

OREGON BULLETIN

Supplements the 2006 *Oregon Administrative Rules Compilation*

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For September 18, 2006–October 13, 2006



Published by
BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the *Oregon Bulletin*. The Oregon Administrative Rules Compilation is an annual publication containing the complete text of the Oregon Administrative Rules at the time of publication. The *Oregon Bulletin* is a monthly publication which updates rule text found in the annual compilation and provides notice of intended rule action, Executive Orders of the Governor, 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. 06-13

GOVERNOR'S TASK FORCE ON METHAMPHETAMINE

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

The Governor's Methamphetamine Task Force (the "Task Force") was created in 2004 to analyze and identify possible solutions to the methamphetamine epidemic in Oregon and to make recommendations to me. The Task Force consisted of experts in the fields of prevention, treatment and enforcement.

The Task Force recommended legislation that was adopted by the 2005 Oregon legislature to implement solutions including restrictions on sales of precursor chemicals, increased funding for drug courts throughout the state and increased penalties for drug dealers and manufacturers. These changes in the law resulted in a 78 percent reduction in the number of methamphetamine laboratories in Oregon from May 2005 to June 2006.

Despite our success at reducing local manufacture of methamphetamine, use and addiction continue to plague Oregon. Methamphetamine addiction is linked to high rates of property crime and increasing numbers of children in foster care. The Task Force must continue its work in order to ensure adequate prevention, treatment and criminal justice resources are available to build on the successes gained to this point. The Task Force is ideally suited to identify the most cost effective tactics for avoiding the social consequences of methamphetamine addiction and trafficking, and to guide legislative and community leaders on how to best invest their time and money to make all Oregonians safer from this persistent problem.

NOW THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. The Governor's Task Force on Methamphetamine is reconvened and reconstituted to act as a planning forum and conduit that will reach out to the communities affected by methamphetamine addiction.
2. The Task Force will focus on engaging and coordinating with community leaders, the business community and public officials who can marshal resources
3. The Task Force shall consist of between 30 and 35 members appointed by the Governor.
4. The Governor will appoint a chair of the Task Force. The chair shall establish an agenda for the Task Force and provide leadership and direction for the Task Force.
5. A quorum for Task Force meetings shall consist of a majority of the appointed members. The Task Force shall strive to operate by consensus; however, the Task Force may approve measures and make recommendations based on an affirmative vote of a majority of the members appointed to the Task Force.
6. The Task Force shall be staffed by the Criminal Justice Commission. If the Task Force requires the assistance of any other executive branch agency of the State, then such agency shall provide the requested assistance to the Task Force.
7. The members of the Task Force shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495.
8. This Order expires on December 31, 2007. Prior to expiration of this Order, the Task Force shall provide a report to the Governor describing the work performed by the Task Force and any additional work recommended by the Task Force.

Done at Salem, Oregon this 22nd day of August, 2006.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 06-14

TRANSPORTATION AND TOURISM TASK FORCE

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

Oregon's abundant natural beauty, its rich cultural heritage, its historical significance as well as its engaging and hospitable people, make our state a wonderful vacation and travel destination.

Travel and tourism are a significant economic benefit to the State of Oregon, with over \$7.4 billion spent on travel and tourism-related activities last year.

Travel industry employment generates 130,000 direct and indirect jobs, with employee earnings of \$3.0 billion.

Visitors spent more than \$1.5 billion on food and beverage in Oregon in 2005 and direct travel spending generated \$90 million in local taxes and \$194 million in state taxes.

Oregon invests \$9.0 million annually through the Oregon Tourism Investment Program to keep our tourism sector strong and competitive.

In 2005, at the request of the Oregon Transportation Commission, tourism industry and government leaders began joint discussions regarding transportation and tourism-related projects that can be pursued together as part of an ongoing and dynamic public-private partnership.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

The Transportation and Tourism Task Force (the "Task Force") is hereby established. The Task Force shall continue the important work of synchronizing tourism and transportation enhancement efforts throughout Oregon.

The following agencies and organizations may appoint a member to the Task Force:

Oregon Travel Information Council

Travel Oregon/Oregon Tourism Commission

Oregon Transportation Commission and Department of Transportation

Oregon Aviation Board and Department of Aviation

Oregon Economic and Community Development Department

Oregon Parks and Recreation Department

Federal Highway Administration

Oregon Congressional Delegation Offices

EXECUTIVE ORDERS

Oregon Association of Visitors and Convention Bureaus and its members

Oregon Lodging Association

Oregon Restaurant Association

American Automobile Association of Oregon/Idaho

Oregon Trucking Association

Additional members of the Task Force may be appointed by the Governor and additional agencies and organizations may be invited by the Governor to appoint representatives. The Chair of the Task Force shall be appointed by the Governor.

The mission of the Task Force is to facilitate a continued public-private partnership between government and the transportation and tourism industries that promotes and encourages the continued development of Oregon's tourism industry. In particular, the Task Force shall:

a. Formulate a system of communication for increased coordination of transportation and tourism development in Oregon.

b. Identify and remove barriers to efficient travel information dissemination. Priority opportunities include:

Creation of a permanent Siskiyou Rest Area and Welcome Center, which is currently operated in a temporary location, as a worthy gateway for visitors entering Oregon on I-5 from the south;

Creation of the Lane County Travel Plaza adjacent to I-5 as a visitor center with enhanced services and a focus on the Federal Oasis program;

Improved signage for Oregon Scenic Byways; and

Coordination of map production and technology

c. Develop a plan for upgrades and enhancements to visitor and traveler information and rest areas at key portals that meet the needs of roadway users through consistent criteria and promotion, increase visitor spending, and provide general traveler information about the state of Oregon in addition to the promotion of regional amenities.

d. Identify local, state, federal and private sector resources that can be pooled or leveraged to accomplish the objectives of the Task Force.

The Oregon Travel Information Council shall organize and coordinate Task Force meeting. State agencies identified in the Executive Order shall provide staff support to the Task Force as necessary.

Neither the Task Force nor the Governor's Office will pay per diems or reimburse expenses. Per diem and travel expenses of Task Force members may be paid by the appointing agencies.

This Executive Order expires on December 31, 2008.

Done at Salem, Oregon this 9th day of October, 2006

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

PROPOSED APPROVAL OF CLEANUP AT BERTHA TRIANGLE, HILLSDALE, OREGON

COMMENTS DUE: November 30, 2006

PROJECT LOCATION: Vacant property bounded by SW Bertha Boulevard, SW Bertha Court, and SW Capitol Highway in Hillsdale, SW Portland, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on the "No Further Action" (NFA) determination proposed for the Bertha Triangle site in SW Portland, Oregon.

HIGHLIGHTS: The site was part of the Fulton Park Dairy farm from the turn of the century until 1953 and a hay barn was located in the south part of the property. During the 1920s the site was the location of the Bertha Station, a stop on Southern Pacific Railroad's interurban Red Electric rail system. The northern part of the property was leased for use as an auto wrecking and gas station facility from the mid-1930s to the early 1940s. ODOT purchased the property in 1957.

Investigation of the site began in 1998 when Multnomah County was considering the site for the Hillsdale Branch Library. Contamination was identified in the northeast corner of the site and at the Sparks Property (now home of Papa Johns Pizza). In 2001, DEQ began a comprehensive investigation of the site with funding help from EPA. Soil and groundwater samples collected throughout the site indicated limited contamination in the northeastern portion of the property. Contaminants include petroleum compounds and solvents related to dry cleaning. Petroleum contamination is likely from past site wrecking yard operations and dry cleaner solvents may have migrated onto the site from an upgradient source.

A risk assessment was completed in 2003 and the results indicate that the remaining soil and groundwater contamination does not pose an unacceptable risk to human health and the environment. The site received a No Further Action determination from DEQ in 2004 with the stipulation that during redevelopment contaminated soil that is excavated would have to be removed for proper treatment or disposal. In September and October 2006 contaminated soil was excavated to prepare for construction of the "Watershed at Hillsdale" mixed commercial and senior housing building. The contaminated soil excavated during development was trucked to Hillsboro Landfill for disposal. Residual contaminated soil that remains does not pose an unacceptable risk to human health and the environment, and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

HOW TO COMMENT: DEQ's Staff Report, dated November 10, 2003, the October 2006 excavation report, and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at Williams.robert.k@deq.state.or.us. DEQ must receive written comments by 5 pm on November 30, 2006. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

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

THE NEXT STEP: DEQ will consider all public comments received by the November 30, 2006 deadline. In the absence of comments, DEQ will issue the No Further Action determination.

PROPOSED APPROVAL OF CLEANUP AT OAK TOWER DEVELOPMENT

COMMENTS DUE: November 30, 2006

PROJECT LOCATION: 225 SW Oak Street, Portland, Oregon
PROPOSAL: Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the no further action recommendation for the Oak Tower site.

HIGHLIGHTS: In June of 2002, the Portland Development Commission (PDC) purchased the Oak Tower property for purposes of redevelopment. Site investigation activities completed by PDC in May of 2002 revealed the presence of bunker fuel (heating) oil contamination in soil beneath the building that apparently was the result of a release from a heating oil underground storage tank (UST) that was apparently removed in the 1950s. Low levels of trichloroethene and suspected polynuclear aromatic hydrocarbon contamination were also discovered in groundwater at the site. In April of 2006, PDC prepared the site for redevelopment by removing approximately 771-cubic yards of contaminated soil from the site. Additional petroleum-contaminated soil remains in place beneath two adjacent structures and in the base of the on-site excavation. A risk assessment of soil and groundwater completed based on likely future use of the property indicates remaining contamination does not pose an unacceptable risk to human health and the environment. DEQ is proposing a no further action (NFA) determination for the site with groundwater and soil management controls to address redevelopment that might result in exposure to soil not considered in risk assessment.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Dawn Weinberger at 503-229-6729. The DEQ contact for this project is Mike Greenburg, 503-229-5153. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by November 30, 2006. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Office of Communication and Outreach at 503-229-5317. Additional information is also available at: <http://www.deq.state.or.us/news/publicnotices/>

CLEANUP APPROVAL H2O BOAT BARN SITE

PROJECT LOCATION: 9015 SE Powell Boulevard, Portland, OR

HIGHLIGHTS: Tank cleanup and soil removal actions have taken place at the site and recent sampling indicates that risk-based cleanup levels have been achieved. DEQ has determined that no further action (NFA) is required to address environmental contamination at this site.

The three primary areas of environmental concern resulting from historical activities identified are seven underground storage tanks (USTs), dry wells and a disposal area.

Seven underground storage tanks were formerly located in a complex in the northwest portion of the site. The USTs and 21 tons of associated contaminated soil were removed in 1994. Subsequent investigations indicate decreasing concentrations of shallow petroleum contamination with distance and depth and residual levels are below risk-based screening levels.

Several semivolatiles contaminants (e.g., trimethyl benzene, naphthalene, and polynuclear aromatic hydrocarbons (PAHs) and pesticides (DDD, DDE, and heptachlor epoxide) were detected in groundwater samples collected in the vicinity of two former dry wells. However, these samples were reported as fairly turbid and contaminants were likely associated with soil particles suspended in the groundwater. Detected contaminants have low mobility and soil sampling does not indicate significant movement away from the dry well.

OTHER NOTICES

Apparent dumping of contaminated soil occurred in one area of the site. Impacted soil was removed in 2001. Soil sampling conducted in 2006 did not detect petroleum hydrocarbons or associated constituents (PAHs and volatile organic compounds) in soil collected from shallow soils in this area.

