f. & cert. ef. 11-2-95; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-003-0001; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-005-0002

### Term of Post-Prison Community Supervision

(1) A term of community supervision is part of the sentence for any felony offender who is sentenced to the legal and physical custody of the Department or to the supervisory authority. This term of community supervision shall be described as post-prison supervision. Departures on the duration of post-prison supervision shall not be allowed.

(2) The duration of post-prison supervision shall be determined by the crime seriousness category of the most serious current crime of conviction:

(a) One year for Crime Categories 1-3, two years for Crime Categories 4-6 and three years for Crime Categories 7-11.

(b) Notwithstanding section (2)(a) of this rule, the following periods of post-prison supervision shall apply:

(A) For an offender convicted of murder or aggravated murder the period shall be as established in OAR 213-005-0004.

(B) For an offender sentenced as a sexually violent dangerous offender the period shall be as established in OAR 213-005-0004.

(C) The duration of the term of post-prison supervision as designated in ORS 144.103.

(3) The term of post-prison supervision shall begin upon completion of the offender's prison term or such term as directed by the supervisory authority. For offenders successfully completing the alternative incarceration program (boot camp) described in ORS 421.500 et seq., the term of post-prison supervision begins upon release pursuant to ORS 421.508(3).

(4) The term of post-prison supervision, when added to the prison term, shall not exceed the statutory maximum indeterminate sentence for the crime of conviction. When the total duration of any sentence (prison incarceration and post-prison supervision) exceeds the statutory maximum indeterminate sentence described in ORS 161.605, the sentencing judge shall first reduce the duration of post-prison supervision to the extent necessary to conform the total sentence length to the statutory maximum.

(5) The duration of post-prison supervision established under section (2) of this rule does not apply to dangerous offender departure sentences, which shall be governed by ORS 144.232.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669 & 144.103

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 1-1993(Temp), f. & cert. ef. 9-15-93; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; SSGB 1-1994, f. 6-27-94, cert. ef. 7-1-94; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-005-0002; CJC 3-1997, f. 10-29-97, cert. ef. 11-1-97; CJC 1-1999, f. & cert. ef. 11-1-99; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-013-0001

### Sentencing Report

(1) The sentencing information required to be provided to the Commission under ORS 137.010(9) shall be submitted in accordance with this rule.

(2) For each sentence imposed for a felony, sentencing information shall be submitted to the Criminal Justice Commission:

(a) In an electronic format approved by order of the Chief Justice of the Supreme Court of Oregon; or

(b) If no electronic format is available, on a paper sentencing report form developed by the staff of the Criminal Justice Commission in accordance with this rule and approved by the Chief Justice of the Supreme Court of Oregon prior to distribution for use by trial courts.

(3) The sentencing information submitted shall include the following:

(a) Offender identification information;

(b) Court processing information;

(c) Offense conviction information for each crime of conviction;

(d) The crime category on the Crime Seriousness Scale (as described in OAR 213-017-0000 - 213-017-0011) and the criminal history category on the Criminal History Scale (as described in OAR 213-004-0007) for each crime of conviction;

(e) For each crime of conviction, a description of the sentence imposed, including:

(A) The prison term of incarceration and the term of post-prison supervision; or

(B) The duration of probation, number of sanction units, any term of jail incarceration and whether treatment or evaluation was ordered as part of probation.

(f) The total amount of financial obligations associated with the sentences;

(g) If multiple sentences are imposed, whether the sentences are to be served consecutively;

(h) Whether a statutory sentence outside the guidelines has been imposed; and

(i) If a departure sentence is imposed, the type of departure (durational, dispositional, or durational and dispositional) and each aggravating or mitigating factor relied upon to impose the departure sentence.

Stat. Auth.: ORS 137.667 - 137.669

Stats. Implemented: ORS 137.667 - 137.669 & 137.010(9)

Hist.: SSGB 2-1989, f. 10-17-89, cert. ef. 11-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-013-0001; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-017-0005

### Crime Category 7

The following offenses are classified at crime category 7 on the Crime Seriousness Scale:

(1) ORS 162.165 — ESCAPE I — (B).

(2) ORS 162.185 — SUPPLYING CONTRABAND — (C).

(If the contraband includes one or more firearms; otherwise CC 4, 5 or 6.)

(3) ORS 163.205 — CRIMINAL MISTREATMENT I — (C).

(4) ORS 163.275 — COERCION — (C).

(If threat of physical injury; otherwise CC 6.)

(5) ORS 163.425 — SEX ABUSE II — (C).

# ADMINISTRATIVE RULES

- (6) ORS 163.452 — CUSTODIAL SEXUAL MISCONDUCT I — (C).
- (7) ORS 163.479 — UNLAWFUL CONTACT WITH A CHILD — (C).
- (8) ORS 163.535 — ABANDON CHILD — (C).  
(If child is placed in immediate physical danger; otherwise CC 3.)
- (9) ORS 164.075 — THEFT BY EXTORTION — (B).  
(If threat of physical injury; otherwise CC 2, 3, 4, 5 or 6.)
- (10) ORS 164.225 — BURGLARY I — (A).  
(If the offense cannot be ranked at CC 8 or 9.)
- (11) ORS 164.325 — ARSON I — (A).  
(If the offense cannot be ranked at CC 8, 9 or 10.)
- (12) ORS 166.275 — INMATE IN POSSESSION OF WEAPON — (A).  
(If firearm CC 8)
- (13) ORS 166.429 — FURNISHING FIREARM IN FURTHERANCE OF FELONY — (B).
- (14) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES — (B) <\$120,000.
- (15) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (B) <\$10,000.  
Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804, Sec. 30 & 58  
Stats. Implemented: ORS 137.667 - 137.669, 2003 OL Ch. 453 & 804  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-017-0006

### Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) MAJOR DRUG OFFENSES (See division 19.).
- (3) ORS 162.015 — BRIBERY — (B).
- (4) ORS 162.025 — BRIBE RECEIVING — (B).
- (5) ORS 162.065 — PERJURY — (C).
- (6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
- (7) ORS 162.155 — ESCAPE II — (C).
- (8) ORS 162.185 — SUPPLYING CONTRABAND — (C).  
(The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 — BRIBING A WITNESS — (C).
- (10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
- (11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
- (12) ORS 162.325 — HINDERING PROSECUTION — (C).
- (13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
- (14) ORS 163.165 — ASSAULT III — (C).
- (15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).
- (16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).
- (17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).
- (18) ORS 163.275 — COERCION — (C).  
(No threat of physical injury; otherwise CC 7.)
- (19) ORS 163.355 — RAPE III — (C).
- (20) ORS 163.385 — SODOMY III — (C).
- (21) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).
- (22) ORS 163.525 — INCEST — (C).  
(If one of the participants is under the age of 18; otherwise CC 1.)
- (23) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).
- (24) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).
- (25) ORS 164.055 — THEFT I\* — (C).
- (26) ORS 164.057 — AGGRAVATED THEFT — (B).  
(Economic loss was greater than \$50,000; otherwise CC 5.)
- (27) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY \* — (C).
- (28) ORS 164.075 — THEFT BY EXTORTION\* — (B).
- (29) ORS 164.085 — THEFT BY DECEPTION\* — (C).
- (30) ORS 164.125 — THEFT OF SERVICES\* — (C).
- (31) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE\* — (C).
- (32) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY \* — (C).
- (33) ORS 164.215 — BURGLARY II\* — (C).
- (34) ORS 164.315 — ARSON II\* — (C).
- (35) ORS 164.365 — CRIMINAL MISCHIEF I\* — (C).
- (36) ORS 164.377 — COMPUTER FRAUD (LOTTERY) \* — (C).

- (37) ORS 164.377(3) — COMPUTER CRIME\* — (C).
- (38) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).
- (39) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).
- (40) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).
- (41) ORS 164.877(1) — TREE-SPIKING — (C).
- (42) INTERFERE W/AGRICULTURAL RESEARCH\* — (C).
- (43) ORS 165.013 — FORGERY I\* — (C).
- (44) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).
- (45) ORS 165.055(3)(A) — CREDIT CARD FRAUD\* — (C).
- (46) ORS 165.065 — NEGOTIATING BAD CHECKS\* — (C).
- (47) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD \* — (C).
- (48) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).
- (49) ORS 165.800 — IDENTITY THEFT\* — (C).
- (50) ORS 166.015 — RIOT — (C).
- (51) ORS 166.165 — INTIMIDATION I — (C).
- (52) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).
- (53) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).
- (54) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).
- (55) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).
- (56) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).
- (57) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).
- (58) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).
- (59) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B).  
(If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
- (60) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION \* — (C).
- (61) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).
- (62) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).
- (63) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED — (C).
- (64) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).
- (65) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).
- (66) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).
- (67) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C).
- (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
- (68) ORS 830.475 — HIT AND RUN BOAT — (C).
- (69) 2003 Oregon Laws Ch 543 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).

\* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-017-0007

### Crime Category 5

The following offenses are classified at crime category 5 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) DRUG-RELATED OFFENSES. (See division 19).
- (3) ORS 162.185 — SUPPLYING CONTRABAND — (C).  
(If contraband includes a controlled substance but no firearms (CC 7) or dangerous weapons (CC 6); otherwise CC 4.)

# ADMINISTRATIVE RULES

(4) ORS 163.537 — BUYING OR SELLING THE CUSTODY OF A MINOR — (B).

(If cannot be ranked at CC 8.)

(5) ORS 163.686 — ENCOURAGING CHILD SEX ABUSE II — (C).

(6) ORS 164.055 — THEFT I\* — (C).

(7) ORS 164.057 — AGGRAVATED THEFT — (B).

(If not categorized at CC 6.)

(8) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY\* — (C).

(9) ORS 164.075 — THEFT BY EXTORTION\* — (B).

(10) ORS 164.085 — THEFT BY DECEPTION\* — (C).

(11) ORS 164.095 — THEFT BY RECEIVING — (C).

(If part of an organized operation; otherwise CC 3.)

(12) ORS 164.125 — THEFT OF SERVICES\* — (C).

(13) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE \* — (C).

(14) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY \* — (C).

(15) ORS 164.215 — BURGLARY II\* — (C).

(16) ORS 164.315 — ARSON II\* — (C).

(17) ORS 164.365 — CRIMINAL MISCHIEF I \* — (C).

(18) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY) \* — (C).

(19) ORS 164.377(5) — COMPUTER CRIME\* — (C).

(20) ORS 164.395 — ROBBERY III — (C).

(21) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).

(22) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).

(23) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).

(24) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH\* — (C).

(25) ORS 165.013 — FORGERY I\* — (C).

(26) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).

(27) ORS 165.055(3)(A) — CREDIT CARD FRAUD\* — (C).

(28) ORS 165.065 — NEGOTIATING BAD CHECKS\* — (C).

(29) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD \* — (C).

(30) ORS 165.800 — IDENTITY THEFT\* — (C).

(31) ORS 166.087 — ABUSE OF CORPSE I — (B).

(32) ORS 166.385(3) — FELONY POSSESSION OF A HOAX DESTRUCTIVE DEVICE — (C).

(33) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION\* — (C).

(34) ORS 609.990(3)(b) — MAINTAINING A DANGEROUS DOG — (C).

(35) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).

(36) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).

(37) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).

(38) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C).

(If not categorized at CC 6.)

(39) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES — (C) <\$10,000.

(40) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (C) <\$10,000.

\* Property offenses marked with an asterisk shall be ranked at Crime Category 5 if the value of the property stolen was \$10,000 but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation. Stat. Auth.: ORS 137.667, 2003 OL Ch. 453 & 804 Sec. 30 & 58  
Stats. Implemented: ORS 137.667 - 137.669, 2003 OL Ch. 453 & 804  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-017-0008

### Crime Category 4

The following offenses are classified at crime category 4 on the Crime Seriousness Scale:

(1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).

(2) DRUG OFFENSES (See division 19.).

(3) ORS 162.185 — SUPPLYING CONTRABAND — (C).

(If offense cannot be ranked at CC 5, 6 or 7.)

(4) ORS 162.205 — FAILURE TO APPEAR I — (C).

(5) ORS 163.245 — CUSTODIAL INTERFERENCE II — (C).

(6) ORS 163.689 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF CHILD II — (C).

(7) ORS 164.055 — THEFT I \* — (C).

(8) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY\* — (C).

(9) ORS 164.075 — THEFT BY EXTORTION\* — (B).

(10) ORS 164.085 — THEFT BY DECEPTION\* — (C).

(11) ORS 164.125 — THEFT OF SERVICES\* — (C).

(12) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE\* — (C).

(13) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY\* — (C).

(14) ORS 164.215 — BURGLARY II\* — (C).

(15) ORS 164.315 — ARSON II\* — (C).

(16) ORS 164.365 — CRIMINAL MISCHIEF I\* — (C).

(Except ORS 164.365(1)(e).)

(17) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)\* — (C).

(18) ORS 164.377(5) — COMPUTER CRIME\* — (C).

(19) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).

(20) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).

(21) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).

(22) ORS 165.013 — FORGERY I\* — (C).

(23) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).

(24) ORS 165.032 — CRIMINAL POSSESSION OF FORGERY DEVICE — (C).

(25) ORS 165.055(3)(A) — CREDIT CARD FRAUD\* — (C).

(26) ORS 165.065 — NEGOTIATING BAD CHECKS \* — (C).

(27) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD \* — (C).

(28) ORS 165.581 — CELLULAR COUNTERFEITING I — (B).

(29) ORS 165.800 — IDENTITY THEFT\* — (C).

(30) ORS 165.810 — UNLAWFUL POSSESSION PERSONAL ID DEVICE. — (C).

(31) ORS 166.023 — DISORDERLY CONDUCT I — (C).

(32) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B).

(If not categorized at CC 6)

(33) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A).

(CC 8 if minor 3 or more yrs. Younger than offender.)

(34) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION\* — (C).

(35) ORS 181.599 — FAIL/REPORT SEX OFFENDER — (C).

(36) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).

(37) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).

(38) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).

\* Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

(a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or

(b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.643 & 2003 OL Ch. 383, 453, 543, 632, 2005 OL Ch. 708

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-019-0008

### Crime Category 8 — Aggravated Drug Offenses

(1) MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL — ORS 475.900(1)(c) is incorporated herein by reference.

(2) DISTRIBUTION TO MINORS — ORS 475.906 — Distribution to Minors shall be classified in Crime Category 8 if the offender is more than three years older than the person receiving the drugs. If the offender is less than three years older than the person receiving the drugs, the Distribution to Minors shall be ranked according to the sub-categories identified for delivery of a controlled substance identified in ORS 475.900.

# ADMINISTRATIVE RULES

(3) ORS 167.262 USING A MINOR IN A CONTROLLED SUBSTANCE OFFENSE: Using a minor in a drug offense shall be ranked in Crime Category 8 unless the minor is less than three (3) years younger than the offender, in which case the offense will be ranked in Crime Category 4.

(4) MANUFACTURE AND DELIVERY OF A CONTROLLED SUBSTANCE — SUBSTANTIAL QUALITIES: ORS 475.900(1)(a) is incorporated herein by reference.

(5) COMMERCIAL DRUG OFFENSE: ORS 475.900(1)(b) is incorporated herein by reference.

(6) CAUSING ANOTHER TO INGEST A CONTROLLED SUBSTANCE: ORS 475.902(1) is incorporated herein by reference.

(7) UNLAWFUL ADMINISTRATION OF A CONTROLLED SUBSTANCE: ORS 475.910(1)(b) is incorporated herein by reference.

(8) MANUFACTURE OF METHAMPHETAMINE: ORS 475.900(1)(d) is incorporated herein by reference.

(9) DISTRIBUTION OF EQUIPMENT, SOLVENT, REAGENT, OR PRECURSOR SUBSTANCE WITH THE INTENT TO FACILITATE THE MANUFACTURE OF A CONTROLLED SUBSTANCE: Violation of ORS 475.962 shall be classified at Crime Category 8.

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL, Ch. 453  
Stats. Implemented: ORS 137.667 - 137.669, 475.986, 475.998, 2003 OL, Ch. 453, 2005 OL, Ch. 706 (HB 2485), 2005 OL, Ch. 708 (SB 907)  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0001; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-019-0010

### Crime Category 6 — Major Drug Offenses

(1) DELIVERY OF A CONTROLLED SUBSTANCE FOR CONSIDERATION: ORS 475.900(2)(a) is incorporated herein by reference.

(2) POSSESSION OF SUBSTANTIAL QUANTITY OF CONTROLLED SUBSTANCE: ORS 475.900(2)(b) is incorporated herein by reference.

(3) ORS 475.967 POSSESSION OF A PRECURSOR WITH THE INTENT TO MANUFACTURE: Possession of a Precursor Substance with the Intent to Manufacture a Controlled Substance shall be ranked at Crime Category 6.