A public comment period was held on the proposed cleanup approval in September 2006. No comments were received.

The No Further Action determination and complete Administrative Record for the project is available at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148 or sutter.jennifer@deq.state.or.us

PROPOSED NO FURTHER ACTION DETERMINATION SISTERS CHEVRON GAS STATION 462 WEST CASCADE AVENUE, SISTERS, OREGON

COMMENTS DUE: November 30, 2006

PROJECT LOCATION: 462 West Cascade Avenue, Sisters, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action (NFA) determination following the underground storage tank (UST) decommissioning and site investigation for the release of petroleum from an UST system at the Sisters Chevron facility. This determination is based on review and approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: Contamination from petroleum products was discovered in August, 2005 during the decommissioning by removal of three underground storage tanks and associated system piping. Groundwater was not encountered. Site investigation activities confirmed extensive petroleum hydrocarbon impacts. Petroleum contaminated soil (PCS) was excavated to a depth of 27 feet below ground surface. Approximately 1,160 tons of PCS was taken to Crook County landfill for disposal. The site investigation shows that contamination has not migrated off site. The site owner recently submitted a request for risk-based closure to DEQ. Based upon the information provided, DEQ has determined that a No Further Action decision is appropriate for this site.

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

Joe Klemz, DEQ Project Manager
2146 NE 4th Street, Bend, OR 97701
Phone: 541-388-6146, ext. 237

Fax: 541-388-8283

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

Please contact Mr. Klemz to schedule an appointment or to obtain a copy of the site report. Comments must be received in DEQ's Bend office by 5 p.m., Thursday, November 30, 2006.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the No Further Action determination will be made after consideration of public comments.

NOTICE OF PROPOSED NO FURTHER ACTION CHEVRON SERVICE STATION NO. 9-0614 115 NORTH HIGHWAY 30, ST. HELENS, OREGON

PROJECT LOCATION: 115 North Highway 30, St. Helens, 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) for Chevron Service Station 9-0614 located at 115 North Highway 30 in St. Helens.

Three gasoline underground storage tanks (USTs), pump islands, associated piping, and a hydraulic hoist were decommissioned in September, 2004 to allow for the construction of the current gasoline station facilities. A petroleum release was noted during decommissioning activities. The site is currently an active service station. A risk based evaluation according to DEQ's "*Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites*" guidance was performed. Residual contamination remains on portions of the site, the adjacent restaurant property, and Highway 30. Based on the evaluation, the site is proposed for a risk-based closure and issuance of a NFA determination. All of the potential exposure concerns were addressed through their elimination during development of the site-specific conceptual site model. The proposed NFA is documented in the "NFA Recommendation" memo dated October, 2006. DEQ will consider all public comments received before issuing the NFA determination.

INFORMATION: The decision document and documentation of remedial actions performed at the site are available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information, contact DEQ Project Manager, Katie Robertson at (541) 278-4620 or by email at robertson.katie@deq.state.or.us. Interested persons should send comments by 5 p.m. December 2, 2006 to the DEQ project manager 700 SE Emigrant, Suite 330, Pendleton, OR 97801.

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 Accountancy
Chapter 801

Rule Caption: Eligibility to bid on municipal audits.

Date: 11-15-06 **Time:** 1-3 p.m. **Location:** 3218 Pringle Rd SE
Salem, OR 97302

Hearing Officer: James Gaffney, Chair

Stat. Auth.: ORS 297.670, 297.680, 297.740

Stats. Implemented: ORS 297.680

Proposed Amendments: 801-020-0620, 801-020-0690

Last Date for Comment: 11-22-06, 5 p.m.

Summary: Division 020 is being modified to clarify circumstances when a firm is authorized to bid and contract for municipal audits and to allow individuals with a active CPA license authorized by substantial equivalency to apply for a municipal auditor license.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-4181

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Rule Caption: Effective date of profession standards adopted by the Board.

Date: 11-15-06 **Time:** 1-3 p.m. **Location:** 3218 Pringle Rd SE
Salem, OR 97302

Hearing Officer: James Gaffney, Chair

Stat. Auth.: ORS 183.332, 673.410

Stats. Implemented: ORS 183.337, 673.410

Proposed Amendments: 801-001-0035

Last Date for Comment: 11-22-06, 5 p.m.

Summary: The rule is amended to update the effective date of professional standards to January 1, 2007.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-4181

Rule Caption: Definitions for Substantial Equivalency, Uniform Accountancy Act and Valid.

Date: 11-15-06 **Time:** 1-3 p.m. **Location:** 3218 Pringle Rd SE
Salem, OR 97302

Hearing Officer: James Gaffney, Chair

Stat. Auth.: ORS 183.332, 673.410

Stats. Implemented: ORS 183.337, 673.410

Proposed Amendments: 801-005-0010

Last Date for Comment: 11-22-06, 5 p.m.

Summary: Substantial Equivalency definition is being amended to clarify the requirements for qualifications for authorization. In addition, the definition for 'valid' is clarified to include chartered accountants and the definitions for supervisor licensee has been removed and placed in Division 010.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-4181

.....

Rule Caption: Substantial equivalency and supervisor licensee requirements.

Date: 11-15-06 **Time:** 1-3 p.m. **Location:** 3218 Pringle Rd SE
Salem, OR 97302

Hearing Officer: James Gaffney, Chair

Stat. Auth.: ORS 670.310, 673.040, 673.050, 673.060, 673.100, 673.150, 673.160, 297.720, 673.153, 673.610

Stats. Implemented: ORS 673, 297, 192.440, 673.050, 673.100, 673.410, 673.040, 673.060, 673.150, 673.610

Proposed Amendments: 801-010-0010, 801-010-0050, 801-010-0065, 801-010-0080, 801-010-0100, 801-010-0110, 801-010-0345

Last Date for Comment: 11-22-06, 5 p.m.

Summary: Revisions to OAR 801-010 include technical changes to clarify rules or correct minor errors. 0050 clarifies that the two year experience requirement for eligibility to take the CPA Exam under experience standard is subject to supervision by a qualified supervisor licensee. 0080 clarifies the eligibility standards under substantial equivalency for certified public accountants licensed in another jurisdiction who wish to practice public accountancy in Oregon. Duplicative language in 0100 is replaced with a reference to the rule that includes identical information.

Rules Coordinator: Kimberly Bennett

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-4181

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Rule Caption: AICPA Interpretations to rules 101, 102 and 201 and restrict settlement agreement provisions.

Date: 11-15-06 **Time:** 1-3 p.m. **Location:** 3218 Pringle Rd SE
Salem, OR 97302

Hearing Officer: James Gaffney, Chair

Stat. Auth.: ORS 670.310, 673.410, OL 2001, Ch. 313, 673.445

Stats. Implemented: ORS 673.160, 673.320, 673.345, 673.445

Proposed Amendments: 801-030-0005, 801-030-0010, 801-030-0015, 801-030-0020

Last Date for Comment: 11-22-06, 5 p.m.

Summary: Revisions include the adoption of AICPA Interpretations to AICPA Rules 101, 102 and 201 to provide additional guidance for licensees, the Board and the public with regard to public accounting services performed under these standards. OAR 801-030-0020(7)(d) is a new provision that prohibits licensees or applicants from entering agreements that would inhibit any party to the agreement from reporting a violation of the board rules or statutes, or from cooperating with a Board investigation, and revisions to clarify requirements of the Professional Code of Conduct.

Rules Coordinator: Kimberly Bennett

NOTICES OF PROPOSED RULEMAKING

Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302
Telephone: (503) 378-4181

Rule Caption: Requirements for ethics continuing education content.

Date:	Time:	Location:
11-15-06	1-3 p.m.	3218 Pringle Rd SE Salem, OR 97302

Hearing Officer: James Gaffney, Chair
Stat. Auth.: ORS 670.310, 673.040, 673.050, 673.410
Stats. Implemented: ORS 673.165
Proposed Amendments: 801-040-0010
Last Date for Comment: 11-22-06, 5 p.m.

Summary: The rules are being modified to clarify that ethics course content must include information that pertains to licensees in all practice areas.

Rules Coordinator: Kimberly Bennett
Address: Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302
Telephone: (503) 378-4181

Board of Chiropractic Examiners Chapter 811

Rule Caption: Allows a signed affidavit for liberal arts and science college transcripts.

Date:	Time:	Location:
11-16-06	2 p.m.	OBCE Admin. Office 3218 Pringle Rd., Suite 150 Salem, OR 97302

Hearing Officer: Dave McTeague
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.050, 684.052
Proposed Amendments: 811-010-0085
Last Date for Comment: 11-16-06

Summary: Allows applicants for a Doctor of Chiropractic license to provide a signed affidavit in lieu of college transcripts for liberal arts and science college transcripts.

Rules Coordinator: Dave McTeague
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311
Telephone: (503) 378-5816

Board of Naturopathic Examiners Chapter 850

Rule Caption: List substances on Formulary Compendium for Naturopathic Physicians.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Proposed Amendments: 850-060-0225, 850-060-0226
Last Date for Comment: 11-25-06

Summary: Add to the list of substances a ND can prescribe: Pseudoephedrine and Naltrexone.

Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

Board of Radiologic Technology Chapter 337

Rule Caption: Define Equipment Operators of Computed Tomography and Merged Technologies and General Housekeeping and Clarification Amendments.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.555(1) (1977 ch. 534 sec. 4(1), (2), (4); 1999 ch. 517 sec. 10)
Proposed Adoptions: 337-010-0011

Proposed Amendments: 337-010-0012, 337-010-0030, 337-010-0031, 337-010-0055

Last Date for Comment: 11-22-06

Summary: Rules are being adopted 337-010-0011 allowing for Computed Tomography and Merged Technologies Equipment Operators, further clarification is achieved by modifying the current Limited Permit Examination rules in 337-010-0030 and other general housekeeping amendments.

Rules Coordinator: Linda Russell
Address: Board of Radiologic Technology, 800 NE Oregon St., Suite 1160A, Portland, OR 97232-2162
Telephone: (971) 673-0216

Board of Tax Practitioners Chapter 800

Rule Caption: OAR 800-015-0020 — Continuing Education Program Requirements.

Date:	Time:	Location:
11-30-06	9 a.m.	3218 Pringle Road SE, #120 Salem, OR 97302

Hearing Officer: Monica J. Leisten
Stat. Auth.: ORS 673.605, 673.740, 673.990
Stats. Implemented: ORS 673.605, 673.740, 673.990
Proposed Amendments: 800-015-0020
Last Date for Comment: 11-30-06, 5 p.m.

Summary: The proposed amendments to OAR 800-015-0020 were reviewed by the Board's Rules Advisory Committee. These proposed changes will allow licensees continuing education credit for courses relating to computer technology and are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies.

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

Bureau of Labor and Industries Chapter 839

Rule Caption: Amending hearings rules to clarify that new affirmative defense not allowed in amended answer.

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
Proposed Amendments: 839-050-0140
Last Date for Comment: 11-19-06

Summary: The current rule language could be understood to permit a respondent to raise an affirmative defense not raised in an original answer, in an amended answer. This is inconsistent with OAR 839-050-0130(2), which provides that the failure of the party to raise an affirmative defense in the answer is a waiver of such defense. This rule amendment will clarify that a new affirmative defense is not allowed in an amended answer, thus making the contested case administrative rules internally consistent.

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

Rule Caption: Clarify list of alternate requirements defining conduct qualifying as sexual harassment by adding "and."

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.029, 659A.030
Proposed Amendments: 839-005-0030
Last Date for Comment: 11-30-06

Summary: This amendment would clarify the introduction of a list of alternate requirements defining types of conduct qualifying as sexual harassment by adding the word "and".

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Marcia Ohlemiller
Address: Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232
Telephone: (971) 673-0784

Rule Caption: Amendment to make rule consistent with ORS 656.240.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Proposed Amendments: 839-009-0280

Last Date for Comment: 11-30-06

Summary: The current rule would allow an employer to require an employee on Oregon Family Leave whose leave is concurrent with Worker's Compensation leave, to exhaust sick leave benefits during leave. This amendment would make the rule consistent with ORS 656.240, which provides that an employer may only require an employee on Worker's Compensation leave to use a limited amount of sick leave.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Construction Contractors Board Chapter 812

Rule Caption: Defines terms "means" and "manner" as used in ORS 670.600(2)(a) relating to independent contractors.

Date:	Time:	Location:
11-15-06	10 a.m. *	Dept. of Revenue Fishbowl Conf. Rm 955 Center St NE Salem, OR

* Note: Register to testify beginning at 9:45. Call 503-378-4621 ext. 4077 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Other Auth.: Ch. 533 OL 2005 (SB 323)

Stats. Implemented: ORS 670.600, 670.605, & 701.075

Proposed Amendments: 812-003-0240

Last Date for Comment: 11-15-06, 5 p.m.

Summary: OAR 812-003-0240 is amended to describe how agencies will carry out the new independent contractor law (ORS 670.600) and provide definitions for the "means" and "manner" of providing services, as used in ORS 670.600(2)(a).

Rules Coordinator: Catherine Dixon

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

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

Rule Caption: Rewrite of Division 7.

Date:	Time:	Location:
12-5-06	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 183.310 - 183.550, 670.310, 701.235, 701.500 - 701.515, 701.515

Stats. Implemented: ORS 701.500 - 701.515, 701.510, 701.515

Proposed Amendments: 812-007-0000, 812-007-0020, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0070, 812-007-0080, 812-007-0090

Last Date for Comment: 12-5-06, 11 a.m.

Summary: 812-007-000, 812-007-0020, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0070, 812-007-0080, and 812-007-0090 are amended to rewrite Division 7, change the name from Health Division to Oregon Department of Human Services, to align language with Oregon Department of Human Services administrative

rules on lead-based paint certification, and to delete language that applies to Department of Human Services procedures and do not apply to CCB's procedures/requirements.

Rules Coordinator: Catherine Dixon

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

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

Rule Caption: Clarify mailing provisions, clarify breach of contract complaint procedures, make housekeeping revisions, and change terminology.

Date:	Time:	Location:
12-5-06	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 36.224, 183.310 - 183.500, 670.310, 701.085, 701.145, 701.150, 701.235, 701.992 & 1999 OL, ch. 849, sec. 8

Stats. Implemented: ORS 25.270, 25.785, 25.900, 36.224, 26.228, 36.230, 36.232, 36.600 - 36.740, 36.690, 36.700, 36.705, 36.710, 87.057, 87.058, 87.093, 183, 183.413-183.470, 183.415, 183.425, 183.440, 183.445, 183.450, 183.460, 183.464, 183.470, 183.480, 183.482, 279C.590, 701, 701.005, 701.010, 701.035, 701.055, 701.065, 701.072, 701.075, 701.077, 701.078, 701.080, 701.085, 701.100, 701.102, 701.105, 701.115, 701.125, 701.139-701.180, 701.135, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147, 701.148, 701.150, 701.180, 701.225, 701.227, 701.235, 701.260, 701.992, & 1999 OL, ch. 849, sec. 8

Proposed Adoptions: 812-001-0135, 812-002-0143

Proposed Amendments: 812-001-0130, 812-001-0500, 812-002-0140, 812-002-0250, 912-002-0400, 812-002-0460, 812-002-0480, 812-002-0540, 812-002-0670, 812-003-0150, 812-003-0160, 812-003-0175, 812-003-0260, 812-003-0400, 812-003-0430, 812-004-0001, 812-004-0110, 812-004-0120, 812-004-0140, 812-004-0160, 812-004-0180, 812-004-0195, 812-004-0210, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0350, 812-004-0360, 812-004-0400, 812-004-0420, 812-004-0440, 812-004-0450, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0510, 812-004-0520, 812-004-0530, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0200, 812-005-0800, 812-009-0010, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0100, 812-009-0120, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0400, 812-009-0430, 812-010-0020, 812-010-0040, 812-010-0085, 812-010-0090, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0140, 812-010-0200, 812-010-0220, 812-010-0260, 812-010-0290, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0420, 812-010-0425, 812-010-0430, 812-010-0460, 812-010-0470, 812-010-0480

Proposed Repeals: 812-002-0130

Last Date for Comment: 12-5-06, 11 a.m.

Summary: • 812-001-0135 is adopted to establish the date of receipt of documents and clarifying that a document received after 5:00 p.m. is considered received the next day.

• 812-002-0143 is adopted to define complainant.

• 812-002-0460 is amended to change the word "claim" to "complaint" and to clarify the rule is meant to restore the complainant to the position he/she was in before construction started, which includes demolition costs and costs to restore property.

• 812-004-0210 is amended to change the word "claim" to "complaint", to simplify language, and to clarify that an initial notice of arbitration conducted by CCB must be sent registered or certified mail, but notices related to other arbitration proceedings may be sent by regular mail.

• 812-004-0440 is amended to change the word "claim" to "complaint", to simplify language and to allow the CCB to continue

NOTICES OF PROPOSED RULEMAKING

processing a complaint while waiting for a party to begin mediation or arbitration under the contract or waive their right to mediation or arbitration under the contract.

- 812-004-0450 is amended to change the word “claim” to “complaint”, to simplify language and to clarify that the CCB may hold more than one on-site meeting.

- 812-004-0520 is amended to change the word “claim” to “complaint”, to simplify language, correct cite reference, and add a new subsection (2)(d) that allow the agency to suspend complaint processing if an owner of a residential structure who is a complainant submits to the agency a copy of a notice of defect involving the structure at issue.

- 812-010-0020 is amended to change the word “claim” to “complaint”, to simplify language and delete language no longer needed.

- 812-010-0260 is amended to change the word “claim” to “complaint”, to simplify language and eliminate requirement that a recording be made on tape to allow for other types of recordings.

- 812-010-0420 is amended to change the word “claim” to “complaint”, to simplify language and correct a cite reference.

- OAR 812-001-0130, 812-001-0500, 812-002-0140, 812-002-0250, 812-002-0400, 812-002-0480, 812-002-0540, 812-002-0670, 812-003-0150, 812-003-0160, 812-003-0175, 812-003-0260, 812-003-0400, 812-003-0430, 812-004-0001, 812-004-0110, 812-004-0120, 812-004-0140, 812-004-0160, 812-004-0180, 812-004-0195, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0350, 812-004-0360, 812-004-0400, 812-004-0420, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0510, 812-004-0530, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0200, 812-005-0200, 812-005-0800, 812-009-0010, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0100, 812-009-0120, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0400, 812-009-0430, 812-010-0040, 812-010-0085, 812-010-0090, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0140, 812-010-0200, 812-010-0220, 812-010-0290, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0425, 812-010-0430, 812-010-0460, 812-010-0470, and 812-010-0480 are amended to change the word “claim” to “complaint” and to simplify language.

Rules Coordinator: Catherine Dixon

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

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

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Rule Caption: The home Inspector rule amendments are regarding education provider requirements and approval.

Date:	Time:	Location:
12-5-06	11 a.m.	West Salem Roth’s IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

Proposed Amendments: 812-008-0040, 812-008-0072, 812-008-0074

Last Date for Comment: 12-5-06, 11 a.m.

Summary: 812-008-0040 is amended — revises the eligibility requirements regarding credit hours, points awarded, allows teaching for monetary compensation as an acceptable experience requirement, and rearranges the numbered order of listed items. HIAC members have recommended the changes.

812-008-0072 and 812-008-0074 are amended to clarify that CCB should only approve education providers for home inspector continuing education units; eliminates the course approval requirements; and strengthens the criteria used for education provider approval. The amendments also require education providers to provide completion

certificates to course attendees within 30 days from date of course completion.

Rules Coordinator: Catherine Dixon

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

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

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Rule Caption: Changes “license fee” to “application fee”, requires a new license number upon a 24 month or longer lapse in license, and housekeeping.

Date:	Time:	Location:
12-5-06	11 a.m.	West Salem Roth’s IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 670.310, 701.130 & 701.235

Other Auth.: Chapter 432 OL 2005 (HB 2200)

Stats. Implemented: ORS 701.055, 701.077, 701.078, 701.085, 701.105, 701.115, 701.125, 701.130 & 701.135

Proposed Amendments: 812-002-0537, 812-003-0140, 812-003-0280, 812-003-0300, 812-005-0210

Last Date for Comment: 12-5-06, 11 a.m.

Summary: 812-002-0537 is amended to include OAR 812-005-0210 in the definition of owner.

812-003-0140 is amended to implement HB 200 (Chapter 432 OR Laws 2005) which changed the fee from a license fee to an application fee.

812-003-0280 and 812-003-0300 are amended to require a new license number upon a 24-month or more lapse of license; and 812-003-0280 is also amended to change “claim” to “complaint” and clarify language.

812-005-0210 is amended clarify the amounts of increased bond required. 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.

Rules Coordinator: Catherine Dixon

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

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

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Department of Agriculture Chapter 603

Rule Caption: Amends Oregon Administrative Rules for Shellfish growing and harvesting.

Stat. Auth.: ORS 622

Stats. Implemented: ORS 622

Proposed Adoptions: 603-100-0040

Proposed Amendments: 603-100-0000, 603-100-0010

Last Date for Comment: 11-23-06

Summary: OAR Chapter 603, Division 100, applies to the sanitation of shellfish growing areas and harvesting, processing and distribution of shellfish. The amendments proposed for OAR 603-100-0000, would correct the definition of shellfish to make it identical to the definition in the shellfish statute, ORS 622. The amendment proposed for OAR 603-100-0010 changes the reference to the National Shellfish Sanitation Program Model Ordinance from the 1997 edition to the 2005 edition. It also adds definition for oyster seed and restricts the sale of commercially harvested oysters to licensed shellfish shippers and shucker packers.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

NOTICES OF PROPOSED RULEMAKING

Rule Caption: To align rule with federal law and clarify rule intent.
Stat. Auth.: ORS 596.190, 596.020, 596.392, 596.412
Stats. Implemented: ORS 596.392
Proposed Amendments: 603-011-0371
Last Date for Comment: 11-28-06
Summary: The current rule OAR 603-011-0371 is not aligned with the Federal Law 9 CFR Part 79. The minor changes will clarify the rule intent and be consistent with the Federal Law 9 CFR Part 79.
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 Community Colleges and
Workforce Development
Chapter 589**

Rule Caption: Revises the calculation of weighted reimbursable Full-Time Equivalent student enrollment; updates allocation for Distributed Learning.

Date: 11-27-06 **Time:** 10 a.m.–12 p.m. **Location:** 255 Capitol St. NE
2nd Flr., Rm. 251-B
Salem, OR 97310

Hearing Officer: Linda Hutchins

Stat. Auth.: ORS 326.051, 341.626

Stats. Implemented:

Proposed Amendments: 589-002-0100

Last Date for Comment: 11-27-06

Summary: Authority for distribution of the Community College Support Fund is granted by OAR 589-002-0100. This rule amendment revises the calculation of weighted reimbursable Full-Time Equivalent enrollment to promote growth and clarifies related language. This rule amendment revises the Distributed Learning allocation so that it is increased by a standard percentage each biennium.