Stat. Auth.: ORS 137.667, 475.986, 475.998 & 2003 OL, Ch. 453, 2005 OL, Ch. 708 (SB 907)  
Stats. Implemented: ORS 137.667 - 137.669, 475.967, 475.996 & 2003 OL, Ch. 453  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0002; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-019-0012

### Crime Category 4 — Drug Offenses

(1) DELIVERY OR MANUFACTURE OF CONTROLLED SUBSTANCE: ORS 475.900(3)(a) is incorporated herein by reference.

(2) ORS 167.262 USING A MINOR IN A DRUG OFFENSE: Using a minor in a drug offense shall be ranked at Crime Category 4 if the minor is less than three (3) years younger than the offender. In all other cases this offense shall be ranked in Crime Category 8.

(3) POSSESSION OR DISPOSAL OF METHAMPHETAMINE MANUFACTURING WASTE: Violation of ORS 475.977 shall be ranked at Crime Category 4.

Stat. Auth.: ORS 137.667 & 475.900  
Stats. Implemented: ORS 137.667 - 137.669, 475.967, 475.996 & 2005 OL Ch. 706, 2005 OL Ch. 708  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0003; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## 213-019-0015

### Crime Category 1 — Drug Offenses

POSSESSION OF CONTROLLED SUBSTANCE: ORS 475.900(3)(b) is incorporated herein by reference.

Stat. Auth.: ORS 137.667, 2005 OL, Ch. 708 (SB 907) & ORS 475.900  
Stats. Implemented: ORS 137.667 - 137.669  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02, Renumbered from 213-019-0004; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06

## Oregon Housing and Community Services Chapter 813

**Rule Caption:** Clarifies terms, eligibility requirements, lending criteria, application process. Adds waiver requirements. Increases maximum financing limit.

**Adm. Order No.:** OHCS 5-2006(Temp)

**Filed with Sec. of State:** 3-29-2006

**Certified to be Effective:** 3-29-06 thru 9-24-06

## Notice Publication Date:

**Rules Adopted:** 813-140-0120

**Rules Amended:** 813-140-0010, 813-140-0020, 813-140-0030, 813-140-0040, 813-140-0050, 813-140-0060, 813-140-0080, 813-140-0090, 813-140-0110

**Rules Renumbered:** 813-140-0070 to 813-140-0105

**Subject:** 813-140-0010 provides clarification of common terms and definitions within the program.

813-140-0020 defines the intent of the program is as a resource to achieve one or more of the Six Budget Proposals.

813-140-0030 provides references to the Program Overview document and application materials.

813-140-0040 defines eligible uses and costs that can be applied against the Fund and stipulates when a grant may be made instead of a loan.

813-140-0050 provides clarification on eligible applicants and projects.

Amendments in 813-140-0060 clarify the criteria for eligible projects and how the agency will address applications when insufficient funds are available.

813-140-0070 is renumbered to 813-140-0105.

813-140-0080(7) is amended to define the terminology ‘appropriateness and uniqueness’ of the design of a project.

813-140-0090 provides additional clarification on documentation required by an applicant to demonstrate an ability to repay a loan. Additional clarification is provided on eligible predevelopment expenses in 813-140-0090(2)(a).

813-140-0110(1) increases the maximum amount of financing for the Small Community Incentive Fund from \$50,000 to \$80,000.

813-140-0110(4) designates the Regional Economic Revitalization Team to determine the process for evaluating applications.

813-140-0120 adds waiver language already provided for by statute.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-140-0010

### Definitions

All terms used in OAR chapter 813, division 140, unless otherwise specifically defined herein have the meanings given in ORS 458.705 through 458.740. As used in OAR chapter 813, division 140, unless the context indicates otherwise:

(1) “Board” means the Community Development Incentive Advisory Board established pursuant to ORS 458.710.

(2) “Fund” or “Incentive Fund” means the Community Development Incentive Project Fund.

(3) “Gap Financing” means financing provided by the Fund when other state or private financing sources are inadequate or unavailable to finance a development project.

(4) “Six Budget Principals” means those principles stated in Governor Kulongoski’s budget document presented in 2004 for the 2005/2007 Legislative Session to grow Oregon’s economy and ensure that all Oregon communities — large and small, urban and rural, survive. Those principals are:

(a) Provide our children and adults with the educational opportunities they need to succeed today and in the future;

(b) Take care of our most vulnerable citizens;

(c) Create family-wage jobs for Oregonians;

(d) Maintain the high quality of life we enjoy in Oregon;

(e) Ensure that our citizens are safe in their homes and in their communities; and

(f) Provide for a safe, efficient and accountable state government.

(5) “Economic Revitalization Team” means the program of agency cooperation by the Governor’s Office to coordinate and streamline state policies, programs and procedures and provide coordinated state agency assistance to local governments. These agencies are: Economic and Community Development Department, Department of Environmental Quality, Oregon Housing and Community Services Department, Department of Land Conservation and Development, and Oregon Department of Transportation, Department of State Lands, the Department of Agriculture and the Department of Business and Consumer Services. “Regional Economic Revitalization Team” means a regional team com-

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prised of one regional employee with each of the agencies listed in (5) above.

(6) "Program Overview" means a publication available from the Department setting forth general guidelines and information about the program and application process.

(7) "Rural Community" and "Rural Service Center," means an unincorporated community which consists of permanent residential dwellings, and commercial, industrial or (in the case of a Rural Community) public uses to the community, the surrounding rural area, or to persons traveling through the area.

(8) "Small Community Incentive Fund" means a program that provides loans and grants of \$80,000 or less for development projects, meet the criteria of the Incentive Fund program.

(9) "Urban Unincorporated Community," means an unincorporated community which has at least 150 permanent residential dwelling units, contains a mixture of land uses, and includes areas served by a community sewer system and water system.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0020

### Fund Purposes

(1) The primary purpose of the Fund is to provide Gap Financing to help local communities or to use as an incentive to obtain additional funding commitments from other sources.

(2) The Fund is not intended to provide financing to replace other financing from private or public sources that could be available within 12 months of the date of the award to fund a proposed development project. Rather it is intended to be a flexible resource that promotes worthy projects by bridging funding gaps which prevent a project either from moving forward or from moving forward in a manner which achieves one or more of the Six Budget Principles.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0030

### Fund Administration

(1) The Board will develop program guidelines, including specific project criteria and financing mechanisms which can be found in the Program Overview and application materials.

(2) The Department will administer the Fund in accordance with ORS 458.735. The Department's Administration of the Fund is not subject to State Housing Council policy, rules or standards.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0040

### Eligible Uses of the Fund

(1) The Oregon Housing and Community Services Department may make grants and loans for the purpose of financing capitalized project costs (including but not limited to project management or consultant fees that are related to project development) but not for the purpose of financing planning or technical assistance or other administrative or operating costs. It is the policy of Oregon Housing and Community Services Department that, in general, payment from the Fund for hours worked by anyone employed by, and paid through the payroll of the applicant or recipient of the funds is not an eligible cost. Work will be performed by an independent contractor and hours worked or job cost billed will be presented by invoice. Any exception to this policy will be pre-approved in writing by the Director of Oregon Housing and Community Services Department. The requested exception will show that the use of employees provides a clear benefit to the project. Each request will include the applicant's cost allocation methodology and payroll procedures to ensure they have sufficient tools in place to appropriately track employee time. Each request for payment from the Fund for hours worked by employees will include a statement that hours billed are correct and appropriate, and will be documented with time-keeping data. In no circumstance will the Fund pay for staff time associated with the entity's operations.

(2) The Department may make a grant instead of a loan for a project which otherwise complies with the requirements of this OAR chapter 813, division 140 where repayment of the amount disbursed by the Fund for the project is inappropriate or the recipient would have insufficient capacity to

repay the amount disbursed based on cash flow projections or documentation submitted with the application.

(3) The costs and expenses of the Department necessary for the administration of the Fund and the grants and loans made from the Fund. These costs and expenses may include the amounts necessary for the administration of the Fund through the Small Community Incentive Fund or the servicing of loans and grants made by the Fund, pursuant to a contract with the Department.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0050

### Eligible Applicants and Eligible Projects

(1) Eligible applicants include local governments and nonprofit and for-profit organizations.

(2) To be eligible for funding, a proposed project must meet the following criteria:

(a) The project must be located within the urban growth boundary of an incorporated city in this state, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and/or water system.

(b) The project must achieve at least one of the following three main purposes found in ORS 458.725:

(A) Promoting affordable housing near jobs or transit, developments near jobs and transportation;

(B) Revitalizing downtowns and community centers; and

(C) Rebuilding rural and distressed economies.

(c) The project must demonstrate financial feasibility and soundness based on cash flow projections or documentation submitted with the application.

(d) The project must promote achievement of at least one of the Governor's "Six Budget Principles."

(e) The project must comply with local comprehensive plans and land use ordinances or other regional or local plans.

(f) The project sponsor must demonstrate capacity (including capacity provided by outside consultants or developers) to fully implement the project as documented in application materials.

(g) The project must be locally supported and serve to further the community's goals related to livability and growth.

(h) The for-profit developer that is or will be the owner of the project must demonstrate investment or equity in the project.

(3) Eligible projects include but are not limited to:

(a) A development project that has joint public and private sponsorship and/or ownership; and

(b) A project listed on the Oregon Economic and Community Development Department's "Needs and Issues Inventory."

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0060

### Funding Preferences

Among proposed projects that meet the requirements of OAR 813-140-0050, preference will be given to projects that meet one or more of the following categories:

(1) Are designed in a manner that maximizes long-term sustainability through use of recycled materials, attention to energy efficiency, and long term economic viability of the project;

(2) Further the economic vitality of the local community;

(3) Address a specific unmet need for affordable housing;

(4) Leverage, to the maximum extent, public and private funding sources (including tax incentives), as demonstrated by local and/or private commitment and investment;

(5) Are designed in a manner to be consistent with or complementary to the character of the surrounding community or neighborhood; and/or

(6) Demonstrate ability to expend Incentive Fund resources within 12 months after award. In the event there are insufficient moneys in the Incentive Fund to meet all otherwise qualified pending applications, the department may provide loans in part or for all of the amount requested based on the number of the categories listed above that a proposed project falls within.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06



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## 813-140-0080

### Rating Criteria

In addition to evaluation of a proposed project's compliance with the requirements of OAR 813-140-0050 and taking into consideration the preferences set forth in OAR 813-140-0060, the evaluation of a proposed project may include, but is not limited to, consideration of the following:

- (1) Any conditional or firm funding commitments or efforts to work with other funders to leverage all available resources;
- (2) The readiness of the project to proceed once financing has been committed by the Department;
- (3) In comparison with other proposed projects, the greatest impact on communities;
- (4) Demonstration of realistic financial assumptions, including the need for a loan guarantee or grant funds, and the ability to repay loans;
- (5) The strength of the development team as it relates to the scope of the project;
- (6) Community support for the project as demonstrated by funding or fee waivers, resolution of support, or participation of community groups; and
- (7) Appropriateness and uniqueness of the design of the project in relation to fulfilling the goals of the project and matching the context of the community.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0090

### Lending Criteria

(1) The Department's lending criteria allows the Fund to create quality development patterns, produce a sound loan portfolio and create a sustainable loan fund.

(2) The Department shall permit the assumption of an appropriate level of risk, maintain a reserve for losses, and provide for the periodic monitoring of reserve adequacy as follows:

(a) An applicant for a loan shall demonstrate an ability to repay the debt through forma and other documentation submitted with the application. When applicable, the Department may offer a combination of grants and loans as well as a combination of loan products and terms, as it, in its sole discretion, deems appropriate to ensure repayment.

(b) A loan may be for an income-producing project or for a project in an urban renewal district with available tax increment financing.

(c) A loan may be subordinate to other loans both in terms of payment and lien securing repayment.

(3) The Department may make the following types of loans:

(a) Predevelopment loans for projects that are in the early stage. The purpose of these loans is to finance eligible predevelopment expenses such as architectural, engineering, environmental studies, purchase of options or other eligible expenses as determined by the department. A predevelopment loan shall have maximum term of 12 months and shall be 100% secured by collateral acceptable to the Department. The borrower shall pay a loan fee of 1% of the principal amount of the loan for the regular, or "large" Community Incentive Fund. There is no fee for Small Community Incentive Fund pre-development loan borrowers.

(b) Short-term loans having terms not to exceed 5 years. These loans shall accrue interest at the rate of 1% per annum for the "large" program and 3% for the Small Community Incentive Fund program. Both shall require minimum annual interest payments.

(c) The "large" Community Incentive Fund can offer long-term loans having terms exceeding 5 years, but not exceeding 15 years. These loans shall accrue interest at a rate of 3% per annum and shall require minimum annual interest payments. The Small Community Incentive Fund does not offer long-term loans.

(4) A borrower shall execute such agreements, instruments and other documents that are required by the Department and that are in form and substance satisfactory to the Department. These documents may contain terms and provisions regarding required insurance coverage, loss reserve and periodic reporting requirement, financial ratios, escrow payments, late charges, defaults, priority of liens, and such other matters as the Department deems prudent or appropriate.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0105

### Application Process for Large Community Incentive Fund

(1) The application process for obtaining a grant or loan from the Fund may involve, but is not limited to, a competitive review process, a first come-first reviewed process, or such expedited process as is necessary or appropriate to further the goals of the Fund.

(2) An applicant must contact the appropriate Department Regional Advisor to the Director to discuss its proposal (See Program Overview). The Regional Advisor to the Director will provide technical assistance; input on the viability of the project; and will work with the applicant to analyze and project the financial needs to determine the appropriate mix of grants and/or loans.

(3) An applicant must submit its application in a manner satisfactory to the Department. The Regional Economic Revitalization Team which may choose to consult with other regional partnerships in areas where partnerships exist, and Oregon Economic and Community Development Department financial reviewers may review the applicants. This review may include a pre-screening for fatal application flaws that on the face of the application do not meet the requirements of these rules as well as an in-depth review.

(4) The applications that, in the judgment of the Regional Economic Revitalization Team, best meet Fund thresholds and preferences (see Program Overview and application materials), will be submitted to the Department along with comments from the reviewers in the Regional Economic Revitalization Team. The number of applications submitted to the Department may be limited at the discretion of the Director.

(5) The Department will forward a description of the projects, along with comments from the Regional Economic Revitalization Team, to the Board for their consideration. At the same time, a committee of representatives from the Regional Economic Revitalization Teams, in conjunction with the Department's senior management, will develop a funding proposal. A finalized funding proposal will be presented to the Director and the Board for their review and recommendations.

(6) Projects will be selected for financing which, in the judgment of the Board (as evidenced by its recommendations to the Director) and the Director best achieve the purposes of the Incentive Fund based on the criteria outlined in OAR chapter 813, division 140.

Stat. Auth.: ORS 458.705 - 458.740

Stats. Implemented: ORS 458.705 - 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; Renumbered from 813-140-0070, OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0110

### Small Community Incentive Fund

(1) The Small Community Incentive Fund may provide loans and grants to eligible projects which require a financial incentive or gap financing. The maximum amount of financing that may be provided by the Small Community Incentive Fund for a project, whether in the form of a grant or loan or a combination of both, is \$80,000.

(2) In order to be eligible for financing by the Small Community Incentive Fund, a project must meet the parameters described in the previous sections of the rule with the following exceptions:

(a) The project must be located within the urban growth boundary of an incorporated Oregon city, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and/or a community water system.

(b) The project must achieve at least one of the three objectives of ORS 458.725(1) through (3).

(3) The Department may make the following types of loans:

(a) Predevelopment loans which shall be fully secured with collateral acceptable to the Department and shall:

(A) Not accrue interest and have a term not to exceed 6 months, or

(B) Accrue interest at the rate of 1% per annum and have a term of more than 6 months but not to exceed 12 months.

(b) Short-term 1-5 year loans which shall accrue interest at the rate of 3% per annum, have a term not to exceed five years, and require a minimum annual payment of interest.

(4) The Regional Economic Revitalization Team will determine at the local level the process for evaluating applications, including use of a first-come, first-served or competitive process (see Overview). The Regional Economic Revitalization Team for the region in which a project is located and other experts as appropriate will review the funding requests for projects in its region. The Regional Economic Revitalization Team will determine if other Economic Revitalization Team agency resources are available to fund a project and if so, will direct the applicant to the appropriate agency. The Regional Economic Revitalization Team will, in evaluating the

# ADMINISTRATIVE RULES

project, consider factors such as how well a project meets the Fund's threshold criteria, the Fund's preferences, and the financial feasibility of the project. Projects selected by the Regional Economic Revitalization Team will be forwarded to the Department, along with the Regional Economic Revitalization Team's comments and recommended conditions of award. The forwarded projects will be submitted to the Board. The Board will provide comments to the OHCS director before funding approval is made. The Director, or his designee, shall make all final funding determinations and announce conditional awards.

Stat. Auth.: ORS 458.705 - 458.740  
Stats. Implemented: ORS 458.705 - 458.740  
Hist.: OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02; OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

## 813-140-0120

### Waiver

The Department may waive or modify any requirements of OAR 813, division 140, unless such waiver or modification would violate applicable federal or state statutes or regulations.

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.: OHCS 5-2006(Temp), f. & cert. ef. 3-29-06 thru 9-24-06

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**Rule Caption:** Provides clarification language and amends the limitation on the size of the fund advance.