Rules Coordinator: Linda Hutchins

Address: Department of Community Colleges and Workforce Development, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 378-8649, ext. 474

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

Rule Caption: Certification Housekeeping Rules.

Date: 11-21-06 **Time:** 9:30 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Casey Hoyer

Stat. Auth.: ORS 447.152, 455.720, 455.730, 455.735, 455.740

Stats. Implemented: ORS 447.152, 455.720, 455.730, 455.735, 455.740

Proposed Amendments: 918-281, 918-695

Last Date for Comment: 11-24-06, 5 p.m.

Summary: These housekeeping rules conform to electrical and plumbing inspector certification processes in existing rules.

Rules Coordinator: Dodie Wagner

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

Telephone: (503) 373-7438

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**Department of Consumer and Business Services,
Division of Finance and Corporate Securities
Chapter 441**

Rule Caption: Clarify the application process and lending practice expectations of conventional consumer finance lenders.

Date: 11-27-06 **Time:** 9 a.m. **Location:** Rm. 260
Labor and Industries Bldg.
350 Winter St NE
Salem, OR

Hearing Officer: Patricia A. Locnikar

Stat. Auth.: ORS 725.320, 725.505

Other Auth.: Sec. 4, Ch. 3, OL 2006

Stats. Implemented: ORS 725.110, 725.120, 725.140, 725.190, 725.310, 725.320, 725.330, 725.340, 725.360, 725.600

Proposed Adoptions: 441-730-0025, 441-730-0255

Proposed Amendments: 441-730-0000, 441-730-0010, 441-730-0050, 441-730-0080, 441-730-0120, 441-730-0320

Proposed Ren. & Amends: 441-730-0005 to 441-730-0015

Last Date for Comment: 11-29-06

Summary: These rules being adopted or amended would describe with some specificity the compliance expectation of a lender under a conventional consumer finance lender license. These specifics would differentiate conventional consumer lending from short term consumer lending such as payday lending. Information proposed to be included in an application for the conventional license is identified.

Rules Coordinator: Shelley Greiner

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

Telephone: (503) 947-7484

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

Rule Caption: Relating to Insurer Premium Audit Program, Workers' Compensation Insurance.

Stat. Auth.: ORS 731.244 & 737.318

Stats. Implemented: ORS 737.318 & 737.505

Proposed Amendments: 836-043-0110

Last Date for Comment: 12-13-06

Summary: This rulemaking amends a rule governing the workers' compensation insurance premium audit program. The current rule requires the insurer, if a policy is not audited, to obtain a signed payroll statement from the employer and this rulemaking proposes to delete the requirement that the statement be signed. The purpose of the change is to allow employers and insurers to satisfy this reporting requirement electronically.

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

Telephone: (503) 947-7272

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

Rule Caption: Propose to adopt Federal OSHA changes to Respiratory Protection in General Industry, Construction, and Maritime.

Stat. Auth.: ORS 654.025(2), 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-002-0120, 437-002-0360, 437-003-0001, 437-004-1041, 437-004-9000, 437-005-0001

Last Date for Comment: 11-21-06

Summary: Oregon OSHA proposes to adopt the Federal OSHA changes as they appear in the August 24, 2006 Federal Register. These changes revise the existing rules on respiratory protection, adding definitions and new language that establishes Assigned Protection Factors (APFs) and Maximum Use Concentrations (MUCs) for respirator use. The revisions also supersede the respirator selection provisions of existing substance-specific standards with these

NOTICES OF PROPOSED RULEMAKING

new APFs (except for the respirator selection provisions of the 1,3-Butadiene Standard).

Federal OSHA developed the final APFs after thoroughly reviewing the available literature, including chamber-simulation studies and workplace protection factor studies, comments submitted to the record, and hearing testimony. The final APFs provide employers with critical information to use when selecting respirators for employees exposed to atmospheric contaminants found in general industry, construction, shipyards, longshoring, and marine terminal workplaces. Proper respirator selection using APFs is an important component of an effective respiratory protection program. Accordingly, Federal OSHA concludes that the final APFs are necessary to protect employees who must use respirators to protect them from airborne contaminants.

Please visit our web site www.osha.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

Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

Rule Caption: Proposed amendments regarding electronically filed and served requests for hearing/review and rulemaking procedures.

Date:	Time:	Location:
12-1-06	9:30 a.m.	2601 25th St. SE, Suite 150 Salem, OR 97302-1280

Hearing Officer: Debra L. Young

Stat. Auth.: ORS 183.310 - 183.400, 656.283, 656.295, 656.726(5)

Stats. Implemented: ORS 656.283, 656.295, 656.726(5)

Proposed Amendments: 438-005-0046, 438-022-0005

Last Date for Comment: 12-1-06

Summary: The Board proposes to amend OAR 438-005-0046(1), (2) to permit filing and service of requests for hearing and Board review by means of electronic mail. The Board also proposes to amend OAR 438-022-0005 to adopt by reference the amended Attorney General's Model Rules for Rulemaking adopted by the Department of Justice effective January 1, 2006.

Pending the hearing, written comments regarding these rules may be submitted for admission into the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280.

Rules Coordinator: Vicky Scott

Address: Department of Consumer and Business Services, Workers' Compensation Board, 2601 25th St. SE, Suite 150, Salem, OR 97302-1280

Telephone: (503) 378-3308

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

Rule Caption: Implementation of ORS 670.600 related to independent contractors.

Date:	Time:	Location:
11-15-06	10 a.m.*	Oregon Dept. of Revenue Fishbowl Conf. Rm. 955 Center St NE Salem OR 97301-2555

* Register to testify beginning at 9:45. Call 503-947-2099 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: ORS 656.726, 670.605

Other Auth.: OL 2005, ch. 533 (Enrolled SB 323)

Stats. Implemented: ORS 316.162, 670.600

Proposed Adoptions: 436-170

Last Date for Comment: 11-15-06

Summary: The agency proposes to adopt OAR chapter 436-170 to provide guidance to agencies referenced in ORS 670.600 as to how the statute will be implemented; to clarify the meaning of terms used in ORS 670.600; and to provide guidance to interested persons as to how the agencies referenced in ORS 670.600 will apply the provisions of that statute.

Address questions to: Fred Bruyns, Rules Coordinator; 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#propules> or from WCD Publications, 503-947-7627, fax 503-947-7630.

Rules Coordinator: Fred Bruyns

Address: Department of Consumer and Business Services, Workers' Compensation Division, 350 Winter St. NE, PO Box 14480, Salem, OR 97301-2555

Telephone: (503) 947-7717

Department of Corrections Chapter 291

Rule Caption: Vocational Training Projects.

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

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

Proposed Repeals: 291-017-0005, 291-017-0010, 291-017-0015, 291-017-0017, 291-017-0020, 291-017-0025

Last Date for Comment: 12-15-06

Summary: These rules are being repealed because the subject matter is covered in the DOC rules on Workforce Development Education Programs (OAR 291-113).

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: News Media Access to Inmates and Board of Parole Hearings.

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

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

Proposed Amendments: 291-039-0025

Proposed Repeals: 291-039-0026, 291-039-0035

Last Date for Comment: 12-15-06

Summary: OAR 291-039-0026 and OAR 291-039-0035 are being repealed because the subject matter is now covered in the rules on Media Access (OAR 291-204). OAR 291-039-0025 is being amended for a minor housekeeping item.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Energy Chapter 330

Rule Caption: Rule changes to update standards for several alternative energy devices and technician certification.

Date:	Time:	Location:
11-28-06	10 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR
12-5-06	10 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR

Hearing Officer: Suzanne C. Dillard

Stat. Auth.: ORS 469.160 - 469.180, ORS 316.116

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 469.160 - 469.180, 316.116
Proposed Amendments: 330-070-0010 – 330-070-0097
Last Date for Comment: 12-12-06

Summary: The Oregon Department of Energy is proposing amendments to its rules governing the Residential Energy Tax Credit (RETC) program to:

- Clarify the requirement that tax-credit certified technicians be employed by a company with a Construction Contractors Board license.
- Clarify the requirement for minimum installations for tax-credit certified technicians to state the installations have to be made in the previous calendar year.
- Clarify the requirements for tax-credit certified geothermal technicians.
- Clarify that homeowner-installed systems will be verified by ODOE on a case-by-case basis.
- Delete the requirement that solar pool and spa alternative energy devices (“AEDs”) be verified by a tax-credit certified solar technician.
- Increase the co-efficient of performance (COP) standard for ground water heat pump system and ground loop AEDs to at least 3.3 for closed loop systems and 3.5 for direct expansion systems.
- Add a requirement that when multiple ground water heat pump system and ground loop AEDs systems are installed, the pipes for each system must have their own trench or well.
- Increase the minimum Modified Energy Factor (MEF) for qualifying clothes washers to a minimum of 2.0 and a maximum Water Factor of 6.5 gal/cubic foot/cycle.
- Clarify the requirement concerning very high efficiency warm air furnaces to state that they must use ducted outside air for combustion.
- Increase the minimum Modified Energy Factor (MEF) for qualifying dishwashers.
- Clarify the water heater standards.
- Consider housekeeping changes.

Rules Coordinator: Michael Grainey
Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301-3737
Telephone: (503) 378-4040

Rule Caption: Amend rule to conform to statute governing eligibility of geothermal project greater than one megawatt.

Stat. Auth.: ORS 469.185, 315.354, 315.356
Stats. Implemented: ORS 469.185, 315.354, 315.356
Proposed Amendments: 330-090-0110
Last Date for Comment: 11-22-06

Summary: The 2001 Oregon Legislature amended the definition of “renewable energy resource in ORS 469.185(9) to remove the Business Energy Tax Credit restriction on geothermal energy to projects of one megawatt or less of installed capacity. Geothermal projects of all sizes are now eligible. The Oregon Department of Energy has not amended OAR 330-090-0110(5)(b)(A) to be consistent with ORS 469.185(9)(b). This rulemaking corrects that error.

Rules Coordinator: Kathy Stuttaford
Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301-3737
Telephone: (503) 378-4040

Department of Forestry Chapter 629

Rule Caption: Wood placement activities coincident with another forest operation are regulated by the Forest Practices Act.

Date:	Time:	Location:
11-15-06	10 a.m.	Department of Forestry 2600 State St., Bldg. D, Santiam Rm. Salem, OR 97310

Hearing Officer: Mike Cafferata

Stat. Auth.: ORS 527.710(1)
Other Auth.: ORS 527.630(3)
Stats. Implemented: ORS 527.714, 527.715, 527.674, 527.765
Proposed Adoptions: 629-640-0105
Proposed Amendments: 629-600-0100, 629-640-0110
Last Date for Comment: 11-27-06, 5 p.m.

Summary: The proposed rule amendments clarify that wood placement projects taking place in conjunction with forest operations are subject to regulation under the Forest Practices Act. The amendment to OAR 629-640-0110(1) and (3) makes this clarification, while the amendment to the Definitions rule, OAR 629-600-0100, provides a definition of “large wood key piece,” which is needed for the amendment to OAR 629-640-0105. OAR 629-640-0110(2) amendment is needed to make explicit that basal area credit applies only if the additional requirements of OAR 629-640-0110 are met.

Rules Coordinator: Gayle Birch
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

Rule Caption: Oregon Forestland-Urban Interface Fire Protection Act: Amends classification criteria; standards for High Density Extreme.

Date:	Time:	Location:
11-21-06	1 p.m.	Oregon Dept. of Forestry 5286 Table Rock Road Medford, OR
11-29-06	1 p.m.	Bend Fire Dept Training Facility 63377 Jamison Street Bend, OR
12-5-06	1 p.m.	Oregon Dept. of Forestry 611 20th Street LaGrande, OR
12-14-06	1 p.m.	Oregon Dept of Forestry 2600 State St. Salem, OR

Hearing Officer: Richard Gibson
Stat. Auth.: ORS 477.027, 477.059
Other Auth.: ORS 526.016
Stats. Implemented: ORS 477.015 - 477.061
Proposed Amendments: 629-044-1005, 629-044-1020, 629-044-1075
Last Date for Comment: 12-14-06

Summary: Adds a definition for “Community Wildfire Protection Plan”. Amends the criteria used to classify lands as High Density Extreme. Amends the fuel break requirements which apply to property classified as High Density Extreme.

Rules Coordinator: Gayle Birch
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

Department of Human Services, Addiction Services Chapter 415

Rule Caption: Amendment of the “Standards For Approval of Substance Abuse Prevention Programs” administrative rules.

Date:	Time:	Location:
11-17-06	1 p.m.	500 Center St. NE Rm. 137A Salem, OR 97301

Hearing Officer: Richard Luthe
Stat. Auth.: ORS 409.410
Stats. Implemented: ORS 430.240 - 430.401
Proposed Amendments: Rules in 415-056
Last Date for Comment: 11-17-06

Summary: The “Standard for the Approval of Substance Abuse Prevention Programs” rules are being amended to update the rules, recognize “Evidence Based Practices” as they relate to the rules, and to prescribe standards and procedures for operating substance abuse prevention agencies approved by the Division, including establish-

NOTICES OF PROPOSED RULEMAKING

ing standards for community substance abuse prevention and providing that a full continuum of substance abuse prevention services be available to Oregonians either directly or through written agreements or contracts.

Rules Coordinator: Richard Luthe
Address: Department of Human Services, Addiction Services, 500 Summer St. NE, E-86, Salem, OR 97301
Telephone: (503) 947-1186

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

Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 11-21-06 **Time:** 1:30 p.m. **Location:** Rm. 257
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Other Auth.: Title IV-E, section 471 (a)(10) of the Social Security Act

Stats. Implemented: ORS 418.005 - 418.640
Proposed Adoptions: 413-200-0274, 413-200-0276, 413-200-0278, 413-200-0281, 413-200-0283, 413-200-0285, 413-200-0287, 413-200-0289, 413-200-0292, 413-200-0294, 413-200-0296, 413-200-0354, 413-200-0383, 413-200-0386, 413-200-0388

Proposed Amendments: 413-200-0270, 413-200-0301, 413-200-0305, 413-200-0306, 413-200-0308, 413-200-0335, 413-200-0348, 413-200-0371, 413-200-0377, 413-200-0390, 413-200-0393, 413-200-0394, 413-200-0395, 413-200-0396

Proposed Repeals: 413-200-0290, 413-200-0307, 413-200-0309, 413-200-0311, 413-200-0338, 413-200-0341, 413-200-0345, 413-200-0376, 413-200-0391, 413-200-0392, 413-200-0401

Proposed Ren. & Amends: 413-200-0280 to 413-200-0272, 413-200-0346 to 413-200-0362, 413-200-0347 to 413-200-0358, 413-200-0349 to 413-200-0379, 413-200-0375 to 413-200-0352, 413-200-0381 to 413-200-0314

Last Date for Comment: 12-4-06

Summary: The Department is adopting, amending, renumbering and amending, and repealing rules regarding certification standards and Department responsibilities for certification of relative caregivers, foster parents and pre-adoptive parents. These rules apply to any family requesting an initial Certificate of Approval or re-certification to provide immediate, temporary, or permanent care for a child or young adult in the care or custody of the Department. The policies changing in these rules cover personal qualifications, the application and recertification process, denial, inactive status, termination, revocation, contested case hearings, limits on the number of children and young adults placed in each home, requirements for the home environment, care, education, discipline, medication, notification of the Department, selection of alternate caregivers, confidentiality, training and education. These rule changes apply a safety intervention model and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services. The revised rules provide clarity on assessment of placement resources for children in the care or custody of Oregon's child welfare system and a consistent process of evaluating a child's safety while in substitute care, specifying child welfare staff actions and responsibilities in certifying and monitoring the home responsible for the child's safety.

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

Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 11-21-06 **Time:** 1:30 p.m. **Location:** Rm. 257
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005, 409.050
Other Auth.: Individuals with Disabilities Education Act, 20 USC §§ 1400, et seq., The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232g, 34 CFR 99.3
Stats. Implemented: ORS 326.575, 339.133, 409.050, 418.005, 419B.192, 419B.220, 419B.343
Proposed Adoptions: 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930
Last Date for Comment: 12-4-06

Summary: These rules are being adopted to describe the activities required to assure that regular education, special education, pre-school, and post-secondary education services are provided to a child or young adult for whom the Child Welfare Program of the Department is legally responsible. These rules include policies about school placement, transportation, GED, Charter Schools, private school, international study, home schooling, consent for schooling, paying for education expenses, and early education. These rules include the Department activities required as a result of HB 3075 enacted during the 2005 legislative session. These rules will replace current Department Policy I-E.8, "Educational Services" which was not adopted through the rulemaking process.

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

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 11-21-06 **Time:** 1:30 p.m. **Location:** Rm. 257
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005, 418.517
Stats. Implemented: ORS 109.675, 418.517
Proposed Amendments: 413-070-0400, 413-070-0410, 413-070-0430, 413-070-0440, 413-070-0450, 413-070-0470, 413-070-0480, 413-070-0490
Proposed Repeals: 413-070-0420, 413-070-0460
Last Date for Comment: 12-4-06

Summary: OAR 413-070-0400 to 413-070-0490 are being revised to describe the responsibilities of a substitute caregiver and the Department when a child or young adult placed with a substitute caregiver, including a pre-adoptive placement, is prescribed or administered psychotropic medication. The rule revisions also include making definitions clear and consistent and clarifying requirements about storage, documentation, and administration of psychotropic medication. These rules will also replace Department Policy I-G.1.11, "Psychotropic Medication Management in Adoptive Placements" which was not adopted through the rulemaking process.

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

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 11-21-06 **Time:** 11:30 a.m. **Location:** Rm. 254
500 Summer St. NE
Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005, 418.945
Stats. Implemented: ORS 418.005, 418.925 - 418.945
Proposed Amendments: 413-070-0300, 413-070-0310, 413-070-0320, 413-070-0340, 413-070-0350, 413-070-0360, 413-070-0370, 413-070-0380

Proposed Ren. & Amends: 413-070-0330 to 413-070-0345
Last Date for Comment: 12-4-06
Summary: OAR 413-070-0300, 413-070-0310, 413-070-0320, 413-070-0340, 413-070-0350, 413-070-0360, 413-070-0370, and 413-070-0380 are being amended, and OAR 413-070-0330 is being renumbered to 413-070-0345 and amended. These rules, which concern the placement of refugee children, are being amended to update terminology and statutory references, clarify the rules, and more closely incorporate statutory language.

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

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 11-21-06
Time: 1:30 p.m.
Location: Rm. 257
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Proposed Adoptions: 413-020-0233, 413-020-0236, 413-020-0245, 413-020-0255
Proposed Amendments: 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0240
Proposed Repeals: 413-020-0220, 413-020-0250, 413-020-0260, 413-020-0270
Last Date for Comment: 12-4-06

Summary: The Department is adopting, amending, and repealing these rules about behavior intervention for children and young adults in substitute care with relative caregivers or foster parents. These rule changes apply best practices and implement intervention strategies recommended by the National Resource Center for Youth Services. These rule changes provide the child welfare behavior intervention practices and training responsibility expected of the Department when a child or young adult in the care or custody of the Department is presenting challenging behaviors. Sub-topics include the development of a placement support plan and the permitted uses of physical restraint. These rules will also replace policy language in Department Policy I-B.1.6, "Physical Behavior Management" that was not adopted through the rulemaking process.

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: January 2007 rule corrections and additional detail for policy clarification.
Date: 11-17-06
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: 410-120-0000, 410-120-1280, 410-120-1340, 410-120-1380, 410-120-1390, 410-120-1960
Last Date for Comment: 11-25-06

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 clarify and coordinate the definition of Ancillary Services with the OHP Managed Care Rules and the Prioritized List, as well as deleting OMPRO and instead generally defining Peer Review Organization (PRO) and Quality Improvement Organization (QIO); 410-120-1280 to adopt by reference the annual publication of the national code sets (Health-care Common Procedure Code Set – HCPCS and Current Procedural Terminology – CPT) for 2007; 410-120-1340 to adopt the federal publication of the Relative Value Unit weights for 2006. OMAP will provide additional detail for policy clarification: 410-120-1390 to clarify that certification annually is required but will be requested no more frequently than quarterly; 410-120-1960 to specify effective dates. OMAP will amend 410-120-1380 to include the federal mandate under the Deficit Reduction Act (DRA) requiring providers claiming more than \$5 million annually to provider employee education on the State False Claims Act.

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: January 1, 2007 — prior authorization criteria for Hepatitis C drug therapies; housekeeping.
Date: 11-17-06
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: 410-121-0040, 410-121-0149
Last Date for Comment: 11-25-06
Summary: The Pharmaceutical Services Program administrative rules govern Office of Medical Assistance Programs' payment for pharmaceutical products and services provided to certain clients. OMAP will amend 410-121-0040 to add prior authorization criteria for Hepatitis C drug therapies, based on recommendations and review by the Drug Utilization Review Board (DUR Board) and to take care of necessary housekeeping corrections. OMAP will amend 410-121-0149 to take care of necessary housekeeping corrections.
Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
Telephone: (503) 945-6927

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Rule Caption: 2006–07 — Medicaid Drug Rebate Program list updates from Centers for Medicare and Medicaid Services (CMS).
Date: 11-17-06
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: 410-121-0157
Last Date for Comment: 11-25-06
Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OAR 410-121-0157 references the CMS Federal Medicaid Rebate List that provides information regarding pharmaceutical companies participating in the Medicaid Drug

NOTICES OF PROPOSED RULEMAKING

Rebate Program. OMAP must use this list for payment reimbursement to providers, in compliance with federal regulations. OMAP receives all updates to this list from CMS in the form of numbered releases, and subsequently amends rule 410-121-0157 to reference, by date, the releases and updated lists. OMAP will amend this rule to reference, by date, updates received July 3, 2006 (for the quarter April through June) and August 23, 2006 (for the quarter July through September) and will further amend to reference, by date, with updates received in October (for the quarter July through September) and December 2006 (for the quarter October through December). In addition, OMAP will amend this rule to reference, by date, any and all updates received during the year 2007. As the updates are received and permanently filed with the Secretary of State as amendments to OAR 410-121-0157, OMAP will post the updated and current information on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html> The information can also be obtained by contacting OMAP.

Note: There is no point in the rulemaking process, that the lists that are referenced can be debated nor changed by OMAP, nor with the public comment process. The rule is revised and filed only to change the date of the list as it is updated, and OMAP is obligated to insert the appropriate date of reference for the dated list, into the permanent rule text. Therefore, this Notice will serve to indicate both, that this rule will be revised to appropriately reference the aforementioned list, and further will be revised to allow OMAP to change or add dates as needed, therefore establishing (in rule), the necessary reference to updated lists (by date), and thus allowing providers to bill accordingly.