**Adm. Order No.:** OHCS 6-2006(Temp)

**Filed with Sec. of State:** 4-13-2006

**Certified to be Effective:** 4-13-06 thru 10-9-06

### Notice Publication Date:

**Rules Amended:** 813-040-0005, 813-040-0010, 813-040-0015, 813-040-0020, 813-040-0025, 813-040-0030, 813-040-0035, 813-040-0040, 813-040-0045

**Subject:** 813-040-0005 sets forth the purpose for the rules and establishes that the department provides non-interest bearing and interest bearing advances to housing sponsors to stimulate the production of housing for persons and families of lower income in the State of Oregon. Clarifies that advances are to be used for predevelopment costs.

813-040-0010 clarifies the common definitions and terms found within the rules.

Amendments in 813-040-0015 clarify that prospective nonprofit borrowers or other borrowers as must demonstrate a need for an advance for predevelopment costs and must satisfy the financial requirements of the Department.

813-040-0020 sets forth the fund limit for each request.

813-040-0025 clarifies the application process and adds an application fee of \$200 for market study funding.

813-040-0030 sets forth the documentation required upon approval and closing.

813-040-0035 identifies the process for distribution of funds once security has been received. It also stipulates that the security requirement may be waived for market study requests.

813-040-0040 increases the time limit for repayment of the Seed Money Advance and the processing fee from six months to two years from the date of initial fund disbursement. The rule further identifies repayment shall be made at the time of land acquisition or from the initial draw against the construction loan, but no later than permanent loan closing.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-040-0005

### General Purpose

The rules of OAR chapter 813, division 40 are established to administer ORS 456.515 through 456.720, specifically ORS 456.550, 456.559, 456.574 and 456.710, which authorize the Housing and Community Services Department to provide non interest-bearing and interest-bearing advances to housing sponsors to stimulate the production of housing for persons and families of lower income in the State of Oregon. These advances will be called Seed Money Advances and will be used only to cover predevelopment costs.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0010

### Definitions

(1) The meanings of words and terms used in OAR chapter 813, division 040, are consistent with definitions in the Act, and as provided in OAR 813-005-0005 and herein. As used in these rules, unless otherwise indicated by the context:

(2) "Approval Letter" means a letter from the Department to the prospective Borrower or Sponsor which provides notification of the Department's approval of the Seed Money Advance. The letter also requires the prospective Borrower's agreement to repay the Seed Money Advance at the time of land acquisition or with the first construction draw, but no later than permanent loan closing.

(3) "Borrower" means, subject to the approval of the Department, a Person, including a Qualified Housing Sponsor, who satisfies the legal, financial and credit criteria as set forth in the applicable Program rules, and who has received a Program Loan.

(4) "Nonprofit Borrower" means, subject to the approval of the Department, a Qualified Housing Sponsor who is a non-profit housing corporation, a housing authority created by ORS 456.075, an urban renewal department created by ORS 457.035, and any city or county governing body or department designated by the governing body, who satisfies the legal, financial and credit criteria as set forth in the applicable Program rules, and who has received a Program Loan.

(5) "Predevelopment Costs" means expenses for architectural design, legal fees, survey and soils boring, appraisal, consultant fees, land option carrying charges, land acquisition costs, federal or state application fees or other recoverable development costs approved by the Department.

(6) "Proposal" means an application or other documentation submitted to the Department which describes the proposed housing Project and provides information which enables the Department to assess the probability of the Seed Money Advance being repaid.

(7) "Seed Money Advance Agreement" means the agreement between the Department and a Qualified Nonprofit Borrower or other Borrower which establishes the terms, conditions and procedures governing the Seed Money Advance.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0015

### Eligibility for the Seed Money Advance

The prospective Nonprofit Borrower or other Borrower will demonstrate the need of a Seed Money Advance to pay Predevelopment Costs as set forth in the Proposal and will satisfy the standards of the Department for financial responsibility and stability.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0020

### Limitation on Size of Advance; Source of Funds

(1) The Seed Money Advance amount shall not exceed \$40,000. Seed Money Advances shall be made from the Department's Revolving Account in the General Fund of the State Treasury, subject to the availability of funds and limitations otherwise prescribed by law.

(2) Requests for Seed Money Advance Loan funds for market-studies will not exceed \$7,500.

(3) The Department shall charge no interest on a Seed Money Advance provided Nonprofit Borrowers.

(4) Interest on a Seed Money Advance provided to other Borrowers shall be determined by the Department at 50 percent of the set prime lending rate established by New York commercial banks and in effect at the time the Advance is made.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0025

### Application Procedure

(1) The prospective Borrower or Nonprofit Borrower may submit to the Department the following:

# ADMINISTRATIVE RULES

- (a) An Proposal for Seed Money Advance in form prescribed by the Department;
- (b) Articles of incorporation, bylaws and borrowing resolution of the corporation;
- (c) Legal description of the site, preliminary title report and location map;
- (d) Financial statements; and
- (e) Statement describing the experience of the prospective Nonprofit Borrower or other prospective Borrower and its ability to develop the proposed project.

(2) The Department shall review the application materials, inspect the site and prepare a Proposal for approval, disapproval or other action at the next regularly scheduled meeting of the Council, where required by the Council or market study program. The applicant shall be informed of the Department's Proposal at least ten days before the Council meeting and shall be invited to appear personally. The Housing Council shall approve or deny the Proposal or take any other appropriate action.

(3) An Application fee of \$200 will be required for requests for market study funding.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0030

### Approval and Closing

(1) Upon approval by the Council of the prospective Nonprofit Borrower's or other prospective Borrower's Proposal for the Seed Money Advance, except for the market study program, the Department shall issue a letter listing the documents that must be provided or executed by the prospective Nonprofit Borrower or other prospective Borrower. Funds shall be reserved for a maximum of one year, during which time the prospective Nonprofit Borrower or other prospective Borrower will provide the Department with copies of the documents listed in section (2) of this rule. If these documents are not received within one year, the prospective Nonprofit Borrower or other prospective Borrower may be required to submit a new Proposal. If a written request for an extension is submitted to and approved by the Department before the expiration date of the approval letter, the prospective Nonprofit Borrower or other prospective Borrower shall not be required to submit a new Proposal.

(2) The Seed Money Advance Approval Letter may be subject to the following documents executed or provided by the prospective Nonprofit Borrower or other prospective Borrower:

- (a) Seed Money Advance Agreement;
- (b) Note (noninterest-bearing) for the Nonprofit Borrower and interest-bearing for other Borrowers in the amount of the Seed Money Advance; and
- (c) Other documents unique to the Proposal or required by the Department.

(3) If the applicant holds title to the Project site, the following additional items shall be required:

- (a) If the site is being used as security, a mortgage or trust deed showing the Department as mortgagee or beneficiary;
- (b) A title insurance policy in the amount of the Seed Money Advance issued by an approved title company in a form acceptable to the Department and in favor of the Department;
- (c) An insurance policy naming the Department as a loss payee, with comprehensive general liability coverage in the amount of \$100,000 single injury and \$500,000 in the aggregate; and
- (d) Other documents unique to the Proposal or required by the Department.

(4) Upon receipt of the documents, the Department may disburse the Seed Money Advance.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0035

### Distribution of Funds

(1) Once the Department has received satisfactory security, which may include but is not limited to an assignment of a mortgage or trust deed, the Department may disburse funds. The Nonprofit Borrower, or other Borrower, shall submit any invoices or paid receipts for Predevelopment

Costs as stated in the Proposal to the Department each month with a progress report.

(2) For market study requests, the Department may waive the requirement for security at its sole discretion.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723, 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0040

### Repayment

(1) The Seed Money Advance, plus a processing fee equal to two percent of the Seed Money Advance amount, shall be due and payable within two years from the date of the initial disbursement of the Seed Money Advance. The Nonprofit Borrower or other Borrower shall make repayment at the time of land acquisition, or from the initial draw against the construction loan but no later than permanent loan closing. If the initial draw of the construction loan or the proceeds from the permanent loan are not disbursed within the two year period, the Nonprofit Borrower or other Borrower shall make this known to the Department. The Department may require the Nonprofit Borrower or other Borrower to repay the Seed Money Advance in full on demand from other sources of funds. The term of the Seed Money Advance may be extended by the Department.

(2) The Nonprofit Borrower or Borrower shall report to the Department on the progress of the project and status of the permanent or construction loan at any time as required by the Department.

(3) Any amount of the Seed Money Advance remaining unpaid after the maturity date of the note shall be subject to a late fee of one and one-half percent (1-1/2%) of the unpaid balance for each month that the Seed Money Advance remains unpaid.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 10-1981(Temp), f. & ef. 8-27-81; 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 8-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

## 813-040-0045

### Waiver

The Department may, with the concurrence of the Council, waive or modify any requirement of these Seed Money Advance Program rules, unless such waiver or modification would violate applicable statutes.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650  
Stats. Implemented: ORS 456.550, 456.559, 456.574 & 456.710  
Hist.: 1HD 5-1982, f. & ef. 6-28-82; 1HD 15-1984, f. & ef. 9-4-84; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 12-1989, 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 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06

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## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Defining and calculating final average salary and defining salary.

**Adm. Order No.:** PERS 4-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 459-005-0001, 459-075-0030, 459-080-0150

**Rules Repealed:** 459-010-0040

**Subject:** 2005 HB 2189 and 3262 (Oregon Laws 2005 chapters 332 and 808, respectively) modified provisions relating to the definition and calculation of Final Average Salary and the definition of salary for the purpose of determining contributions to the IAP.

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-005-0001

### Definitions, Generally

The words and phrases used in Chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in Chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

## ADMINISTRATIVE RULES

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to “pick up,” assume or pay in accordance with ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s taxable income for purposes of state or federal income taxation at the time paid to PERS. “After-tax” contributions are included in computing FAS and in computing the employer’s contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) “Before-tax” contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to “pick up,” assume or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax” contributions are not included in the member’s taxable income for purposes of state or federal income taxation at the time paid to PERS. “Before-tax” contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer’s contributions paid to PERS if the employer has elected to “pick up” the member contributions.

(4) “Calendar month” means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) “Casual worker” means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) “Contributions” means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) “Effective date of withdrawal” is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member’s regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member’s former employer(s).

(8) “Effective retirement date” means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) “Elected official” means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

(10) “Emergency worker” means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(11) “Employee” has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term “employee” includes public officers whether elected or appointed for a fixed term.

(b) The term “employee” does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(6).

(12) “Employer contribution account” means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS Chapter 238.

(13) “Employment” is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(14) “Estimate” means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(15) “FAS” and “final average salary” have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a local government as defined in ORS 174.116;

(c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local government as defined in ORS 174.116; or

(d) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) “General service member” means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) “Good cause” means a cause beyond the reasonable control of an individual. “Good cause” exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(18) “Independent contractor” means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(19) “Judge member” has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

(20) “Legislator” means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) “Member cost” means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(22) “Participating employer” means a public employer who has one or more employees who are active members of PERS.

(23) “PERS” and “system” have the same meaning as the Public Employees Retirement System in ORS 238.600.

(24) “Qualifying position” has the same meaning as provided in ORS 238.005(19).

(25) “Regular account” means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(26) “Salary” has the same meaning as provided in ORS 238.005(21).

(a) For a Tier One member, a lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(b) For a Tier Two member, a lump sum payment for accrued vacation pay:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(27) “Seasonal worker” means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer’s business cycle or services.

(28) “Staff” means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(29) “Tier One member” means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(30) “Tier Two member” means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(31) “Vacation pay” means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer’s governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer’s PTO has a cash option, the employer shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

# ADMINISTRATIVE RULES

(32) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(33) "Variable Annuity Account" means the account established in ORS 238.260(2).

(34)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(35) "Year" means any period of 12 consecutive calendar months.

(36) The provisions of this rule are effective January 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 4-2006, f. & cert. ef. 4-5-06

## 459-075-0030

### Calculation of Overtime for Purposes of Final Average Salary

(1) For purposes of calculating final average salary, a member's salary shall not include any amounts attributable to hours of overtime that exceed the average number of hours of overtime for the same employee class.

(2) The average number of hours of overtime for an employee class shall be determined by the employer based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year. The employer shall maintain records of the average number of hours of overtime for each employee class for each calendar year and provide those records to PERS upon request.

(3) Under the provisions of ORS 238A.130(5) the Oregon Department of Administrative Services shall establish by rule more than one overtime average for a class of state employees based on the geographic placement of the employees.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 25-2003, f. 12-30-03 cert. ef. 1-1-04; PERS 4-2006, f. & cert. ef. 4-5-06

## 459-080-0150

### Employee Contributions into the IAP Account

(1) Definitions. For the purposes of this rule:

(a) "Forfeiture account" means the account set up by PERS to administer overpayments of employee contributions.

(b) "Salary" has the same meaning provided in:

(A) ORS 238A.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(1); or

(B) ORS 238.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(2) or (3).

(2) Employee contributions under the OPSRP Individual Account Program ("IAP") are required from all eligible employees who qualify as members, as established under OAR 459-080-0010, who:

(a) Are working in a position designated as a "qualifying position" as defined in OAR 459-070 0001; or

(b) Perform a total of 600 or more hours in a calendar year with one or more participating employers in one or more classes the participating employer has designated as a participating class.

(3) Contributions for current members.

(a) For a member who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(b) Once a member meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted following the member's performance of 600 hours in the calendar year. Contributions are due for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(4) Contributions for new employees.

(a) For an eligible employee who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary

are required to be transmitted after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(b) Once an eligible employee meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted from the date of membership in the IAP, as established under OAR 459-080-0010.

(5)(a) If contributions are submitted on behalf of an eligible employee who does not meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of those contributions will be returned after the end of the calendar year during which the pay period triggering those contributions ended.

(b) Any net earnings, losses, or administrative fees attributable to the returned contributions will be applied to the forfeiture account.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.330

Hist.: PERS 13-2004(Temp), f. 5-19-04, cert. ef. 6-21-04 thru 12-1-04; PERS 21-2004, f. & cert. ef. 9-22-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 4-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Amend Designation of Beneficiary rule to comply with statutory changes and reflect current PERS practices.

**Adm. Order No.:** PERS 5-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 459-014-0030

**Subject:** OAR 459-014-0030 has been amended to delete sections of the rule that require that a beneficiary have an insurable interest in the life of the member. The doctrine of insurable interest is no longer recognized in common law.

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-014-0030

### Designation of Beneficiary

(1) A member may designate a new beneficiary or revoke a previous designation by giving written notice to the Retirement Board, but no revocation or new designation shall be effective until received by the Public Employees Retirement Board. (Forms will be furnished by the Board upon request.)

(2) When a member designates a new beneficiary or beneficiaries, such action shall annul and revoke all prior designations.

(3) The right of a beneficiary to receive the balance in a member's account in the Retirement Fund shall not be deemed nullified or waived by any agreement or property settlement between the member and the beneficiary, or on behalf of either of them, which does not specifically mention such right and waive it on the part of the beneficiary or vacate and set aside the designation of said beneficiary by such member.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0075; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 5-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Allow OSGP participant to revoke their beneficiary designation by divorce or annulment decree.

**Adm. Order No.:** PERS 6-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 459-050-0060

**Subject:** OAR 459-050-0060 provided that a participant's designation of beneficiary shall not be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance. 2005 HB 2978 (Oregon Laws 2005 chapter 285) allows the revocation of a beneficiary designation upon divorce or dissolution of marriage, effective upon the entry of the judgment. PERS proposes to revise OAR 459-050-0060 to allow an OSGP participant to revoke their beneficiary designation by divorce or annulment decree.

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-050-0060

### OSGP Designation of Beneficiary

The purpose of this rule is to establish the criteria and process that must be used to designate a beneficiary. The provisions in this rule apply to participants, a participant's surviving beneficiaries, alternate payees and alternate payee's surviving beneficiaries.

# ADMINISTRATIVE RULES

(1) Definitions. The following definitions apply for the purpose of this rule:

(a) "Administrator" means the person appointed by a probate court to handle the distribution of property of someone who has died without a will, or with a will that fails to name someone to carry out this task.

(b) "Conservator" means the person who has been appointed by a court to manage the property and financial affairs of an incapacitated person.

(c) "Executor" means the person named in a will to handle the property of someone who has died. The executor must collect and manage the property, pay debts and taxes, and distribute the remaining assets as specified in the will. In addition, the executor handles any probate court. Executors are also called personal representatives.

(d) "Personal Representative" means the person named in a will to handle the property of someone who has died. Personal representatives are also called executors.

(2) Designation of Beneficiary. When a participant in the Deferred Compensation Program dies, the benefit of the participant's account shall be paid to the beneficiaries designated by the participant. For purposes of this rule, a participant may designate any of the following as a primary or contingent beneficiary:

(a) Any natural person(s);

(b) The personal representative or executor of the estate of the participant;

(c) A charity or other non-profit organization; or

(d) A trust that is valid under Oregon state law.