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: 2006-07 — Federal Upper Limits for Prescription drugs updates from Centers for Medicare and Medicaid Services (CMS).

Date:	Time:	Location:
11-17-06	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: 410-121-0300

Last Date for Comment: 11-25-06

Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OAR 410-121-0300 references the CMS Federal Upper Limits (FUL) List that provides information regarding multiple source drugs that meet the criteria set forth in 42 CFR 447.332 and section 1927(e) of the Social Security Act, as amended by OBRA 1993. OMAP must use this list for payment reimbursement to providers, in compliance with federal regulations. OMAP receives all updates to this list from CMS in the form of numbered releases, and subsequently amends rule 410-121-0300 to reference the releases and updated lists. OMAP will amend this rule to reference updates received June 23, 2006 and will further amend with updates received in the remainder of 2006.

In addition, OMAP will amend this rule to reference, by date, any and all updates received during the year 2007. As the updates are received and permanently filed with the Secretary of State as amendments to OAR 410-121-0300, OMAP will post the updated and current information on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html>

The information can also be obtained by contacting OMAP.

Note: There is no point in the rulemaking process, that the lists that are referenced can be debated nor changed by OMAP, nor with the public comment process. The rule is revised and filed only to change

the date of the list as it is updated, and OMAP is obligated to insert the appropriate date of reference for the dated list, into the permanent rule text. Therefore, this Notice will serve to indicate both, that this rule will be revised to appropriately reference the aforementioned list, and further will be revised to allow OMAP to change or add dates as needed, therefore establishing (in rule), the necessary reference to updated lists (by date), and thus allowing providers to bill accordingly.

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: 2007 — Oregon Maximum Allowable Costs (OMAC) updates from Centers for Medicare and Medicaid Services (CMS).

Date:	Time:	Location:
11-17-06	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: 410-121-0320

Last Date for Comment: 11-25-06

Summary: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. OMAP will revise rule 410-121-0320 to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2007 through and including December 1, 2007. As the updates are received and permanently filed with the Secretary of State as amendments to OAR 410-121-0320, OMAP will post the updated and current information on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html> The information can also be obtained by contacting OMAP.

Note: There is no point in the rulemaking process that the lists that are referenced can be debated nor changed by OMAP staff, nor with the public comment process. The rule is revised and filed only to change the date of the list as it is updated, and OMAP is obligated to insert the appropriate date of reference for the dated list, into the permanent rule text. Therefore, this Notice will serve to indicate both, that this rule will be revised to appropriately reference the aforementioned list, and further will be revised to allow OMAP to change or add dates as needed, therefore establishing (in rule), the necessary reference to updated lists (by date), and thus allowing providers to bill accordingly.

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: January 2007 rule update for the Home Health program.

Date:	Time:	Location:
11-17-06	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: 410-127-xxxx

Last Date for Comment: 11-25-06

Summary: The Home Health Services program Services program rules govern the Office of Medical Assistance Programs' (OMAP)

NOTICES OF PROPOSED RULEMAKING

payments for services provided to certain clients. OMAP will adopt 410-127-xxxx to specify signature requirements for home health services ordered.

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

Rule Caption: Payment authorization request form required when requesting payment authorization.

Date:	Time:	Location:
11-17-06	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: 410-129-0080

Last Date for Comment: 11-25-06

Summary: The Speech-Language Pathology, Audiology and Hearing Aid Services program administrative rules govern payment for the Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will amend 410-129-0080 to clarify that payment authorization request forms, OMAP 3071H or OMAP 3071S, or reasonable facsimiles, are required when requesting payment authorization form OMAP.

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

Rule Caption: A therapy plan of care is required when requesting payment authorization for physical and occupational therapy.

Date:	Time:	Location:
11-17-06	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: 410-131-0080

Last Date for Comment: 11-25-06

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 revise 410-131-0080 to clarify that a therapy care of plan is required when requesting payment authorization for physical and occupational therapy services from OMAP.

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

Rule Caption: Oregon Health Plan Managed Care miscellaneous rule revisions for January 2007.

Date:	Time:	Location:
11-17-06	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, 410-141-0080, 410-141-0220, 410-141-0480, 410-141-0520

Last Date for Comment: 11-25-06

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 define detrimental to health for established relationship disenrollments. OMAP will amend 410-141-0080 to clarify the policy for Prepaid Health Plan (PHP) disenrollment requests for threats or acts of violence. OMAP will amend 410-141-0480 to delete the reference to the Ancillary Services list that is no longer in existence. OMAP will amend 410-141-0520 to update the references to the Prioritized List. OMAP will amend 410-141-0000, 410-141-0070 and 410-141-0220 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

Rule Caption: January 2007 rule update for the Hospice Services program.

Date:	Time:	Location:
11-17-06	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: 410-142-xxxx

Last Date for Comment: 11-25-06

Summary: The Hospice Services Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services provided to certain clients. OMAP will adopt 410-142-xxxx to specify signature requirements for hospice services ordered.

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

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

Date:	Time:	Location:
11-17-06	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: 410-147-0120, 410-147-0320, 410-147-0365, 410-147-0460, 410-147-0480, 410-147-0620

Last Date for Comment: 11-25-06

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 410-147-0120, 410-147-0320, 410-147-0365, 410-147-0460, 410-147-0480, and 410-147-0620 to clarify language, remove reference to 'independent' Rural Health Clinics (RHCs) and ensure OARs pertaining to laboratory and radiology costs and services are consistent with Federal law and regulations.

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

Rule Caption: January 2007 rule change to re-coded and remove G-J-tube from Not Otherwise Classified Prior Authorization.

Date:	Time:	Location:
11-17-06	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: 410-148-0260

Last Date for Comment: 11-25-06

Summary: The Home Enteral/Parenteral and Intravenous Services (EPIV) administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP will amend 410-148-0260 to recode and remove the standard or low profile gastrostomy/jejunostomy tube for non-Prior Authorized coding as B4086 from "Not Otherwise Classified (NOC)".

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

Rule Caption: January 2007 rule updates for the DMEPOS program.

Date:	Time:	Location:
11-17-06	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: 410-122-0020, 410-122-0055, 410-122-0080, 410-122-0182, 410-122-0184, 410-122-0186, 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0205, 410-122-0207, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0240, 410-122-0280, 410-122-0320, 410-122-0325, 410-122-0340, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0380, 410-122-0400, 410-122-0420, 410-122-0500, 410-122-0510, 410-122-0580, 410-122-0590, 410-122-0600, 410-122-0620, 410-122-0660, 410-122-0678, 410-122-0700 & 410-122-0720

Proposed Repeals: 410-122-0085, 410-122-0190, 410-122-0530

Last Date for Comment: 11-25-06

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 repeal:

410-122-0085 Dispensing: Information moved to 410-122-0184.

410-122-0190 Miscellaneous Durable Medical Equipment and Supplies: Information in this rule is already found in other rules.

410-122-0530 Proof of Delivery: Information moved to 410-122-0184.

OMAP will amend rules for housekeeping and clarification regarding conditions of coverage as follows:

410-122-0020 Orders: Adds that signature and date stamps are only acceptable for use on certificates of medical necessity (CMNs) when allowed by Medicare.

410-122-0055 Standard Benefit Package Limitations: Adds code A4604 (tubing with integrated heating element for use with positive airway pressure device).

410-122-0080 Conditions of Coverage, Limitations, Restrictions and Exclusions: Removes reimbursement information (moved to 410-122-0186).

410-122-0182 Legend: Clarifies some abbreviations used in the tables.

410-122-0184 Repairs, Maintenance, Replacement and Delivery: Changes name to *Repairs, Maintenance, Replacement, Delivery and Dispensing*, adds dispensing (from 410-122-0085), proof of delivery (from 410-122-0530) and documentation requirements.

410-122-0186 Reimbursement and Prior Authorization Requirements for Codes E1399 and K0108: Changes name to *Payment Methodology* and specifies payment methodology for DMEPOS.

410-122-0202 CPAP: Adds code A4604 (tubing with integrated heating element for use with positive airway pressure device) and clarifies payment authorization requirements.

410-122-0203 Oxygen and Oxygen Equipment: Rewrites rule to clarify conditions of coverage, reformats the rule and adds prior authorization requirements. Currently OMAP makes continuous

monthly payments for oxygen equipment as long as medically appropriate. In keeping with the Deficit Reduction Act (DRA), beginning with items newly rented on or after January 1, 2006, the rental period changes to not more than 36 months for oxygen equipment. Once the rental period ends, title to the equipment transfers to the client. OMAP will continue to pay for reasonable and necessary service and maintenance after the end of the rental period for covered equipment.

410-122-0207 Respiratory Supplies: Moves A4608 (transtracheal oxygen catheter), A4615 (cannula, nasal),

A4616 (tubing, oxygen), A4617 (mouthpiece) and A4620 (variable concentration mask) to 410-122-0203 Oxygen and Oxygen Equipment. Adds E0605 (vaporizer).

410-122-0209 Tracheostomy Care Supplies: Moves A7525 (tracheostomy mask) to 410-122-0203 Oxygen and Oxygen Equipment.

410-122-0240 Apnea Monitors for Infants: Changes rental from monthly to daily.

410-122-0320 Manual Wheelchair Base: Clarifies conditions of coverage.

410-122-0325 Motorized Power Wheelchair Base: Adds 63 new power wheelchair codes and clarifies conditions of coverage.

410-122-0340 Wheelchair Options/Accessories: Adds: "A shoulder harness/straps or chest strap (E0960) and a safety belt/pelvic strap (E0978) are covered only to treat a client's medical symptoms;

(I) A medical symptom is defined as an indication or characteristic of a physical or psychological condition;

(II) E0960 and E0978 are not covered when intended for use as a physical restraint or for purposes intended for discipline or convenience of others."

410-122-0380 Hospital Beds: Adds: "Payment Authorization: Subject to service limitations of OMAP rules, from the initial date of service through the second date of service, a hospital bed rental may be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require prior authorization."

410-122-0400 Pressure Reducing Support Surfaces: Adds: "OMAP may consider coverage for bariatric pressure reducing support surfaces coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric pressure reducing support surface has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC)."

410-122-0420 Hospital Bed Accessories: Adds: "Bariatric trapeze bars coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of OMAP rules, may be considered for coverage."

410-122-0510 Osteogenesis Stimulator: Clarifies coverage criteria for an ultrasonic osteogenesis stimulator.

410-122-0580 Bath Supplies: Adds E0705 (transfer board or device).

410-122-0600 Toilet Supplies: Adds: "Bariatric commodes coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of OMAP rules, may be considered for coverage."

410-122-0620 Miscellaneous Supplies: Clarifies conditions of coverage for some miscellaneous items.

410-122-0660 Orthotics and Prosthetics: Removes L7520 (repair prosthetic device, labor component, per 15 minutes) from exclusions list.

NOTICES OF PROPOSED RULEMAKING

410-122-0700 Negative Pressure Wound Therapy Pumps: Removes PA from A7000 (canister, disposable, used with suction pump) and clarifies conditions of coverage.

410-122-0720 Pediatric Wheelchairs: Rewrites rule to reflect the same coverage criteria in 410-122-0320 Manual Wheelchair Base (which became effective 7/1/06).

(The following amendments are contingent upon CMS implementation.) Currently capped rental items are rented by OMAP for no more than 13 to 16 months depending on the item. In keeping with the DRA, beginning with items newly rented on or after January 1, 2006, the rental period changes to not more than 13 months for most capped rental items. Once the rental period ends, title to the equipment transfers to the client. OMAP will continue to pay for reasonable and necessary service and maintenance after the end of the rental period for covered items.

Changes the capped rental period to no more than 13 months for some codes in the following rules:

410-122-0202, 410-122-0203, 410-122-0204, 410-122-0205, 410-122-0208, 410-122-0210, 410-122-0280, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0420, 410-122-0500, 410-122-0600, 410-122-0620, 410-122-0678, 410-122-0720

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: Outpatient Services — In-State DRG Hospitals, Outpatient Hospital Services in a Hospital Emergency Department, and Supplemental Reimbursement for Public Academic Teaching University Medical Practitioners.

Date:	Time:	Location:
11-17-06	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: 410-125-0196

Proposed Amendments: 410-125-0146, 410-125-0195

Last Date for Comment: 12-8-06

Summary: The Hospital Services program and the General Rules govern payments and services for the Office of Medical Assistance Programs' (OMAP) provided to certain clients.

OMAP will amend OAR 410-125-0195 to include emergency room triage screening fee methodology for non-emergent services. The effective date for this rule will be on or after January 1, 2007, but will not be operational until OMAP determines federal approval has been obtained.

OMAP will adopt OAR 410-125-0196 to establish the policy behind the reimbursement revision of OAR 410-125-0195.

OMAP will amend OAR 410-125-0146 to clarify the dates of service covered by rule and to make consistent with other policy rules.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

Telephone: (503) 945-6927

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

Rule Caption: Commemorative Certificate of Stillbirth (Implementation of SB 787, 2005 Oregon Laws, Chapter 769).

Date:	Time:	Location:
11-22-06	2 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 918 Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 432.266

Other Auth.: SB 787 (2005 Legislative Session) and 2005 OL, chapter 769

Stats. Implemented: ORS 432.266

Proposed Adoptions: 333-011-0200

Last Date for Comment: 11-24-06, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to adopt Oregon Administrative Rule 333-011-0200, pursuant to Senate Bill 787 (2005 Oregon Laws, Chapter 769), to establish the form of and information included on the Commemorative Certificate of Stillbirth.

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: Submission of sera positive IgM core antibody to hepatitis B to the Public Health Laboratory.

Date:	Time:	Location:
11-22-06	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 135 Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 438.310

Stats. Implemented: ORS 438.310

Proposed Amendments: 333-018-0018

Last Date for Comment: 11-24-06, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to amend Oregon Administrative Rule, 333-018-0018, to include a requirement for licensed laboratories to submit sera positive IgM core antibody to hepatitis B to the Oregon State Public Health Laboratory.

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: WIC Vendor Administration.

Date:	Time:	Location:
12-7-06	9 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 135 Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 409.600

Other Auth.: 7 CFR 246.12, PL 108-265

Stats. Implemented: ORS 409.600

Proposed Adoptions: 333-054-0025

Proposed Amendments: 333-054-0000 – 333-054-0070

Proposed Repeals: 333-054-0020(T), 333-054-0030(T)

Last Date for Comment: 12-8-06, 5 p.m.

Summary: The Oregon Department of Human Services (DHS) is proposing to adopt and amend rules as they pertain to WIC program vendors who derive or are likely to derive more than 50% of their food sales from WIC program sales and to update the criteria used by the DHS when making price adjustments on redeemed food instruments. Additionally, clarifications and adjustments to definitions, the vendor agreement, violations and sanctions have been made to reflect current program vendor management practices.

The DHS temporarily amended 333-054-0020 and 333-054-0030 on July 1, 2006. These rules expire on December 27, 2006. DHS is proposing to permanently amend these rules.

Rules Coordinator: Christina Hartman

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

Telephone: (971) 673-1291

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Ambulance Service Licensing, Ambulance Licensing and EMT-Paramedic Continuing Education Requirements for Recertification.

Date: 12-6-06
Time: 1:30 p.m.
Location: Portland State Office Bldg.
800 NE Oregon St., Rm. 918
Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117 & 682.991

Proposed Amendments: 333-265-0130, Rules in 333-250, 333-255

Proposed Repeals: 333-250-0090

Last Date for Comment: 12-8-06, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to amend and repeal Oregon Administrative Rules relating to Ambulance Service Licensing (Division 250), Ambulance Licensing (Division 255) and Emergency Medical Technicians (EMT) (Division 265).

Division 250 is being amended to clarify, simplify and update requirements for ambulance service licensing, record keeping, inspection processes and operational needs for emergency medical service agencies.

Division 255 is being amended to clarify, simplify and update ambulance vehicle licensing requirements, inspection processes, ambulance construction criteria and ambulance operating requirements for basic, intermediate and advanced life support care.

Division 265 is being amended to change EMT-Paramedic continuing education requirements for recertification to better align with national EMT-Paramedic recertification practice.

Both Divisions contain proposed amendments to correct Department terminology, punctuation and formatting.

Rules Coordinator: Christina Hartman

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

Telephone: (971) 673-1291

Rule Caption: Wading Pool Compliance.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.090, 448.990

Proposed Amendments: 333-060-0020

Last Date for Comment: 11-24-06, 5 p.m.

Summary: On September 15, 2006 the Oregon Department of Human Services, Public Health Division temporarily amended Oregon Administrative Rule, 333-060-0020 relating to wading pool compliance, to correct two errors made during the July 2006 revision of the public swimming pool rules. The Division is now proposing to permanently adopt the temporary amendments.

Rules Coordinator: Christina Hartman

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

Telephone: (971) 673-1291

Department of Human Services, Self-Sufficiency Programs Chapter 461

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

Date: 11-22-06
Time: 10 a.m.
Location: Rm 255
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.095, 411.700, 411.710, 411.816, 414.042, 416.510-416.610, 418.100

Other Auth.: 7 CFR 273.2(f)(1)(ii), 273.2(f)(2)(ii), 273.7, 273.8, 273.12(e), 273.14(b), 273.15(k), 273.16; 20 CFR 404.1509, 416.905(a), 416.1103, 416.1205; 42 CFR 431.210, 431.211, 431.213, 435.135, 435.541(c), 435.601, 435.930; 45 CFR 264.1; 7

U.S.C 2014(d) and (g), (Farm Security and Rural Investment Act of 2002, section 4102 and 4107); 42 U.S.C. 608(a)(7); Section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171) amending section 1903 of the Social Security Act, 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396b; Section 1613(a)(1) of the Social Security Act; SSA Program Operations Manual section SI 01130.100; Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)); Section 1917 of the Social Security Act (42 U.S.C. 1396p(c)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1935(a)(5)(E) of the Social Security Act; The Deficit Reduction Act of 2005 (DRA), Section 6065, amending Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)); Section 503 of P.L. 94-566; Deficit Reduction Act of 2005 (DRA)

Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 411.070, 411.095, 411.113, 411.117; 411.632, 411.700, 411.710, 411.816, 414.042, 414.047, 414.420, 414.422, 414.424, 416.510-416.610, 418.100, 418.131, 1999 OL ch. 859

Proposed Adoptions: 461-145-0185, 461-145-0343

Proposed Amendments: 461-110-0630, 461-115-0010, 461-115-0050, 461-115-0651, 461-115-0705, 461-125-0370, 461-130-0310, 461-135-0010, 461-135-0075, 461-135-0708, 461-135-0780, 461-135-0950, 461-135-0960, 461-140-0210, 461-140-0220, 461-140-0242, 461-140-0270, 461-140-0296, 461-140-0300, 461-145-0020, 461-145-0022, 461-145-0130, 461-145-0140, 461-145-0175, 461-145-0220, 461-145-0280, 461-145-0310, 461-145-0330, 461-145-0470, 461-145-0580, 461-150-0055, 461-155-0225, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0660, 461-160-0010, 461-160-0580, 461-160-0610, 461-160-0620, 461-170-0130, 461-175-0010, 461-175-0250, 461-180-0085, 461-180-0090, 461-185-0050, 461-195-0301, 461-195-0305, 461-195-0310, 461-195-0325, 461-195-0611

Proposed Repeals: 461-110-0610

Proposed Ren. & Amends: 461-115-0510 to 461-175-0222

Last Date for Comment: 12-4-06

Summary: OAR 461-110-0610 is being repealed and OAR 461-110-0630 is being amended so that a single rule will be used to describe the concept of a need group, which is the individuals whose needs are used in determining eligibility and benefit level for food stamps, medical assistance, and public assistance programs. OAR 461-110-0630 is also being amended to change who is considered part of the need group in the QMB (Qualified Medical Beneficiaries) program and to add cross references to other rules.

OAR 461-115-0010 is being amended to clarify current policy regarding the application process for food stamps, public assistance, and medical assistance. The amendment indicates that while a client may apply for more than one program utilizing one application, the application process for different programs may vary. This rule is also being amended to update terms and use more precise language.

OAR 461-115-0050 is being amended to correct a rule cross-reference, clarify the rule and state when a new application is not required in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), and Oregon Health Plan (OHP) programs.

OAR 461-115-0510 is being amended and renumbered to OAR 461-175-0222 to outline the information that will be included in the notice that the Food Stamp certification period is ending. The certification period means the period for which a client is certified eligible for the Food Stamp program.

OAR 461-115-0651 is being amended to make permanent a temporary rule change adopted on September 1, 2006 that removed a requirement to verify citizenship for initial applicants to the Food Stamp program because routine verification is not required by the federal regulations.

OAR 461-115-0705 about required verification is being amended to add the citizenship verification requirements of the Deficit Reduction Act of 2005 into the verification requirements for Breast

NOTICES OF PROPOSED RULEMAKING

and Cervical Cancer Medical (BBCM), Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Substitute Adoptive Care (SAC) programs. OAR 461-135-0010 about assumed eligibility for medical programs is being amended to add the new citizenship verification requirements of OAR 461-115-0705 into the assumed eligibility requirements for the Medical Assistance Assumed (MAA) and the Substitute Adoptive Care (SAC) programs. These amendments make permanent temporary rules adopted on September 1, 2006. Additionally, OAR 461-115-0705 is being amended to remove a reference regarding the requirement to provide verification to support a request for waiver of a premium arrearage in the OHP program, as it is redundant (the information is already required to be verified in section (3) of the rule).

OAR 461-125-0370 is being amended to more accurately restate the requirements in 42 CFR 435.541 about the effect of a disability determination by the Social Security Administration (SSA) on the eligibility of clients in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program – Medical) programs.

OAR 461-130-0310 about the participation classifications for Employment and Training programs is being amended to clarify when a person may be exempt from participating in the Oregon Food Stamp Employment Transition Program (OFSET) program due to taking care of a person with a disability that lives in a different household and eliminate use of the “incapacitated” per ORS 182.109. This rule is also being amended add and updated cross-references to other rules and to use more precise language.

OAR 461-135-0075 is being amended to comply with federal requirements by replacing the current language, which is based on the Oregon Option waiver of 1996, with current language found in federal law at 42 U.S.C. 608(a)(7) and in regulation at 45 CFR 264.1. Under the federal law, families with an adult receiving TANF are not eligible, in most instances, for TANF benefits for more than 60 months in a lifetime. The amended rule also states exceptions to the 60-month limit and the priority system if the state exceeds its extension allotment under federal law.

OAR 461-135-0708 is being amended to correct a cross-reference to a rule that was renumbered.