(A) If a living trust is designated, the trust must be legally in existence before the participant makes the designation.

(B) If a designated trust fails to satisfy the requirements in OAR 459-050-0300(1)(c)(B), payment to the trust shall be made as provided in OAR 459-050-0300(11).

(3) Surviving beneficiary or alternate payee. Any surviving beneficiary designated under section (2) of this rule or an alternate payee may designate a beneficiary in the same manner as a participant.

(4) Power of attorney. The agent shall submit a copy of the Power of Attorney document with the filing of the designation of beneficiary form. The Deferred Compensation Plan may, but is not required to, accept a beneficiary designation made by an agent or attorney-in-fact appointed under a Power of Attorney document. If the Deferred Compensation Program is satisfied that a Power of Attorney document is valid, has not been revoked, and empowers the agent or attorney-in-fact to designate a beneficiary, the program shall accept a beneficiary designation made by the agent or attorney-in-fact appointed under the Power of Attorney document.

(5) Conservator. The Deferred Compensation Program shall accept a beneficiary designation made by a conservator for the participant provided that the conservator submit a certified copy of the letters of conservatorship or other court order appointing a conservator with the designation of beneficiary form.

(6) Effective date of designation of beneficiary. A designation of beneficiary is not effective until a properly completed designation on a form supplied by the Deferred Compensation Program is filed with the Deferred Compensation Program. In the event a designation of beneficiary is incomplete staff will provide notification within 30 days explaining why the form is incomplete.

(7) Revocation of designation of beneficiary. A participant, alternate payee or surviving beneficiary may revoke any and all previous beneficiary designations by filing a new designation on a properly completed form supplied by the Deferred Compensation Program. This designation must be in accordance with section (2) of this rule.

(8) Dissolution of marriage. A participant's designation of beneficiary may be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance effective upon the entry of a judgment that revokes the designation of the beneficiary.

(9) No Designated Beneficiary. If the designated primary and contingent beneficiaries on file with the Deferred Compensation Program have predeceased the deceased participant, surviving beneficiary, or alternate payee who made the designation, or if the program is otherwise unable to administer the designation, the Deferred Compensation Plan shall distribute the benefit of the deceased's account to the executor, personal representative, or administrator of the deceased's estate.

(a) If the program is unable to locate the designated beneficiaries or the executor, personal representative, or administrator of the estate by December 31 of the calendar year following the participant's death, the amount in the deceased's account on that date shall be credited to the Deferred Compensation Fund. The amount credited may be used for the

payment of administrative expenses of the Deferred Compensation Program.

(b) If the designated beneficiaries or the executor, personal representative, or administrator of the estate is later located or other future successful claim is filed, payment will be made in an amount not to exceed the balance in the deceased's account credited to the Deferred Compensation Fund in subsection (9)(a).

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 6-2002, f. & cert. ef. 5-24-02; PERS 6-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Amend OPSRP definitions rule in response to 2005 statutory changes.

**Adm. Order No.:** PERS 7-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 459-070-0001

**Subject:** PERS proposes to amend the OPSRP definitions rule (OAR 459-070-0001) to incorporate new definitions, modify existing definitions and correct citations in response to the passage of 2005 SB 108, HB 2189 and HB 3262 (OL 2005 chapters 152, 332 and 808, respectively).

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-070-0001

### Definitions

The words and phrases used in this Division have the same meaning given them in ORS 238A.005 unless otherwise indicated in this rule. Specific and additional terms for purposes of Divisions 70, 75 and 80 are defined as follows unless context requires otherwise:

(1) "Academic employee of a community college" means an instructor who teaches classes offered for college-approved credit or on a non-credit basis.

(a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

(b) The governing body of a community college shall determine who is an academic employee in its employ under this rule. In making that determination, a community college shall consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(2) "Break in Service" means a period concluding on or after August 29, 2003, during which a member of PERS performs no service with a participating public employer in a qualifying position for a duration of:

(a) Six or more consecutive calendar months; or

(b) 12 or more consecutive calendar months under one of the following circumstances:

(A) The member of PERS ceases performance of service for purposes that have qualified the member for family leave, as described in ORS 238A.025(3)(c), as determined by the employer; or

(B) The member of PERS ceases performance of service for career development purposes, as described in ORS 238A.025(3)(d); or

(C) The member ceases performance of service on or after August 29, 2003 due to the seasonal nature of the employee's employment and does not return to the same employer.

(3) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(4) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(5) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(6) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(7) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(8) "Final Average Salary" (FAS) has the same meaning given the term in:

(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed by a local government as defined in ORS 174.116; or

# ADMINISTRATIVE RULES

(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a local government as defined in ORS 174.116.

(9) "Member" has the same meaning given the term in ORS 238A.005(10).

(10) "Member account" means the account of a member of the individual account program.

(11) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(12) "OPSRP" means the Oregon Public Service Retirement Plan.

(13) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(14) "PERS" means the retirement system established under ORS chapter 238.

(15)(a) "Qualifying position" means a position or positions in which an employee is expected to perform 600 or more combined hours of service in a calendar year.

(b) An academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed to have performed 600 hours or more in the calendar year.

(c) If an employee is employed in a position or positions not designated as qualifying and performs 600 or more total hours of service in a calendar year, the position or positions will be considered qualifying and the employee shall be considered to have performed service in a qualifying position from the date of employment or January 1 of the calendar year in which the employee performed more than 600 hours of service, whichever is later.

(d) Except as provided in subsection (e) of this section, if an employee is employed in a position or positions designated as qualifying and performs less than 600 hours of service in a calendar year, the position will be considered non-qualifying from the date of employment or January 1 of the calendar year in which the employee performed less than 600 hours of service, whichever is later.

(e) For purposes of determining qualification upon separation from employment in a position or positions, but not for any other purpose, if an employee was employed in a position or positions for less than a full calendar year and performed less than 600 hours of service in that calendar year, but would have performed 600 hours of service or more if the employee had performed service in the same position or positions for the full calendar year, and if the employee performed 600 or more hours of service in the previous calendar year, the position or positions will be considered qualifying as of the date of separation.

(16) "Salary" has the same meaning given the term in ORS 238A.005(16).

(17) "School employee" has the meaning given the term in ORS 238A.140(7).

(18) "Service." Except as provided in subsection (c) of this section, a person is still providing "service," for purposes of determining whether a "Break in Service" has occurred under Section 2a, Chapter 733, Oregon laws 2003, during any calendar month that a member:

(a) Is in an employer/employee relationship; and

(b) Receives a payment of "salary," as that term is defined in ORS 238.005(21) or similar payment from workers compensation or disability.

(c) A member who is a school employee will be considered to provide "service" during any calendar month the institution is not normally in session so long as the member is in an employer/employee relationship both before and after the period the institution is not normally in session.

(19) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: 238A.450

Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330 & 238A.335

Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 7-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Implement recent changes to "Break in Service" statutes.

**Adm. Order No.:** PERS 8-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 1-1-06

**Rules Amended:** 459-075-0010

**Subject:** OAR 459-075-0010 is amended to implement "Break in Service" provisions of 2005 HB 2189 (Oregon Laws 2005, chapter 332) and to articulate PERS policy.

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-075-0010

### Eligibility and Membership

(1) Eligibility. An employee is eligible to become a member and receive benefits under the OPSRP pension program, and ineligible to become (or remain) a member of PERS or accrue benefits under PERS, if the employee:

(a) Begins employment in a qualifying position with a participating public employer on or after August 29, 2003;

(b) Was not a member of PERS before August 29, 2003; and

(c) Did not perform any period of service before August 29, 2003, that is credited to the six-month period required under ORS 238.015 for membership in PERS; or

(d) Was an active or inactive member of PERS on August 28, 2003, and incurs a "Break in Service."

(2) "Break in Service":

(a) For purposes of this section, ORS 238A.025 and section 2a of chapter 733, Oregon Laws 2003:

(A) "Active member of PERS" means an employee who is a member of PERS and not separated from service in a qualifying position with a participating public employer.

(B) "Inactive member of PERS" means an employee who is a member of PERS but was separated from service in a qualifying position with a participating public employer, including a member who was on a leave of absence without pay as described in OAR 459-010-0010.

(b) An employee will not incur a "Break in Service" if the employee was an inactive vested member of PERS on August 28, 2003, and returns to a qualifying position before January 1, 2006 with the same participating public employer the employee was employed with before the employee became inactive.

(c) If an employee who was an active member of PERS on August 28, 2003, incurs a "Break in Service", the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service", and benefits under the OPSRP pension program for all service performed after the "Break in Service."

(d) If an employee who was an inactive member of PERS on August 28, 2003, incurs a "Break in Service" concluding prior to January 1, 2004, the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service" and benefits under the OPSRP pension program for all service performed on or after January 1, 2004.

(e) If an employee who was an inactive member of PERS on August 28, 2003, incurs a "Break in Service" concluding on or after January 1, 2004, the employee shall be entitled to benefits under PERS for all service performed prior to the "Break in Service" and benefits under the OPSRP pension program for all service performed after the "Break in Service"

(f) If a member of PERS ceases performance of service for one of the reasons described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if the member resumes performance of hours of service: and

(A) Performs 600 hours of service in the calendar year(s) of absence; or

(B) Performs a total of 600 hours of service in the calendar year prior to leaving service, with no less than 50 hours per month performed in the last six months of that year, and performs 600 hours of service in the calendar year following the return to service, with no less than 50 hours per month performed in the first six months of that year.

(g) If a member of PERS ceases performance of service for reasons other than those described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if the member resumes performance of service and performs 600 hours in the calendar year of the return to service.

(h) If a member of PERS ceases performance of service to serve as a legislator, the absence from regular employment for that purpose shall not be considered a "Break in Service."

(i) If a member of PERS ceases performance of service to serve in the uniformed services, as defined in the 1994 federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and meets the eligibility requirements for reemployment under USERRA, the absence from service for that purpose shall not be considered a "Break in Service."

(j) If a member of PERS ceases performance of service and receives a disability retirement allowance under ORS 238.320, the absence from regular employment during that period, regardless of when the disability period begins or ends, shall not be considered a "Break in Service."

(k) If a member of PERS ceases performance of service on or after August 29, 2003, due to the seasonal nature of the employee's employment, the absence from regular employment during that period shall not be con-

# ADMINISTRATIVE RULES

sidered a "Break in Service" as long as the employee returns to the same public employer before 12 full calendar months have elapsed.

(3) **Membership:**

(a) Except as provided in subsection (c) of this section, an employee who meets the requirements in section (1) of this rule shall become a member of the OPSRP pension program on the first day of the calendar month after the employee completes six full calendar months of employment in a qualified position with the same participating public employer.

(b) If the six months required by subsection (a) of this section are interrupted by 30 or more consecutive working days in which the employee performs no paid service for the same participating public employer, the period of employment prior to the interruption shall not count toward the six-month requirement.

(c) An employee who was an active or inactive member of PERS on August 28, 2003, and incurred a "Break in Service," shall become a member of the OPSRP pension program on the first day of the calendar month after the return to employment.

Stat. Auth.: ORS 238A.450  
Stats. Implemented: ORS 238A.025, OL 2003 Ch 733(2)(a)  
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 8-2006, f. & cert. ef. 4-5-06

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**Rule Caption:** Person making military service full-cost purchase may elect any benefit methodology to calculate retirement allowance.

**Adm. Order No.:** PERS 9-2006

**Filed with Sec. of State:** 4-5-2006

**Certified to be Effective:** 4-5-06

**Notice Publication Date:** 1-1-06

**Rules Adopted:** 459-011-0115

**Subject:** This rule is needed to comply with 2005 HB 3262 (Oregon Laws 2005, chapter 808), which provides in section 26 that a person making a full-cost purchase for military service under ORS 238.157 may elect any benefit methodology (full-formula, money match, formula + annuity) they are eligible for to be used for their service retirement allowance even if that methodology does not produce the highest benefit. The change in statute applies only to members who have an effective retirement date on or after November 4, 2005.

**Rules Coordinator:** Brendalee S. Wilson—(503) 431-8902

## 459-011-0115

### Military Full Cost Purchase

(1) For the purposes of this rule:

(a) "Active Duty for Training" means periods of active service where the member engages in training only.

(b) "Armed Forces" means the Army, Navy, Air Force, Marine Corps and the Coast Guard and the reserve components thereof.

(c) "Effective Retirement Date" means the date the member is eligible to retire and has indicated on their retirement application.

(d) "Full Cost" means the actual cost to the system of the retirement credit for military service being purchased, including any applicable administrative fee.

(e) "Military Service" means qualifying service as described under section (2) of this rule.

(2) An eligible member who served in the Armed Forces prior to becoming a member of PERS may purchase up to four years of retirement credit for military service if they:

(a) Were other than dishonorably discharged from the Armed Forces;

(b) Entered or reentered active service after January 1, 1950, or were in active service on January 1, 1950;

(c) Were on active duty for other than active duty for training; and

(d) Except as provided in section (3) of this rule, the member must be neither receiving, nor eligible to receive, a pension or retirement for service in the Armed Forces at the time of their Effective Retirement Date.

(3) If member is or was a member of a reserve component of the Armed Forces and would be entitled to a pension or retirement for service in the military, the purchase or retirement credit must be made prior to member reaching age 60.

(4) If the member has reached earliest retirement age, the purchase may be made within 90 days before and after the member's effective retirement date.

(a) If the member has not reached earliest retirement date, the purchase may be made only in the 90 day period immediately before the member's effective retirement date.

(5) A member electing to make a full cost purchase may elect to have the service retirement allowance determined under any calculation for which the member is eligible for under ORS 238.300 even if the calculation does not produce the highest retirement allowance.

(6) If the full cost of the purchase is not known at the time the payment is required, the member must pay the remainder of the full cost purchase. If the member does not pay the entire full cost, the member's full cost purchase request will be rejected.

(7) To verify military service, a copy of the member's form DD-214 or other acceptable military discharge or service records must be submitted to PERS with the full cost purchase request.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238.157  
Hist.: PERS 9-2006, f. & cert. ef. 4-5-06

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## Oregon State Lottery Chapter 177

**Rule Caption:** Operating Rules for Lucky Lines, a new Lottery game.

**Adm. Order No.:** LOTT 4-2006

**Filed with Sec. of State:** 3-23-2006

**Certified to be Effective:** 4-9-06

**Notice Publication Date:** 2-1-06

**Rules Adopted:** 177-083-0000, 177-083-0010, 177-083-0020, 177-083-0030, 177-083-0040, 177-083-0050, 177-083-0060, 177-083-0070

**Subject:** These rules authorize the new On-Line game, Lucky Lines, and provide the rules for how it is played.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-083-0000

#### Definitions

For the purposes of division 83, in addition to the definitions set forth in OAR 177-070-0005, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Lucky Lines drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing dates appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Play" or "Game play" means the eight different numbers which appear on a grid on a Lucky Lines ticket and are to be played by a player in a drawing. These eight numbers are compared to the winning numbers selected for each of the drawings appearing on the ticket.

(3) "Quick Pick" means the random selection of numbers by a terminal, which appears as the game play on a Lucky Lines ticket.

(4) "Winning numbers" means the eight numbers that are randomly selected by the Lottery at each drawing and which are used to determine winning game plays contained on a Lucky Lines ticket.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

### 177-083-0010

#### Game Description

(1) **General:** Lucky Lines is a game based on a grid consisting of nine fields. There are four numbers in eight of the nine fields. The center field is a free field. To play the game, one number is selected from each of the eight fields that contain numbers. The player may select the numbers from each of the eight fields or may select the numbers using the Quick Pick option. During each drawing, the Lottery randomly selects one number from each of the eight fields as the winning numbers.

(2) **Determination of Winners:** A player wins by matching the player's numbers on the grid in a straight line, either horizontally, vertically, or diagonally, to the winning numbers on the grid selected by the Lottery for that drawing. There are eight possible ways to match numbers in a straight line on each ticket.

(3) **Location:** A Lucky Lines ticket may only be sold by and purchased from a Lottery On-Line retailer.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06



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## 177-083-0020

### Price

(1) **Ticket Price for a Single Drawing:** A player may purchase a ticket for a single drawing. The price of a ticket for a single drawing is \$2.

(2) **Ticket Price for Consecutive Drawings:** A player may purchase a ticket for 2, 3, 4, 5, 6, 7, or 14 consecutive drawings. The price of a ticket for consecutive drawings is a minimum of \$4 to a maximum of \$28.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

## 177-083-0030

### Ticket Purchase, Characteristics, and Restrictions

(1) **Hours of Purchase:** Lucky Lines tickets may be purchased every-day of the year during the hours of operation of the Lottery's On-Line game system and a Lottery On-Line retailer's business hours of operation.

(2) **Ticket Purchase:** Tickets may be purchased either from a clerk-operated terminal or from a player-operated terminal. To play Lucky Lines, a player must:

(a) Complete a play slip for input into a clerk-operated terminal or player-operated terminal; or

(b) Request a Quick Pick from a clerk or by using a player-operated terminal; and

(c) Pay the ticket price.

(3) **Play Slip:** Completing a play slip:

(a) A player must choose a game play by one of two methods:

(A) A player must select one number out of a group of four numbers in each of the eight fields; or

(B) The player may select the numbers using the Quick Pick option.

(b) A player must indicate if the game play is for consecutive drawings. If the game play is for consecutive drawings, the player must select the number of consecutive drawings from 2, 3, 4, 5, 6, 7, or 14.

(4) **Clerk-Operated Terminal:** Purchasing a ticket from a clerk-operated terminal:

(a) The player may complete a game slip and submit it with the price of the ticket to the clerk. The clerk will use the terminal to issue a ticket to the player with the player's game plays; or

(b) Without using a game slip, the player may request that a clerk electronically use the terminal's Quick Pick number selection. Upon payment of the price of the ticket to the clerk, the clerk will use the terminal to issue a ticket to the player with the player's Quick Pick game plays.

(c) The placing of game plays is done at the player's own risk through the On-Line retailer who is acting on behalf of the player in entering the player's plays.

(5) **Player-Operated Terminal:** A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal either by:

(a) Completing a game slip, inserting it into the terminal, and paying the price of the ticket into the terminal. The terminal will issue a ticket to the player with the player's game plays; or

(b) The player may use the terminal's Quick Pick number selection without using a game slip by following the instructions appearing on the terminal screen and paying the price of the ticket. The terminal will issue a ticket to the player with the player's Quick Pick game plays.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

## 177-083-0040

### Cancellation of Tickets

(1) **General:** A player may cancel a Lucky Lines ticket for a single drawing or consecutive drawings. To cancel a ticket, a player must follow the procedure in OAR 177-046-0060.

(2) **Refund:** In the event that a ticket is canceled in accordance with OAR 177-083-0040(1) and 177-046-0060, the player shall be entitled to a refund from the retailer equal to the cost shown on the player's ticket, not to exceed the maximum ticket cost of \$28.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

## 177-083-0050

### Drawings

Drawings will normally occur daily at approximately 6:00 p.m. or at any other time as determined by the Director. Each drawing shall randomly select numbers from each of the four number choices in each of the eight fields. The winning numbers selected at each drawing shall be generated through the use of a computer-driven random number generator.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

## 177-083-0060

### Ticket Validation Requirements

(1) **General:** A Lucky Lines ticket must meet the requirements in OAR chapter 177 to be valid and eligible to receive prize payment.

(2) **Validation of Consecutive Play Tickets:** A game ticket containing a winning game play and purchased for play in consecutive drawings may be validated prior to the occurrence of future drawings for which the game ticket was purchased. At the time the original game ticket is validated, an exchange ticket shall be issued for the remainder of the drawings appearing on the validated game ticket.

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

## 177-083-0070

### Prizes

(1) **Prize Structure:** Prizes for a winning ticket are determined by the ticket's game play that matches the winning numbers and the criteria established in this section. The prize structure is as follows: [Table not included. See ED. NOTE.]

(2) **Jackpot Prize:** The jackpot prize is a rolling jackpot, and it is paid on a parimutuel basis. The jackpot prize starts at a minimum of \$10,000 and if it is not won in the daily drawing, it will increase by approximately \$1,000 for each consecutive drawing. If the jackpot prize is won, it will return to a minimum of \$10,000.

(3) **Estimation:** The number of prizes for Lucky Lines is not predetermined by the Lottery. The overall prize-percentage payout for Lucky Lines prizes is estimated at 60.95% over time, but the actual prize payout may vary from day-to-day and year-to-year, due to factors that include, but are not limited to, the number of players participating each day and the number of winning wagers.

(4) **Lottery's Determination:** In the event of a dispute over the determination of a prize, the Lottery's determination is controlling.

(5) **Prize payments:** Prizes will be paid in accordance with OAR 177-046-0110.

(6) **Lump Sum Distribution:** Each prize-winning player will be paid in one lump sum.

(7) **Limits on Prizes:** For each drawing, a player may have more than one winning combination on a single ticket for each game play. However, the player shall receive only the highest single prize for which the player is eligible.

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

Stat. Auth.: ORS 461 & OR Const., Art. XV, §4(4)  
Stats. Implemented: ORS 461.210  
Hist.: LOTT 4-2006, f. 3-23-06, cert. ef. 4-9-06

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Consideration of allowing electric motors on lakes previously prohibited from motor boat operation.

**Adm. Order No.:** OSMB 1-2006

**Filed with Sec. of State:** 3-28-2006

**Certified to be Effective:** 3-28-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 250-020-0102

**Subject:** The Marine Board received a request to allow electric motors on lakes previously prohibited from motor boat operation. At the meeting on March 16, 2006 the Board considered information included in the public record: comments from local land managing agency (Rogue National Forest) and members of the public and decided it would be in the best interest of the public good to allow electric motors on boats operating on Hemlock Lake in Douglas County.

**Rules Coordinator:** Jill E. Andrick—(503) 378-2617

## 250-020-0102

### Boat Operations in Douglas County

(1) No person shall operate a motorboat at a speed in excess of 10 MPH in the following areas:

(a) On Carter Lake;

(b) On Plat I Reservoir after 6 p.m. or before 11 a.m.

# ADMINISTRATIVE RULES

(2) No person shall operate a motorboat at a speed in excess of 5 MPH in the following areas:

(a) Within the Harbor limits of Salmon Harbor on Winchester Bay;

(b) On the Umpqua River in the vicinity of River Forks Park from a point 30 yards downstream (North) from the launching ramp to a point upstream 100 yards on each the North Fork and South Fork of the Umpqua River;

(c) On the Umpqua River within 300 feet of the boat launching ramp and designated swimming area at Scottsburg Park.

(3) Lemolo Lake:

(a) No person shall operate a motorboat in excess of a "Slow-No Wake" maximum 5 MPH speed within 150 feet of the shore or pier line in a zone extending from the launch ramp at Lemolo Lake Resort south to Pool Creek Inlet, and from a point 200 feet south of Pool Creek Inlet south to the small unnamed island, and thence south from the south tip of the island across to the nearest peninsula;

(b) Boats shall not exceed a "Slow-No Wake" maximum 5 MPH speed in the area from where U.S. Forest Service Road Number 2666 crosses the North Umpqua River, to a point 2,000 feet westward thereof;

(c) Boats shall not exceed a maximum speed of 40 MPH on all other waters of Lemolo Lake.

(4) No person shall operate a motorboat for any purpose on the following bodies of water:

(a) Amos and Andy Lakes;

(b) June Lake;

(c) Indigo Lake;

(d) Maidu Lake;

(e) Wolf Lake;

(f) Skookum Lake;

(g) Fish Lake;

(h) Buckeye Lake;

(i) Cliff Lake;

(j) Calamut Lake;

(k) Lucile Lake;

(l) Faller Lake;

(m) Lower Twin Lake;

(n) Upper Twin Lake;

(o) Lake in the Woods.

(5) Cooper Creek Reservoir: No person shall operate a motorboat in excess of:

(a) 40 MPH on the main body of the Reservoir;

(b) 5 MPH within the buoyed area of Rachele Inlet; Pierce Canyon Inlet; Sutherland Inlet and Douglas Inlet;

(c) 5 MPH within 200 feet of a boat launching ramp or designates swimming area.

(6) Ben Irving Reservoir: No person shall operate a motorboat in excess of:

(a) 35 MPH from the markers (identified by the letter "A") located where the reservoir narrows, downstream for approximately 1.2 miles to the dam;

(b) 5 MPH:

(A) From the markers (identified by the letter "A") located where the reservoir narrows, upstream for approximately one mile to the second set of markers (identified by the letter "B");

(B) Within 100 feet of the boat ramp as marked.

(c) No person shall operate a motorboat upstream from the second markers (identified by the letter "B") except that electric motors may be used;

(d) No boats shall be permitted within the log boomed area in the vicinity of the dam spillway.

(7) Galesville Reservoir: No person shall operate a motorboat in excess of:

(a) 40 MPH on the main body of the lake;

(b) 5 MPH along the north shore between the launch ramp and log boom, in the buoyed areas;

(c) 5 MPH between the buoy line at the upper end of the lake to the powerboat deadline as marked;

(d) Above the 5 MPH zone, as marked, no person shall operate a motorboat, except those propelled by electric motors;

(e) Persons operating a motorboat in excess of 5 MPH in the otherwise unrestricted portions of the lake shall proceed about the lake in a counter clockwise direction.

(8) No person shall operate a motorboat on the North Umpqua River between the boat ramp at Lone Rock Camp (approximate RM 32) upstream to Lemolo Lake.

(9) Loon Lake:

(a) Except for safe take-offs and landings, no person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within 200 feet of the designated swimming area and boat mooring area at the BLM day use area, as marked. Boats towing skiers may exceed 5 MPH to extent necessary to maintain the skier in a skiing position, within 200 feet from the designated swimming area and boat mooring area only under safe conditions as outlined in this section. A safe take-off or landing will not be considered "safe" unless it can be accomplished without risk to any swimmer or craft within 200 feet from designated swimming area and boat mooring area. If a safe landing as thus defined is not possible, skiers must be picked up by the boat before coming within 200 feet from the designated swimming area and boat mooring area and brought to shore under usual speed restrictions (5 MPH with in 200 feet of the designated swimming area and boat mooring area). Take-offs and landings are required to be made following the mandatory counter-clockwise pattern.

(b) Persons operating a motorboat in excess of 10 MPH shall proceed in a counter-clockwise direction in the otherwise unrestricted portions of the lake.

(c) No person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within the buoyed area extending from the north shore of the cove at Fish Haven Resort in a southwest direction across the lake to the end of the prominent point of land on the south shore of the lake, as marked.

(10) Diamond Lake:

(a) No person shall operate a motorboat in excess of 45 MPH between the hours of 9 a.m. and 6 p.m.;

(b) No person shall operate a motorboat in excess of 10 MPH between 6 p.m. and 9 a.m.;

(c) No person shall operate a motorboat in excess of 10 MPH within 200 yards of any boat ramp, boat dock, swimming area, inlet or outlet of the lake, designated campground or summer home;

(d) No person shall operate a personal watercraft as defined in OAR 250-021-0020 at anytime;

(e) No person shall operate a motorboat that exceeds the noise levels specified in OAR 250-010-0121.

(11) Hemlock Lake: No person shall operate a motorboat, except those propelled by electric motors.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110, 830.175 & 830.185

Hist.: MB 20, f. 3-20-63; MB 29, f. 6-17-66; MB 32, f. 9-14-66; MB 34, f. & ef. 6-2-67; MB 41, f. 9-18-68; MB 47, f. 7-14-70, ef. 8-11-70; MB 74(Temp), f. 5-18-76, ef. 6-1-76 thru 9-28-76; MB 82, f. & ef. 4-19-77; Renumbered from 250-020-0083; MB 4-1981(Temp), f. & ef. 4-17-81; MB 7-1981, f. & ef. 11-16-81; MB 4-1987, f. 4-20-87, ef. 5-1-87; MB 21-1987, f. 12-31-87, ef. 1-1-88; MB 5-1995, f. & cert. ef. 7-14-95; OSMB 8-2000, f. & cert. ef. 12-1-00; OSMB 7-2002, f. & cert. ef. 10-15-02; OSMB 1-2006, f. & cert. ef. 3-28-06

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**Rule Caption:** Consideration of allowing electric motors on lakes previously prohibited from motor boat operation.

**Adm. Order No.:** OSMB 2-2006

**Filed with Sec. of State:** 3-28-2006

**Certified to be Effective:** 3-28-06

**Notice Publication Date:** 2-1-06

**Rules Amended:** 250-020-0266

**Subject:** The Marine Board received a request to allow electric motors on lakes previously prohibited from motor boat operation. At the meeting on March 16, 2006 the Board considered information included in the public record: comments from local land managing agency (City of Salem) and members of the public and decided it would be in the best interest of the public good to allow electric motors on boats operating on Walter Wirth Lake, City of Salem, Marion County.

**Rules Coordinator:** Jill E. Andrick—(503) 378-2617

**250-020-0266**

**Boat Operations in Marion County**

No person shall operate a motorboat except those propelled by electric motors on Walter Wirth Lake.

Stat. Auth.: ORS 830.110, 830.175 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 2-1991, f. & cert. ef. 6-6-91; OSMB 2-2006, f. & cert. ef. 3-28-06

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**Rule Caption:** Consideration of allowing electric motors on lakes previously prohibited from motor boat operation.

**Adm. Order No.:** OSMB 3-2006

**Filed with Sec. of State:** 3-28-2006

# ADMINISTRATIVE RULES

**Certified to be Effective:** 3-28-06  
**Notice Publication Date:** 2-1-06  
**Rules Amended:** 250-020-0350

**Subject:** The Marine Board received a request to allow electric motors on lakes previously prohibited from motor boat operation. At the meeting on March 16, 2006 the Board considered information included in the public record: comments from local land managing agency (Rock Creek District Improvement Company) and members of the public and decided it would be in the best interest of the public good to allow electric motors on boats operating on Rock Creek Reservoir in Wasco County.  
**Rules Coordinator:** Jill E. Andrick—(503) 378-2617

## 250-020-0350

### Boat Operations in Wasco County

(1) No person shall operate a motorboat except those propelled by electric motors on Rock Creek Reservoir.

(2) No person shall operate a motorboat in excess of 10 MPH on Pine Hollow Reservoir, except between July 1 and the day following Labor Day, in the area west of a buoy line.

(3) No person shall operate a boat for any reason in any restricted area at any time without first obtaining permission from the District Engineer, Corps. Of Engineers, U.S. Army, or his duly authorized representative.

(4) At The Dalles Dam. The waters restricted to only Government vessels are described as all downstream waters other than those of the navigation lock downstream approach channel which lie between the Wasco County Bridge and the project axis including those waters between the powerhouse and the Oregon shore and all upstream waters other than those of the navigation lock upstream approach channel which lie between the project axis and a line projected from the upstream end of the navigation lock upstream guide wall to the junction of the concrete structure with the earth fill section of the dam near the upstream end of the powerhouse as marked.

(5) On Lake Bonneville in Salisbury Slough at West Mayer State Park. No person shall operate a motorboat in excess of a 5 MPH slow no-wake speed between May 1 and September 30 west of a line originating at the east end of West Mayer State Park swimming beach and extending northeast across the slough to the east end of spit of land separating the slough from the main lake, as marked.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 41, f. & cert. ef. 9-18-68; MB 46, f. & cert. ef. 4-15-70, ef. 4-17-70; Renumbered from 250-020-0195; MB 8-1990, f. & cert. ef. 7-19-90; OSMB 3-1998, f. & cert. ef. 4-3-98; OSMB 3-2006, f. & cert. ef. 3-28-06

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## Oregon University System, Eastern Oregon University Chapter 579

**Rule Caption:** Amend special student and course fees.

**Adm. Order No.:** EOU 1-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 579-020-0006

**Subject:** Amend fees charged to students for special use of facilities, services or supplies at Eastern Oregon University.

**Rules Coordinator:** Lara Moore—(541) 962-3368

## 579-020-0006

### Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2006-07 school year.

[ED NOTE: Fee list referenced is available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 3, f. & cert. ef. 6-23-76; EOSC 8, f. & cert. ef. 6-16-77; EOSC 6-1978, f. & cert. ef. 10-2-78; EOSC 1-1979, f. & cert. ef. 6-27-79; EOSC 1-1981, f. & cert. ef. 1-12-81; EOSC 3-1981, f. & cert. ef. 7-1-81; EOSC 2-1983, f. & cert. ef. 12-16-83; EOSC 2-1984, f. & cert. ef. 10-25-84; EOSC 1-1986, f. & cert. ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EQU 1-2006, f. & cert. ef. 4-14-06

## Oregon University System, Southern Oregon University Chapter 573

**Rule Caption:** Special Fees.

**Adm. Order No.:** SOU 1-2006

**Filed with Sec. of State:** 3-31-2006

**Certified to be Effective:** 3-31-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 573-040-0005

**Subject:** The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.

**Rules Coordinator:** Treasa Sprague—(541) 552-6319

## 573-040-0005

### Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-040-0010

Hist.: SOSC 4, f. & cert. ef. 9-2-76; SOSC 10, f. & cert. ef. 5-9-77; SOSC 6-1978, f. & cert. ef. 6-2-77; SOSC 8-1978, f. & cert. ef. 12-15-78; SOSC 2-1979, f. & cert. ef. 6-20-79; SOSC 4-1980, f. & cert. ef. 5-20-80; SOSC 4-1980, f. & cert. ef. 5-20-80; SOSC 2-1981, f. & cert. ef. 6-2-81; SOSC 3-1982, f. & cert. ef. 7-1-82; SOSC 4-1983, f. & cert. ef. 5-26-83; SOSC 1-1984, f. & cert. ef. 6-20-84; SOSC 4-1985, f. & cert. ef. 6-3-85; SOSC 9-1985, f. & cert. ef. 12-17-85; SOSC 2-1986, f. & cert. ef. 5-30-86; SOSC 1-1987, f. & cert. ef. 6-5-87; SOSC 4-1987, f. & cert. ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 1-2006, f. & cert. ef. 3-31-06

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## Oregon Youth Authority Chapter 416

**Rule Caption:** Adoption of Temporary Rule definitions which are due to expire 5/06.

**Adm. Order No.:** OYA 5-2006

**Filed with Sec. of State:** 3-20-2006

**Certified to be Effective:** 3-20-06

**Notice Publication Date:** 12-1-05

**Rules Amended:** 416-530-0010, 416-530-0040

**Subject:** Temporary rules OAR 416-530-0010 and OAR 416-530-0040 due to expire 5/7/06 are adopted as permanent rules as amended to add a definition of "computerized criminal history checks" and subsequent definitions will be renumbered. OAR 416-530-0040 is amended to include language regarding incidents of abuse and neglect as it relates to foster care applicants.

**Rules Coordinator:** Mike Riggan—(503) 378-3864

## 416-530-0010

### Definitions

(1) Applicant: A person who applies for a certificate of approval to operate and maintain a foster home, including persons who seek initial certification or re-certification.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youths' interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certificate: A certificate of approval, issued by the OYA, to operate a foster home where offenders in OYA custody are placed.

(4) Certification process: The process of initial or renewal application for certification to operate a foster home.

(5) Computerized criminal history checks: The access and use of automated or manual files, or associated systems available to the OYA as a criminal justice agency, through the Law Enforcement Data Systems (LRDS) including on-line information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), the

# ADMINISTRATIVE RULES

Department of Human Services (DHS) Child Abuse Registry, and the National Law Enforcement Telecommunications System (NLETS).

(6) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, including computerized and fingerprint-based processes.

(7) Denial: The refusal of the OYA to issue a certificate of approval (including re-certification) to operate a foster home.

(8) Discipline: A process by which foster parents and OYA assist offenders to develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(9) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(10) Foster parent employee: Any person receiving compensation from foster parents for assistance in the care and supervision of offenders placed in the foster home.

(11) Foster care maintenance payment: The OYA's monthly payment to the foster parent to cover expenses such as the offender's room, board, clothing, allowance, personal incidentals, transportation, respite provider, educational supplies, or other costs approved by the OYA.

(12) Foster home: A home in the community which is certified by the OYA and maintained and lived in by a foster parent who provides supervision, food, and lodging for offenders in OYA custody.

(13) Foster parent: A person certified by the OYA who demonstrates special competence to supervise offenders with serious social and/or behavioral maladaptive characteristics in a foster home setting. A foster parent must be unrelated to an offender by blood or marriage. Foster parents provide supervision, food, and lodging to offenders as the offenders progress through their case plan.

(14) Family foster home agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(15) Home study: The assessment process, conducted prior to issuance of a certificate, to determine an applicant's ability to provide foster care services to offenders.

(16) Information required: All information requested by the OYA, including information used to process criminal history checks.

(17) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for offenders. The process is a collaborative effort between OYA staff, the offender's biological and foster families and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

(18) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to the offender to limit movement.

(19) Members of household: Any person who lives in the foster home or who assists in the care provided to offenders including but not limited to the provision of tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(20) Offender: A person who has been found to be within the jurisdiction of the juvenile court under ORS 415C.005 for an act committed when the person was under 18 years of age.

(21) Physical force: To physically force or constrain the movement of a person in order to prevent self-harm, harm to others, damage to property, or to remove a person from a scene of danger.

(22) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(23) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to: Physical force or threat of physical force inflicted in any manner upon an offender; verbal abuse, including derogatory remarks about the offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting punishment of an offender by another offender; and use of cold shower as punishment.

(24) Regular certificate: A certificate of approval issued by the OYA, for a period of one year, when all foster care standards have been met.

(25) Respite care: A temporary arrangement between the foster parent and the respite provider to allow the foster parent(s) time away of 12 hours or more from the offender.

(26) Respite provider: An individual approved by the OYA who is at least 21 years of age who temporarily assists with supervision of offenders when the foster parent is not available.

(27) Revocation: The action taken to rescind a foster home certificate of approval after the OYA determines that the foster parent or the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with OYA.

(28) Special certificate: A conditional certificate of approval that limits the foster home to care and supervision of a specific offender, or other specified offenders, under specific conditions.

(29) Suspension: A temporary withdrawal of the foster home certificate after the OYA determines that the foster home is in non-compliance with statute, administrative rule(s) or the foster parent agreement with the OYA.

(30) Volunteer: Any person who is not a member of the household and who assists, for no compensation, with the supervision of offenders and with other activities, including but not limited to, food preparation, household chores, recreation, tutoring, mentoring, or respite care.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06

## 416-530-0040

### Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age.

(2) Meet the qualifications and standards described in these rules and chapter 416, division 800.

(3) Demonstrate the following personal qualifications.

(a) Responsible, stable, emotionally mature adults who exercise sound judgment and display the capacity to meet the mental, physical and emotional needs of offenders placed in foster care.

(b) Understand the behaviors of offenders, as well as ensure the safety of the community.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping an offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, and cultural identity and heritage.

(e) Be able to realistically evaluate which offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(4) Be physically and mentally able to perform the duties of foster care.

(a) The OYA may require a medical statement from a physician verifying that neither the applicant nor any member of the household suffers from a communicable disease, specific illness, or disability which would interfere with the ability to care for and supervise offenders.

(b) The OYA may ask the applicant to consent to the release of psychological, medical or physical, sex-offender, drug and alcohol, or other reports and evaluations.

(c) In the case of alcoholism or substance abuse, the applicant must be able to demonstrate he/she has been substance-free and sober for at least two years prior to making application for certification.

(5) Be free from a professional or personal conflict of interest. If the applicant is an OYA employee or works in a professional capacity which may contribute to a conflict of interest, the application and supporting study must be reviewed by the Assistant Director, Field Operations, or designee, who will decide whether a certificate should be issued.

(6) Not have any documented incidents of abuse or neglect that resulted in a founded disposition by DHS. The OYA will conduct DHS Child Abuse Registry checks at the time of certification and re-certification; at the time a foster home certified by another agency wishes to serve OYA offenders; and when the OYA deems it necessary for the safety of offenders in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06

# ADMINISTRATIVE RULES

## Physical Therapist Licensing Board Chapter 848

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

**Adm. Order No.:** PTLB 1-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06

**Notice Publication Date:** 3-1-06

**Rules Adopted:** 848-035-0010, 848-035-0015, 848-035-0020, 848-035-0030, 848-035-0040

**Subject:** • 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—(971) 673-0203

### 848-035-0010

#### Purpose

The 2005 Oregon Legislation gave new authority to the Physical Therapist Licensing Board, effective January 1, 2006, to adopt rules establishing minimum continuing education requirements for all licensees. The following rules set out the new requirements.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06

### 848-035-0015

#### Definitions

As used in this Division:

(1) "Certification period" means a 24 month continuing education certification period which runs from April 1st of each even numbered year, through March 31st of the next even numbered year, i.e. April 1, 2008 through March 31, 2010.

(2) "Initial Certification Period" means January 1, 2006 through March 31, 2008.

(3) "Hours" means contact hours.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06

### 848-035-0020

#### Required Hours and Period for Completion

(1) A licensed physical therapist is required within each certification period to complete 24 hours of continuing education relating to the delivery or provision of physical therapy services.

(2) A licensed physical therapist assistant is required within each certification period to complete 12 hours of continuing education relating to the delivery or provision of physical therapy services.

(3) Notwithstanding the provisions of subsection (1) of this rule, any person who is first issued an Oregon physical therapist license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education

required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(4) Notwithstanding the provisions of subsection (2) of this rule, any person who is first issued an Oregon physical therapist assistant license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist assistant license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(5) Notwithstanding the provisions of subsection (1) of this rule, a physical therapist whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to OAR 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person whose lapsed physical therapist license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 24 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(6) Notwithstanding the provisions of subsection (2) of this rule, a physical therapist assistant whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to OAR 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person whose lapsed physical therapist assistant license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 12 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(7) Any licensee whose license lapses on April 1st of an even numbered year, regardless of the reason, and who subsequently renews the lapsed license during the first 12 months of a new certification period, shall provide documentation of completion of the continuing education requirements for the immediately prior certification period before the license will be renewed.

(8) For purposes of determining whether a licensee has satisfied the continuing education requirement under section (3), (4), (5) or (6) of this rule, the Licensing Board will accept all qualifying continuing education hours completed from the beginning date of the 24 month certification period in which the license was issued or renewed, regardless of the specific date the license was issued or renewed. For example, a person whose license is issued or renewed on June 15, 2009 will receive credit for all qualifying continuing education hours completed at any time during the certification period of April 1, 2008 to March 31, 2010.

(9) The initial certification period for a licensee to complete the required hours shall be January 1, 2006, through and including March 31, 2008. Thereafter, each twenty-four month period for completion of the required hours shall be April 1st of the even numbered year through March 31st of the next even numbered year. For example, the second twenty-four month period will be from April 1, 2008, through March 31, 2010.

(10) Failure to complete the required continuing education by March 31st of an even-numbered year shall constitute a violation of this division 35.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06

# ADMINISTRATIVE RULES

## 848-035-0030

### Course Requirements and Restrictions

(1) Courses which a licensee may take to satisfy the continuing education requirement include but are not limited to:

(a) Courses, seminars, and workshops sponsored or approved by an established and recognized medical or dental health-related organization or professional association recognized by the Board;

(b) Courses approved for continuing education by other states which require continuing education for physical therapists or physical therapist assistants;

(c) Courses certified for continuing education units (CEU) by a recognized physical therapy professional association;

(d) Courses provided by an accredited institution of higher education other than courses taken prior to graduation from a school of physical therapy;

(e) Individual study courses requiring an examination and recognized by an accredited institution or recognized health-related organization or professional association recognized by the Board;

(f) Courses in cardiopulmonary resuscitation (CPR) however, continuing education credit will be limited to one hour, regardless of the length of the course;

(g) Courses or lectures which a licensee presents if the course or lecture presented awards continuing education units or hours to participants and the licensee requests continuing education credit from the Board;

(A) The licensee may receive continuing education units or hours equivalent to the actual credit hours awarded to participants for that portion of the program which the licensee presents;

(B) The maximum cumulative credit granted for presenting courses or lectures shall be no more than one half of the total continuing education requirement during any certification period (ie: 12 hours for physical therapists and 6 hours for physical therapist assistants) and;

(C) A licensee may receive credit for presenting a particular course or lecture only one time during any certification period, regardless of how many times the licensee presents that course or lecture; and

(h) Courses approved by the Board by special request.

(2) Activities which will not satisfy the continuing education requirement include:

(a) Orientation and in service programs;

(b) Professional association meetings for purposes of business or policy decisions making;

(c) Entertainment or recreational meetings;

(d) Attending meetings, holding office, or representing a professional association as a lobbyist or delegate;

(e) Publishing or preparing presentations.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06

## 848-035-0040

### Documentation of Continuing Education Credits

(1) In order to qualify for credit against the required hours, a continuing education course must include a course completion certificate. The certificate must include the title of the course, the name of course provider or speaker, date of completion, number of hours and licensee's name.

(2) The licensee is responsible for obtaining a course completion certificate from the course provider. The licensee is further responsible for retaining the certificate in the event the Board requires the licensee to produce documentation of completion of the continuing education requirement. All completion certificates shall be retained for a minimum of three years from the certificate date.

(3) The Board may require all or any percentage of physical therapists and physical therapist assistants who are renewing their licenses in the even numbered year to provide documentation of completion of the continuing education requirements of this division 35.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06

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### Public Utility Commission Chapter 860

**Rule Caption:** Amend OAR 860-011-0001(1)(b) to Provide Notice to Interested Persons of Permanent Rules Only.

**Adm. Order No.:** PUC 5-2006

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06

**Notice Publication Date:** 3-1-06

## Rules Amended: 860-011-0001

**Subject:** This amendment adds the word "permanent" to OAR 860-011-0001(1)(b) so that persons on a mailing list will receive notice of any permanent rulemaking proceedings. This change preserves the agency's flexibility for adopting temporary rules.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-011-0001

### Notice to Interested Persons

(1) The Commission maintains mailing lists of persons interested in receiving notices of:

(a) Commission public meetings;

(b) Permanent rulemaking proceedings that involve electric, natural gas, telecommunications, water, wastewater or procedural matters; and

(c) Contested case proceedings that concern particular regulated industries.

(2) The Commission will send advance notice of these events, by mail or electronic mail, to persons on these lists. Any person may request in writing to be included on the relevant list(s) for the person's particular area of interest.

(3) The Commission will not delete the names of persons from a notice list without prior notification.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 - 756.575

Hist.: PUC 169, f. & ef. 11-10-75 (Order No. 75-936); PUC 179, f. 3-18-77, ef. 4-1-77 (Order

No. 77-163); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 10-2004, f. & cert. ef.

4-29-04; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 5-2006, f. & cert. ef. 4-14-06

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### Secretary of State, Elections Division Chapter 165

**Rule Caption:** Allows for use of alternate voting systems for individuals with disabilities at 2006 primary election.

**Adm. Order No.:** ELECT 2-2006(Temp)

**Filed with Sec. of State:** 4-14-2006

**Certified to be Effective:** 4-14-06 thru 10-11-06

**Notice Publication Date:**

**Rules Amended:** 165-007-0250

**Subject:** In order to initiate compliance with the disabled-voter access requirements of the Help America Vote Act, the Division is implementing a pilot project using an audio ballot marking system for the May 2006 primary election. Audio Ballot Marking System is a form of accessible voting system that provides an accessible ballot marking station at each county election office using a telephone and fax machine to afford voters with disabilities the opportunity to vote privately and independently.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-007-0250

### Voting System Certification

Adoption by Reference:

(1) In addition to, and not in lieu of, any other election processes contained in OAR chapter 165, the Division adopts by reference the federal rules as printed in the Federal Election Commission publication: Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems, revised April 2002, and any appendices, tables and relevant accompanying documents. All vote tally systems approved for use in Oregon must conform to the Federal Election Commission's voting systems standards adopted by this rule.

(2) All Vote Tally Systems approved before the effective date of this rule, are unaffected by this rule.

(3) Notwithstanding any other provision of this rule, the Inspire Vote-by-Phone (IVS) voting system is approved for use by counties in the 2006 primary election to accommodate individuals with disabilities pursuant to section 301(a)(3) of the Help America Vote Act of 2002 (42 USC § 15481(a)(3)).

**NOTE:** These rules are on file with Oregon Secretary of State, Elections Division and the Federal Elections Commission.

Authorization: ORS 246.150

Stats Implemented: ORS 246.520, 246.530, 246.540, 246.550, 246.560, 246.565, 246.570, 246.580, 246.590 & 246.600

Hist.: ELECT 11-2000, f. & cert. ef. 12-8-00; ELECT 9-2003, f. & cert. ef. 9-3-03; ELECT 2-2006(Temp), f. & cert. ef. 4-14-06 thru 10-11-06

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137-055-4130	1-3-06	Amend	2-1-06	137-087-0095	1-1-06	Adopt	1-1-06
137-055-4160	1-3-06	Amend	2-1-06	137-087-0100	1-1-06	Adopt	1-1-06
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137-055-4420	1-3-06	Amend	2-1-06	141-085-0021	3-27-06	Adopt	5-1-06
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137-055-4560	1-3-06	Amend	2-1-06	141-085-0031	3-27-06	Amend	5-1-06
137-055-5020	1-3-06	Amend	2-1-06	141-085-0036	3-27-06	Amend	5-1-06
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137-055-5025	1-3-06	Amend	2-1-06	141-085-0066	3-27-06	Amend	5-1-06
137-055-5110	1-3-06	Amend	2-1-06	141-085-0075	3-27-06	Amend	5-1-06
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137-055-5400	1-3-06	Amend	2-1-06	141-085-0141	3-27-06	Amend	5-1-06
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137-055-6021	1-3-06	Adopt	2-1-06	141-089-0115	1-3-06	Amend	2-1-06
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137-055-6260	1-3-06	Amend	2-1-06	141-089-0175	1-3-06	Amend	2-1-06
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137-087-0050	1-1-06	Adopt	1-1-06	141-089-0275	1-3-06	Amend	2-1-06
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141-089-0420	1-3-06	Amend	2-1-06	150-314.415(7)	1-1-06	Renumber	2-1-06
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141-089-0560	1-3-06	Amend	2-1-06	150-314.752	1-1-06	Amend	2-1-06
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177-036-0055(T)	12-31-05	Repeal	2-1-06	177-040-0026	1-25-06	Amend	3-1-06
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213-017-0006	4-12-06	Amend	5-1-06	257-050-0070	11-18-05	Amend	1-1-06
213-017-0007	4-12-06	Amend	5-1-06	257-050-0070	3-31-06	Amend	5-1-06
213-017-0008	4-12-06	Amend	5-1-06	257-050-0080	11-18-05	Repeal	1-1-06
213-019-0008	4-12-06	Amend	5-1-06	257-050-0090	11-18-05	Amend	1-1-06
213-019-0010	4-12-06	Amend	5-1-06	257-050-0090	3-31-06	Amend	5-1-06
213-019-0012	4-12-06	Amend	5-1-06	257-050-0095	3-31-06	Adopt	5-1-06
213-019-0015	4-12-06	Amend	5-1-06	257-050-0100	3-31-06	Amend	5-1-06
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220-005-0015	12-30-05	Amend(T)	2-1-06	257-050-0125	11-18-05	Adopt	1-1-06
220-005-0110	12-30-05	Amend(T)	2-1-06	257-050-0125	3-31-06	Amend	5-1-06
220-005-0115	12-30-05	Amend(T)	2-1-06	257-050-0140	11-18-05	Amend	1-1-06
220-005-0120	12-30-05	Amend(T)	2-1-06	257-050-0140	3-31-06	Amend	5-1-06
220-005-0130	12-30-05	Amend(T)	2-1-06	257-050-0145	11-18-05	Adopt	1-1-06
220-005-0135	12-30-05	Amend(T)	2-1-06	257-050-0145	3-31-06	Amend	5-1-06
220-005-0140	12-30-05	Amend(T)	2-1-06	257-050-0150	11-18-05	Amend	1-1-06
220-005-0150	12-30-05	Amend(T)	2-1-06	257-050-0150	3-31-06	Amend	5-1-06
220-005-0160	12-30-05	Amend(T)	2-1-06	257-050-0155	3-31-06	Adopt	5-1-06
220-005-0170	12-30-05	Amend(T)	2-1-06	257-050-0157	11-18-05	Adopt	1-1-06
220-005-0210	12-30-05	Amend(T)	2-1-06	257-050-0157	3-31-06	Amend	5-1-06
220-005-0220	12-30-05	Amend(T)	2-1-06	257-050-0160	11-18-05	Repeal	1-1-06
220-005-0225	12-30-05	Adopt(T)	2-1-06	257-050-0170	11-18-05	Adopt	1-1-06
220-005-0230	12-30-05	Suspend	2-1-06	257-050-0170	3-31-06	Amend	5-1-06
220-005-0240	12-30-05	Suspend	2-1-06	257-050-0180	3-31-06	Adopt	5-1-06
220-005-0245	12-30-05	Adopt(T)	2-1-06	257-050-0200	11-18-05	Adopt	1-1-06
220-005-0250	12-30-05	Amend(T)	2-1-06	257-050-0200	3-31-06	Amend	5-1-06
220-010-0020	12-30-05	Amend(T)	2-1-06	259-008-0010	2-28-06	Amend	4-1-06
220-010-0030	12-30-05	Amend(T)	2-1-06	259-008-0045	2-28-06	Amend	4-1-06
220-010-0050	12-30-05	Amend(T)	2-1-06	259-008-0076	12-7-05	Adopt	1-1-06
220-010-0060	12-30-05	Amend(T)	2-1-06	259-009-0005	1-24-06	Amend	3-1-06
220-010-0200	12-30-05	Suspend	2-1-06	259-009-0059	1-23-06	Adopt(T)	3-1-06
220-010-0300	12-30-05	Amend(T)	2-1-06	259-009-0062	1-24-06	Amend	3-1-06
220-030-0035	12-30-05	Amend(T)	2-1-06	259-009-0065	1-24-06	Amend	3-1-06
220-040-0015	12-30-05	Amend(T)	2-1-06	274-010-0100	1-27-06	Amend	3-1-06
220-040-0025	12-30-05	Suspend	2-1-06	274-010-0115	1-27-06	Amend	3-1-06
220-040-0035	12-30-05	Amend(T)	2-1-06	274-010-0120	1-27-06	Amend	3-1-06
220-040-0045	12-30-05	Amend(T)	2-1-06	274-010-0135	1-27-06	Amend	3-1-06
220-040-0050	12-30-05	Amend(T)	2-1-06	274-010-0140	1-27-06	Repeal	3-1-06
220-050-0105	12-30-05	Suspend	2-1-06	274-010-0145	1-27-06	Amend	3-1-06
220-050-0110	12-30-05	Amend(T)	2-1-06	274-010-0150	1-27-06	Repeal	3-1-06
220-050-0140	12-30-05	Amend(T)	2-1-06	274-010-0155	1-27-06	Amend	3-1-06
220-050-0150	12-30-05	Suspend	2-1-06	274-010-0160	1-27-06	Amend	3-1-06
220-050-0300	12-30-05	Amend(T)	2-1-06	274-010-0170	1-27-06	Amend	3-1-06
250-016-0012	1-1-06	Adopt	2-1-06	274-010-0175	1-27-06	Amend	3-1-06
250-020-0102	3-28-06	Amend	5-1-06	274-012-0001	2-23-06	Adopt(T)	4-1-06
250-020-0266	3-28-06	Amend	5-1-06	274-012-0100	2-23-06	Adopt(T)	4-1-06
250-020-0350	3-28-06	Amend	5-1-06	274-012-0105	2-23-06	Adopt(T)	4-1-06
255-015-0003	4-5-06	Amend	5-1-06	274-012-0110	2-23-06	Adopt(T)	4-1-06
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274-012-0125	2-23-06	Adopt(T)	4-1-06	291-130-0060	3-13-06	Amend	4-1-06
274-012-0130	2-23-06	Adopt(T)	4-1-06	291-130-0070	3-13-06	Repeal	4-1-06
274-012-0131	2-23-06	Adopt(T)	4-1-06	291-130-0080	3-13-06	Adopt	4-1-06
274-020-0340	12-27-05	Amend	2-1-06	309-120-0000(T)	1-1-06	Repeal	2-1-06
274-030-0600	12-23-05	Adopt(T)	2-1-06	309-120-0005(T)	1-1-06	Repeal	2-1-06
274-030-0605	12-23-05	Adopt(T)	2-1-06	309-120-0015	1-1-06	Repeal	2-1-06
274-030-0610	12-23-05	Adopt(T)	2-1-06	309-120-0020	1-1-06	Repeal	2-1-06
274-030-0615	12-23-05	Adopt(T)	2-1-06	309-120-0021(T)	1-1-06	Repeal	2-1-06
274-030-0620	12-23-05	Adopt(T)	2-1-06	309-120-0070	1-1-06	Adopt	2-1-06
274-030-0621	12-23-05	Adopt(T)	2-1-06	309-120-0070(T)	1-1-06	Repeal	2-1-06
274-030-0630	12-23-05	Adopt(T)	2-1-06	309-120-0075	1-1-06	Adopt	2-1-06
274-030-0640	12-23-05	Adopt(T)	2-1-06	309-120-0075(T)	1-1-06	Repeal	2-1-06
274-040-0030	3-31-06	Amend(T)	5-1-06	309-120-0080	1-1-06	Adopt	2-1-06
274-045-0060	12-27-05	Amend	2-1-06	309-120-0080(T)	1-1-06	Repeal	2-1-06
291-047-0005	1-1-06	Amend	2-1-06	309-120-0200	1-1-06	Am. & Ren.	2-1-06
291-047-0010	1-1-06	Amend	2-1-06	309-120-0205	1-1-06	Am. & Ren.	2-1-06
291-047-0020	1-1-06	Repeal	2-1-06	309-120-0210	1-1-06	Adopt	2-1-06
291-047-0021	1-1-06	Adopt	2-1-06	309-120-0215	1-1-06	Adopt	2-1-06
291-047-0025	1-1-06	Repeal	2-1-06	309-120-0220	1-1-06	Adopt	2-1-06
291-047-0061	1-1-06	Adopt	2-1-06	309-120-0225	1-1-06	Adopt	2-1-06
291-047-0065	1-1-06	Adopt	2-1-06	309-120-0230	1-1-06	Adopt	2-1-06
291-047-0070	1-1-06	Adopt	2-1-06	309-120-0235	1-1-06	Adopt	2-1-06
291-047-0075	1-1-06	Adopt	2-1-06	309-120-0240	1-1-06	Adopt	2-1-06
291-047-0080	1-1-06	Adopt	2-1-06	309-120-0245	1-1-06	Adopt	2-1-06
291-047-0085	1-1-06	Adopt	2-1-06	309-120-0250	1-1-06	Adopt	2-1-06
291-047-0090	1-1-06	Adopt	2-1-06	309-120-0255	1-1-06	Adopt	2-1-06
291-047-0095	1-1-06	Adopt	2-1-06	309-120-0260	1-1-06	Adopt	2-1-06
291-047-0100	1-1-06	Adopt	2-1-06	309-120-0265	1-1-06	Adopt	2-1-06
291-047-0105	1-1-06	Adopt	2-1-06	309-120-0270	1-1-06	Am. & Ren.	2-1-06
291-047-0110	1-1-06	Adopt	2-1-06	309-120-0275	1-1-06	Am. & Ren.	2-1-06
291-047-0115	1-1-06	Am. & Ren.	2-1-06	309-120-0280	1-1-06	Am. & Ren.	2-1-06
291-047-0120	1-1-06	Am. & Ren.	2-1-06	309-120-0285	1-1-06	Am. & Ren.	2-1-06
291-047-0125	1-1-06	Am. & Ren.	2-1-06	309-120-0290	1-1-06	Am. & Ren.	2-1-06
291-047-0130	1-1-06	Am. & Ren.	2-1-06	309-120-0295	1-1-06	Am. & Ren.	2-1-06
291-047-0135	1-1-06	Am. & Ren.	2-1-06	325-005-0015	2-6-06	Adopt	3-1-06
291-047-0140	1-1-06	Am. & Ren.	2-1-06	325-010-0001	2-6-06	Adopt	3-1-06
291-063-0010	1-1-06	Amend	2-1-06	325-010-0005	2-6-06	Adopt	3-1-06
291-063-0016	1-1-06	Amend	2-1-06	325-010-0010	2-6-06	Adopt	3-1-06
291-063-0030	1-1-06	Amend	2-1-06	325-010-0015	2-6-06	Adopt	3-1-06
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291-077-0033	2-15-06	Amend	3-1-06	325-010-0035	2-6-06	Adopt	3-1-06
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330-070-0045	1-1-06	Amend	2-1-06	333-050-0040	1-27-06	Amend	3-1-06
330-070-0048	1-1-06	Amend	2-1-06	333-050-0050	1-27-06	Amend	3-1-06
330-070-0055	1-1-06	Amend	2-1-06	333-050-0060	1-27-06	Amend	3-1-06
330-070-0059	1-1-06	Amend	2-1-06	333-050-0080	1-27-06	Amend	3-1-06
330-070-0060	1-1-06	Amend	2-1-06	333-050-0090	1-27-06	Amend	3-1-06
330-070-0062	1-1-06	Amend	2-1-06	333-050-0100	1-27-06	Amend	3-1-06
330-070-0063	1-1-06	Amend	2-1-06	333-050-0130	1-27-06	Amend	3-1-06
330-070-0064	1-1-06	Amend	2-1-06	333-061-0020	1-31-06	Amend	3-1-06
330-070-0073	1-1-06	Amend	2-1-06	333-061-0030	1-31-06	Amend	3-1-06
330-070-0089	1-1-06	Amend	2-1-06	333-061-0032	1-31-06	Amend	3-1-06
330-070-0097	1-1-06	Amend	2-1-06	333-061-0036	1-31-06	Amend	3-1-06
330-090-0105	1-1-06	Amend	2-1-06	333-061-0040	1-31-06	Amend	3-1-06
330-090-0110	1-1-06	Amend	2-1-06	333-061-0042	1-31-06	Amend	3-1-06
330-090-0120	1-1-06	Amend	2-1-06	333-061-0043	1-31-06	Amend	3-1-06
330-090-0130	1-1-06	Amend	2-1-06	333-061-0057	1-31-06	Amend	3-1-06
330-110-0010	4-3-06	Amend	5-1-06	333-061-0060	1-31-06	Amend	3-1-06
330-110-0016	4-3-06	Amend	5-1-06	333-061-0070	1-31-06	Amend	3-1-06
330-110-0042	4-3-06	Amend	5-1-06	333-061-0071	1-31-06	Amend	3-1-06
330-110-0050	4-3-06	Amend	5-1-06	333-061-0072	1-31-06	Amend	3-1-06
330-110-0055	4-3-06	Amend	5-1-06	333-061-0090	1-31-06	Amend	3-1-06
331-405-0020	1-1-06	Amend	1-1-06	333-061-0097	1-31-06	Amend	3-1-06
331-405-0030	1-1-06	Amend	1-1-06	333-061-0215	1-31-06	Amend	3-1-06
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331-410-0010	1-1-06	Amend	1-1-06	333-061-0235	1-31-06	Amend	3-1-06
331-410-0020	1-1-06	Amend	1-1-06	333-061-0245	1-31-06	Amend	3-1-06
331-410-0030	1-1-06	Amend	1-1-06	333-061-0250	1-31-06	Amend	3-1-06
331-410-0040	1-1-06	Amend	1-1-06	333-061-0260	1-31-06	Amend	3-1-06
333-008-0000	1-1-06	Amend	2-1-06	333-061-0265	1-31-06	Amend	3-1-06
333-008-0010	1-1-06	Amend	2-1-06	333-061-0270	1-31-06	Amend	3-1-06
333-008-0020	12-1-05	Amend	1-1-06	333-061-0290	1-31-06	Amend	3-1-06
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333-008-0070	1-1-06	Amend	2-1-06	333-510-0045	1-1-06	Amend(T)	2-1-06
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333-018-0030	1-1-06	Amend(T)	2-1-06	334-010-0050	1-5-06	Amend	2-1-06
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333-025-0105	1-1-06	Amend	2-1-06	340-012-0053	3-31-06	Amend	5-1-06
333-025-0110	1-1-06	Amend	2-1-06	340-012-0054	3-31-06	Amend	5-1-06
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333-025-0120	1-1-06	Amend	2-1-06	340-012-0060	3-31-06	Amend	5-1-06
333-025-0135	1-1-06	Amend	2-1-06	340-012-0065	3-31-06	Amend	5-1-06
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340-012-0073	3-31-06	Amend	5-1-06	350-050-0070	5-1-06	Amend	5-1-06
340-012-0074	3-31-06	Amend	5-1-06	350-050-0075	5-1-06	Repeal	5-1-06
340-012-0079	3-31-06	Amend	5-1-06	350-050-0080	5-1-06	Amend	5-1-06
340-012-0081	3-31-06	Amend	5-1-06	350-050-0085	5-1-06	Amend	5-1-06
340-012-0082	3-31-06	Amend	5-1-06	350-050-0090	5-1-06	Amend	5-1-06
340-012-0083	3-31-06	Amend	5-1-06	350-050-0100	5-1-06	Amend	5-1-06
340-012-0097	3-31-06	Amend	5-1-06	350-050-0110	5-1-06	Repeal	5-1-06
340-012-0130	3-31-06	Amend	5-1-06	407-005-0000	3-1-06	Adopt	4-1-06
340-012-0135	3-31-06	Amend	5-1-06	407-005-0005	3-1-06	Adopt	4-1-06
340-012-0140	3-31-06	Amend	5-1-06	407-005-0010	3-1-06	Adopt	4-1-06
340-012-0155	3-31-06	Amend	5-1-06	407-005-0015	3-1-06	Adopt	4-1-06
340-045-0033	12-28-05	Amend	2-1-06	407-005-0020	3-1-06	Adopt	4-1-06
340-110-0001	3-15-06	Amend	4-1-06	407-005-0025	3-1-06	Adopt	4-1-06
340-110-0020	3-15-06	Amend	4-1-06	407-005-0030	3-1-06	Adopt	4-1-06
340-110-0061	3-15-06	Amend	4-1-06	407-010-0001	3-1-06	Adopt	4-1-06
340-122-0040	3-17-06	Amend	5-1-06	407-050-0000	11-28-05	Adopt(T)	1-1-06
340-122-0045	3-17-06	Repeal	5-1-06	407-050-0005	11-28-05	Adopt(T)	1-1-06
340-122-0115	3-17-06	Amend	5-1-06	407-050-0010	11-28-05	Adopt(T)	1-1-06
340-200-0020	3-14-06	Amend	4-1-06	410-011-0000	1-1-06	Am. & Ren.	1-1-06
340-200-0040	3-14-06	Amend	4-1-06	410-011-0010	1-1-06	Am. & Ren.	1-1-06
340-200-0040	3-31-06	Amend	5-1-06	410-011-0020	1-1-06	Am. & Ren.	1-1-06
340-216-0060	3-14-06	Amend	4-1-06	410-011-0030	1-1-06	Am. & Ren.	1-1-06
340-238-0040	3-14-06	Amend	4-1-06	410-011-0040	1-1-06	Am. & Ren.	1-1-06
340-238-0050	3-14-06	Amend	4-1-06	410-011-0050	1-1-06	Am. & Ren.	1-1-06
340-238-0060	3-14-06	Amend	4-1-06	410-011-0060	1-1-06	Am. & Ren.	1-1-06
340-244-0030	3-14-06	Amend	4-1-06	410-011-0070	1-1-06	Am. & Ren.	1-1-06
340-244-0040	3-14-06	Amend	4-1-06	410-011-0080	1-1-06	Am. & Ren.	1-1-06
340-244-0220	3-14-06	Amend	4-1-06	410-011-0090	1-1-06	Am. & Ren.	1-1-06
340-257-0010	1-1-06	Adopt(T)	2-1-06	410-011-0100	1-1-06	Am. & Ren.	1-1-06
340-257-0020	1-1-06	Adopt(T)	2-1-06	410-011-0110	1-1-06	Am. & Ren.	1-1-06
340-257-0030	1-1-06	Adopt(T)	2-1-06	410-011-0120	1-1-06	Am. & Ren.	1-1-06
340-257-0040	1-1-06	Adopt(T)	2-1-06	410-120-0000	1-1-06	Amend	1-1-06
340-257-0050	1-1-06	Adopt(T)	2-1-06	410-120-0250	1-1-06	Amend	2-1-06
340-257-0060	1-1-06	Adopt(T)	2-1-06	410-120-1200	1-1-06	Amend	1-1-06
340-257-0070	1-1-06	Adopt(T)	2-1-06	410-120-1210	1-1-06	Amend	1-1-06
340-257-0080	1-1-06	Adopt(T)	2-1-06	410-120-1280	1-1-06	Amend	2-1-06
340-257-0090	1-1-06	Adopt(T)	2-1-06	410-120-1295	1-1-06	Amend	1-1-06
340-257-0100	1-1-06	Adopt(T)	2-1-06	410-120-1295	1-1-06	Amend(T)	1-1-06
340-257-0110	1-1-06	Adopt(T)	2-1-06	410-120-1295	1-1-06	Amend(T)	2-1-06
340-257-0120	1-1-06	Adopt(T)	2-1-06	410-120-1295(T)	1-1-06	Repeal	1-1-06
340-257-0130	1-1-06	Adopt(T)	2-1-06	410-121-0040	3-15-06	Amend(T)	4-1-06
340-257-0150	1-1-06	Adopt(T)	2-1-06	410-121-0147	1-1-06	Amend	1-1-06
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350-013-0001	5-1-06	Amend	5-1-06	410-121-0320	1-1-06	Amend	2-1-06
350-016-0004	5-1-06	Amend	5-1-06	410-122-0190	12-1-05	Amend	1-1-06
350-050-0030	5-1-06	Amend	5-1-06	410-125-0090	1-1-06	Amend	2-1-06
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350-050-0040	5-1-06	Amend	5-1-06	410-125-0181	1-1-06	Amend	2-1-06
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410-125-0210	1-1-06	Amend	2-1-06	411-030-0070	12-21-05	Amend(T)	2-1-06
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410-125-1060	1-1-06	Amend	2-1-06	411-031-0050	11-16-05	Amend(T)	1-1-06
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410-136-0420	12-1-05	Amend	1-1-06	411-055-0003(T)	2-1-06	Repeal	3-1-06
410-138-0600	2-7-06	Adopt(T)	3-1-06	411-055-0190	1-18-06	Amend(T)	3-1-06
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410-138-0660	2-7-06	Adopt(T)	3-1-06	411-070-0005	2-1-06	Amend	3-1-06
410-138-0680	2-7-06	Adopt(T)	3-1-06	411-070-0010	2-1-06	Amend	3-1-06
410-138-0700	2-7-06	Adopt(T)	3-1-06	411-070-0015	2-1-06	Amend	3-1-06
410-138-0710	2-7-06	Adopt(T)	3-1-06	411-070-0020	2-1-06	Amend	3-1-06
410-138-0720	2-7-06	Adopt(T)	3-1-06	411-070-0025	2-1-06	Amend	3-1-06
410-138-0740	2-7-06	Adopt(T)	3-1-06	411-070-0027	2-1-06	Amend	3-1-06
410-138-0760	2-7-06	Adopt(T)	3-1-06	411-070-0029	2-1-06	Amend	3-1-06
410-138-0780	2-7-06	Adopt(T)	3-1-06	411-070-0035	2-1-06	Amend	3-1-06
410-140-0320	12-1-05	Amend	1-1-06	411-070-0040	2-1-06	Amend	3-1-06
410-140-0400	12-1-05	Amend	1-1-06	411-070-0043	2-1-06	Amend	3-1-06
410-141-0000	1-1-06	Amend	1-1-06	411-070-0045	2-1-06	Amend	3-1-06
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410-141-0010(T)	3-1-06	Repeal	3-1-06	411-070-0080	2-1-06	Amend	3-1-06
410-141-0060	1-1-06	Amend	1-1-06	411-070-0085	2-1-06	Amend	3-1-06
410-141-0070	1-1-06	Amend	1-1-06	411-070-0091	2-1-06	Amend	3-1-06
410-141-0080	1-1-06	Amend	1-1-06	411-070-0095	2-1-06	Amend	3-1-06
410-141-0120	1-1-06	Amend	1-1-06	411-070-0100	2-1-06	Amend	3-1-06
410-141-0160	1-1-06	Amend	1-1-06	411-070-0105	2-1-06	Amend	3-1-06
410-141-0220	1-1-06	Amend	1-1-06	411-070-0110	2-1-06	Amend	3-1-06
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410-141-0520	4-1-06	Amend	5-1-06	411-070-0125	2-1-06	Amend	3-1-06
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411-018-0000	12-12-05	Amend	1-1-06	411-070-0305	2-1-06	Amend	3-1-06
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411-018-0020	12-12-05	Amend	1-1-06	411-070-0315	2-1-06	Amend	3-1-06
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411-021-0000	4-1-06	Amend	5-1-06	411-070-0359	2-1-06	Amend	3-1-06
411-021-0005	4-1-06	Amend	5-1-06	411-070-0365	2-1-06	Amend	3-1-06
411-021-0010	4-1-06	Amend	5-1-06	411-070-0370	2-1-06	Amend	3-1-06
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411-070-0458	2-1-06	Repeal	3-1-06	411-320-0130	11-23-05	Amend(T)	1-1-06
411-070-0462	2-1-06	Amend	3-1-06	411-320-0130	2-1-06	Amend	3-1-06
411-070-0464	2-1-06	Amend	3-1-06	411-320-0130(T)	2-1-06	Repeal	3-1-06
411-070-0465	2-1-06	Amend	3-1-06	411-320-0140	11-23-05	Amend(T)	1-1-06
411-070-0470	2-1-06	Amend	3-1-06	411-320-0140	2-1-06	Amend	3-1-06
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411-200-0020	4-1-06	Amend	5-1-06	411-320-0160	2-1-06	Amend	3-1-06
411-200-0030	4-1-06	Amend	5-1-06	411-320-0160(T)	2-1-06	Repeal	3-1-06
411-200-0040	4-1-06	Amend	5-1-06	411-320-0170	11-23-05	Amend(T)	1-1-06
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411-310-0020	4-5-06	Amend	5-1-06	411-320-0170(T)	2-1-06	Repeal	3-1-06
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411-310-0060	4-5-06	Amend	5-1-06	413-010-0084	2-6-06	Adopt(T)	3-1-06
411-310-0070	4-5-06	Amend	5-1-06	413-010-0085	2-6-06	Adopt(T)	3-1-06
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411-315-0090	4-5-06	Amend	5-1-06	413-015-0212	12-1-05	Adopt	1-1-06
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411-320-0080	2-1-06	Amend	3-1-06	413-015-0512	3-1-06	Amend	4-1-06
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414-350-0010	1-1-06	Amend(T)	2-1-06	436-009-0060	4-1-06	Amend	4-1-06
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414-350-0140	1-1-06	Amend(T)	2-1-06	436-010-0210	1-1-06	Amend	1-1-06
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414-350-0250	1-1-06	Amend(T)	2-1-06	436-010-0265	1-1-06	Amend	1-1-06
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436-035-0340	1-1-06	Amend	1-1-06	436-110-0345	1-1-06	Amend	1-1-06
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461-145-0540	1-1-06	Amend	2-1-06	461-195-0320	1-1-06	Amend	2-1-06
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629-625-0320(T)	1-1-06	Repeal	1-1-06	629-670-0115(T)	1-1-06	Repeal	1-1-06
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629-630-0200(T)	1-1-06	Repeal	1-1-06	629-670-0210(T)	1-1-06	Repeal	1-1-06
629-630-0600	1-1-06	Amend	1-1-06	629-672-0100	1-1-06	Amend	1-1-06
629-630-0600(T)	1-1-06	Repeal	1-1-06	629-672-0100(T)	1-1-06	Repeal	1-1-06
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735-024-0120	1-1-06	Amend(T)	1-1-06	735-070-0037	12-14-05	Amend	1-1-06
735-024-0130	1-1-06	Amend(T)	1-1-06	735-070-0054	12-14-05	Amend	1-1-06
735-024-0170	1-1-06	Amend(T)	1-1-06	735-070-0180	12-14-05	Repeal	1-1-06
735-028-0010	1-1-06	Amend(T)	1-1-06	735-150-0005	1-1-06	Amend(T)	1-1-06
735-028-0090	1-1-06	Amend(T)	1-1-06	735-150-0010	1-1-06	Amend	1-1-06
735-028-0110	1-1-06	Amend(T)	1-1-06	735-150-0010	1-1-06	Amend(T)	1-1-06
735-032-0020	1-1-06	Amend(T)	1-1-06	735-150-0033	1-1-06	Adopt	1-1-06
735-046-0080	1-1-06	Suspend	1-1-06	735-150-0040	1-1-06	Amend	1-1-06
735-060-0000	12-14-05	Amend	1-1-06	735-150-0050	1-1-06	Amend	1-1-06
735-060-0030	12-14-05	Amend	1-1-06	735-150-0055	1-1-06	Amend	1-1-06
735-060-0040	12-14-05	Amend	1-1-06	735-150-0110	1-1-06	Amend	1-1-06
735-060-0050	12-14-05	Amend	1-1-06	735-150-0120	1-1-06	Amend	1-1-06
735-060-0055	12-14-05	Amend	1-1-06	735-150-0130	1-1-06	Amend	1-1-06
735-060-0057	12-14-05	Amend	1-1-06	735-150-0140	1-1-06	Amend	1-1-06
735-060-0060	12-14-05	Amend	1-1-06	735-152-0000	1-1-06	Amend(T)	1-1-06
735-060-0105	12-14-05	Amend	1-1-06	735-152-0005	1-1-06	Amend(T)	1-1-06
735-060-0110	12-14-05	Amend	1-1-06	735-152-0010	1-1-06	Amend(T)	1-1-06
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735-060-0120	12-14-05	Amend	1-1-06	735-152-0025	1-1-06	Adopt(T)	1-1-06
735-060-0120	4-15-06	Amend	5-1-06	735-152-0030	1-1-06	Suspend	1-1-06
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735-062-0075	4-15-06	Amend	5-1-06	735-152-0045	1-1-06	Adopt(T)	1-1-06
735-062-0080	12-14-05	Amend	1-1-06	735-152-0050	1-1-06	Amend(T)	1-1-06
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801-010-0080	1-1-06	Amend	1-1-06	808-003-0015	1-1-06	Amend	2-1-06
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812-001-0500	1-1-06	Am. & Ren.	1-1-06	812-005-0120	1-1-06	Am. & Ren.	1-1-06
812-001-0510	1-1-06	Am. & Ren.	1-1-06	812-005-0130	1-1-06	Am. & Ren.	1-1-06
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812-002-0100	1-1-06	Amend	1-1-06	812-005-0160	1-1-06	Am. & Ren.	1-1-06
812-002-0160	1-1-06	Amend	1-1-06	812-005-0170	1-1-06	Am. & Ren.	1-1-06
812-002-0190	1-1-06	Amend	1-1-06	812-005-0180	1-1-06	Am. & Ren.	1-1-06
812-002-0260	1-1-06	Amend	1-1-06	812-005-0200	1-1-06	Am. & Ren.	1-1-06
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812-002-0430	1-1-06	Amend	1-1-06	812-006-0015	1-1-06	Adopt	1-1-06
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813-013-0015	1-5-06	Adopt(T)	2-1-06	817-090-0070	3-15-06	Amend	4-1-06
813-013-0020	1-5-06	Adopt(T)	2-1-06	817-090-0075	3-15-06	Amend	4-1-06
813-013-0025	1-5-06	Adopt(T)	2-1-06	817-090-0080	3-15-06	Amend	4-1-06
813-013-0030	1-5-06	Adopt(T)	2-1-06	817-090-0085	3-15-06	Amend	4-1-06
813-013-0035	1-5-06	Adopt(T)	2-1-06	817-090-0090	3-15-06	Amend	4-1-06
813-013-0040	1-5-06	Adopt(T)	2-1-06	817-090-0095	3-15-06	Amend	4-1-06
813-013-0045	1-5-06	Adopt(T)	2-1-06	817-090-0100	3-15-06	Amend	4-1-06
813-013-0050	1-5-06	Adopt(T)	2-1-06	817-090-0105	3-15-06	Amend	4-1-06
813-013-0055	1-5-06	Adopt(T)	2-1-06	817-090-0110	3-15-06	Amend	4-1-06
813-013-0060	1-5-06	Adopt(T)	2-1-06	817-090-0115	3-15-06	Amend	4-1-06
813-040-0005	4-13-06	Amend(T)	5-1-06	817-100-0005	3-15-06	Amend	4-1-06
813-040-0010	4-13-06	Amend(T)	5-1-06	817-120-0005	3-15-06	Amend	4-1-06
813-040-0015	4-13-06	Amend(T)	5-1-06	818-001-0002	4-1-06	Amend	5-1-06
813-040-0020	4-13-06	Amend(T)	5-1-06	818-012-0030	4-1-06	Amend	5-1-06
813-040-0025	4-13-06	Amend(T)	5-1-06	818-015-0007	4-1-06	Amend	5-1-06
813-040-0030	4-13-06	Amend(T)	5-1-06	818-021-0011	4-1-06	Amend	5-1-06
813-040-0035	4-13-06	Amend(T)	5-1-06	818-021-0012	4-1-06	Amend	5-1-06
813-040-0040	4-13-06	Amend(T)	5-1-06	818-021-0025	4-1-06	Amend	5-1-06
813-040-0045	4-13-06	Amend(T)	5-1-06	818-021-0026	4-1-06	Adopt	5-1-06
813-140-0010	3-29-06	Amend(T)	5-1-06	818-026-0080	4-1-06	Amend	5-1-06
813-140-0020	3-29-06	Amend(T)	5-1-06	818-042-0115	4-1-06	Amend	5-1-06
813-140-0030	3-29-06	Amend(T)	5-1-06	818-042-0116	4-1-06	Amend	5-1-06
813-140-0040	3-29-06	Amend(T)	5-1-06	818-042-0117	4-1-06	Amend	5-1-06
813-140-0050	3-29-06	Amend(T)	5-1-06	820-010-0010	12-13-05	Amend	1-1-06
813-140-0060	3-29-06	Amend(T)	5-1-06	820-010-0205	12-13-05	Amend	1-1-06
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813-140-0090	3-29-06	Amend(T)	5-1-06	820-010-0230	12-13-05	Amend	1-1-06
813-140-0110	3-29-06	Amend(T)	5-1-06	820-010-0255	12-13-05	Amend	1-1-06
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817-005-0005	3-15-06	Amend	4-1-06	820-010-0427	12-13-05	Adopt	1-1-06
817-010-0065	3-15-06	Amend	4-1-06	820-010-0450	12-13-05	Amend	1-1-06
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817-015-0065	3-15-06	Amend	4-1-06	820-010-0625	12-13-05	Amend	1-1-06
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837-012-0910	3-10-06	Amend	4-1-06	839-025-0240	1-1-06	Repeal	2-1-06
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837-040-0020	2-1-06	Adopt(T)	2-1-06	839-025-0700	1-25-06	Amend	3-1-06
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848-010-0035	1-1-06	Amend	2-1-06	860-021-0033	11-30-05	Amend	1-1-06
848-010-0044	1-1-06	Amend	2-1-06	860-021-0045	11-30-05	Amend	1-1-06
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848-020-0030	1-1-06	Amend	2-1-06	860-021-0326	11-30-05	Amend	1-1-06
848-020-0060	1-1-06	Amend	2-1-06	860-021-0328	2-17-06	Adopt(T)	4-1-06
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848-035-0030	4-14-06	Adopt	5-1-06	860-021-0415	11-30-05	Amend	1-1-06
848-035-0040	4-14-06	Adopt	5-1-06	860-021-0420	11-30-05	Amend	1-1-06
848-040-0105	1-1-06	Amend	2-1-06	860-021-0510	2-27-06	Amend	4-1-06
848-040-0110	1-1-06	Amend	2-1-06	860-021-0550	2-27-06	Adopt	4-1-06
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848-040-0147	1-1-06	Adopt	2-1-06	860-022-0017	11-30-05	Amend	1-1-06
848-045-0010	1-1-06	Amend	2-1-06	860-022-0040	11-30-05	Amend	1-1-06
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851-050-0131	2-22-06	Amend	4-1-06	860-023-0054	12-23-05	Adopt	2-1-06
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