OAR 461-135-0780 (eligibility for Pickle Amendment clients in the OSIPM program), 461-155-0250 (income and payment standard for OSIP and OSIPM), 461-155-0270 (payment standard for OSIP and OSIPM clients in nonstandard living arrangements), 461-155-0300 (shelter-in-kind standard for OSIP, OSIPM, QMB), 461-160-0580 (excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD and OSIPM-EPD), and 461-160-0620 (income deductions and client liability for Long Term Care Services and Waivered Services) are being amended to reflect the Federal Cost of Living Adjustments that happen every January. This keeps Oregon in line with current Federal Income standards for Department Medicaid programs. These rules are also being amended to add cross-references to other rule numbers and update cross-references to definitions that are being moved to other rule numbers.

OAR 461-135-0950 about the eligibility of inmates for public assistance, medical assistance, and food stamps is being amended to correct a rule cross reference.

OAR 461-135-0960 about eligibility for the OSIPM (Oregon Supplemental Income Program Medical) and SAC (Medical Coverage for Children in Substitute or Adoptive Care) programs for individuals in state psychiatric institutions and training centers is being amended to indicate the current facilities covered in this rule.

OAR 461-140-0210 and 461-140-0242 is being amended 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 to no longer impose a disqualification for a trans-

fer of assets for less than fair market value, for clients in standard living arrangements as defined in OAR 461-110-0110. Federal regulations allow states the option of imposing disqualifications for this group of clients. The Department is exercising its option to no longer impose a disqualification. OAR 461-140-0210 concerning Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute or Adoptive Care (SAC) programs is also being amended to restrict the imposition of a disqualification for a transfer of assets for less than fair market value to specific non-standard living arrangement situations. Federal regulations allow states the option of restricting the imposition of disqualifications for this group of clients.

OAR 461-140-0220 is being amended to remove the disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements 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 rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to correct, update, and add cross-references to other rules.

OAR 461-140-0270 about disqualification due to a resource transfer is being amended to remove the reference to transfers of resource in the rule title and replacing it with a reference to transfers of assets. This rule is also being amended to include the Extended Medical (EXT) program as a program subject to the requirements of this rule. This rule change does not affect disqualification in the Refugee (REF) or Temporary Assistance to Needy Families (TANF) programs because these programs only impose disqualifications for invalid transfer of resources.

OAR 461-140-0296 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 no longer impose a disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements. The Department is exercising its option under federal regulations to no longer impose a disqualification for this group of clients. Also, the Department is opting to begin the disqualification period the month following the month of the transfer, for transfers of assets that occurred prior to July 1, 2006. The rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to clarify that although the DRA allows calculating partial month disqualifications, the Department will exercise its option to accumulate multiple fractional transfers and not impose a disqualification for a transfer of assets involving an income cap trust until a full month is involved. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-140-0300 is being amended to permit the waiver of a disqualification due to an asset transfer if certain hardship requirements are met by clients in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute and Adoptive Care (SAC) programs.

OAR 461-145-0020 and OAR 461-145-0022 which concern the treatment of annuities for eligibility purposes are being amended to replace the reference to the life expectancy table from the table in the

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Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change that affects clients of 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. These rules are also being amended to be consistent with the simultaneous change to no longer disqualify clients in standard living arrangements for transfers of assets for less than fair market value in division 140. These rules are also being amended to clarify that for an annuity that meets the criteria of the rule, monthly annuity payments will be counted as unearned income to the annuitant, regardless of who may be designated as the payee. These rules are also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0130 is being amended to clarify current policy regarding the treatment of earned income in the eligibility process for public assistance, medical assistance, and food stamps.

OAR 461-145-0140 about the treatment of the earned income tax credit in the eligibility process for food stamps, public assistance, and medical programs is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by allowing it to align food stamp policies with TANF. This amendment will exclude earned income tax credit as both income and resources for food stamps. The current policy requires the income be counted as a resource if it is retained for 12 months.

OAR 461-145-0175 about the treatment of Family Abuse Prevention Act (FAPA) payments authorized by the courts to victims of domestic violence in the eligibility process for food stamps, public assistance, and medical assistance is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by aligning food stamp and TANF policies. This amendment will exclude the first \$2,500 FAPA payments as income and count any amount over \$2,500 as a resource for food stamps. The current policy requires the income be counted as unearned income for food stamps.

OAR 461-145-0185 and 461-145-0343 are being adopted so that there are separate rules that cover the treatment of the value of manufactured and mobile homes as well as floating homes and houseboats as part of the eligibility process for public assistance, medical assistance, and food stamps. These topics are currently covered in OAR 461-145-0220, 461-145-0250, and 461-145-0420.

OAR 461-145-0220 about the treatment of a home in the eligibility process is being amended for 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 to change the definition of contiguous property that is considered part of the home of the filing group. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0280 — about the treatment of in-kind income in the eligibility process for medical assistance, public assistance, and food stamps — is being amended to state that in-kind income does not include shelter-in-kind income for all programs, that in-kind income does not include child support in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Medical (REFM), Substitute Adoptive Care (SAC), and Temporary Assistance to Needy Families (TANF) programs, and that in-kind income does not include an expenditure by a business entity that benefits a principal in the OHP program. This rule is also being amended to clarify that in the Extended Medical (EXT) program all in-kind income is excluded, and that in the REFM program, in-kind income (except child support) is excluded. This rule

is also being amended to remove the definition of in-kind income and to add cross-references to other rules.

OAR 461-145-0310 about the treatment of life estates in the eligibility process for medical assistance, public assistance, and food stamps, is being amended to add and correct cross references to other rules and to move a definition to OAR 461-001-0000.

OAR 461-145-0330 concerning the treatment of loans and interest on loans is being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change which impacts client of 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 rule is also being amended to include the policy on the treatment of purported loans that fail to meet the requirements of the rule and to cross-reference rules that explain technical terms used.

OAR 461-145-0470 is being amended to clarify that in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee (REF), Refugee Medical (REFM), Substitute Adoptive Care (SAC) and Temporary Assistance to Needy Families (TANF) programs child support payments made to a third party for shelter expenses are treated in accordance with OAR 461-145-0080. This rule is also being amended to add the Extended Medical (EXT) program the programs that exclude shelter-in-kind income (except child support). This rule is also being amended to relocate a definition to a rule where definitions are more easily located and to add and correct cross-references to other rules.

OAR 461-145-0580 about the treatment of veterans benefits in the eligibility process for public assistance, medical assistance, and food stamps is being amended to change the treatment these payments for QMB clients (Qualified Medicare Beneficiaries) so that the rule is clear that Veteran's Aid and Attendance payments are excluded for all QMB clients. This rule is also being amended to clarify that in the OSIP and OSIPM programs, when aid and attendance payments are received, the Veterans benefit payment is made up of both a pension and aid-and-attendance, the entire amount is excluded in the eligibility determination and counted in the benefit or patient liability calculations. Other sections of the rule are being amended to add cross-references and use more precise language.

OAR 461-150-0055 is being amended to clarify that the Oregon Health Plan (OHP) budget month for clients losing eligibility for the Breast and Cervical Cancer Medical (BCCM) and the Extended Medical (EXT) programs is the last month of their EXT eligibility period. This rule is also being amended to add cross-references to other rules.

OAR 461-155-0225 about the income standard for the OHP (Oregon Health Plan) program is being amended to add and correct cross references to other rules.

OAR 461-155-0250 about income and payment standards in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical) programs is also being amended to clarify how to deal with SIP (supplemental income) payments for SSI spouses when waived services are involved. The rule is being amended to indicate that if the Social Security Administration considers the spouses as a couple for payment, then there is no SIP payment unless the client is blind; if the client is blind, the payment is at the couple, not individual, standard. This rule is also being amended to clarify that the 250 percent federal poverty level (FPL) adjusted income standard for the OSIPM-EPD (Employed Persons with Disabilities) program is only for earned income, and unearned income is not involved in this calculation. This rule is being further amended to update cross-references to defined terms.

OAR 461-155-0660 is being amended to only allow an accommodation allowance for clients who have a documented cost asso-

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ciated with accommodations, or who have a live-in provider. 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. This rule is also being amended because there is no need to allow home adaptations in this rule since OAR 461-155-0551 allows home adaptations.

OAR 461-160-0010 about the use of resources for determining financial eligibility for public assistance, medical assistance, and food stamp programs is being amended to remove language that gives service clients with a liability the ability to have more than the allowed resources and still be eligible. This rule is also being amended to move definitions to OAR 461-001-0000, update and add cross-references to definitions in other rules, and clarify the rule.

OAR 461-160-0610, 461-160-0620, 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 also being amended to indicate that adult disabled children, disabled widows and widowers, and widows or widowers who qualify under OAR 461-135-0820 are required to contribute toward the cost of their Medicaid-funded services if they reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a state psychiatric institution.

OAR 461-170-0130 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs that are required — when a client, who is required to report a change in circumstances, makes a timely report of change that could reduce or end medical benefits — to review each individual in the filing group for eligibility for other medical programs prior to reducing or ending medical benefits. If additional information is needed to act on the reported change by the client, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with application processing time frames. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-175-0010 and 461-175-0250 are being amended to make it easier to understand the requirements that apply to mass change notices and to state that some of the requirements and exceptions to other decision notice requirements in the current rules apply only in the Food Stamp program. While the current rules treat mass change notice as exempt from requirements that apply to other decision notices, the proposed amendment treats mass change notices as a subcategory of the other types of notices.

OAR 461-180-0085 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs for which, when eligibility for the program ends, the Department must consider the eligibility criteria for all other Medicaid programs before closing the case. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-180-0090 is being amended 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 to allow clients who are under the age of 21 assumed eligibility for Medicaid effective the month prior to the client's initial month of federal Supplemental Security Income (SSI) payment eligibility.

OAR 461-195-0301, 461-195-0305, 461-195-0310, and 461-195-0325 about personal injury claims and liens, are being amended as a consequence of a recent U.S. Supreme Court decision that changed how states may recover from the proceeds of insurance settlements for accident related public assistance. These rules are also being

amended to clarify Department processes, update information, and further delineate the responsibilities of the Department, prepaid managed care organizations (MCO's), and recipients of public assistance. These rules implement state law allowing recovery of public assistance funds when a judgment, settlement or compromise includes amounts of public assistance paid on behalf of a recipient.

OAR 461-195-0611 about Intentional Program Violations (IPVs) is being amended to clarify the process if there is a determination that an IPV waiver was signed under duress.

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

A copy of the draft rules can be accessed at the self-sufficiency policy website: http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm

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

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

Rule Caption: Addition of definitions for clarification and arrangement of facility and community rule into respective sections.

Date:	Time:	Location:
11-20-06	1 p.m.	500 Summer St. NE, Rm. 137 D Salem, OR 97301

Hearing Officer: Lisa Richards

Stat. Auth.: ORS 410.070, 410.610 - 410.700, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070, 411.116

Proposed Amendments: 411-020-0002, 411-020-0020, 411-020-0100, 411-020-0120

Last Date for Comment: 11-21-06, 12 p.m.

Summary: The proposed rule changes are for the purposes of clarification, arranging facility and community investigation rule into respective sections, and to promote consistency regarding field office practice and rule application. The specific rule areas considered for change are as follows:

a) 411-020-0002: Addition of definitions for non-facility vs. facility settings; addition of language to the definition of "neglect"; definition of "conclusion", "reported perpetrator", "wrongdoing", and "reported victim"; and removal of "self-neglect" from the definitions of abuse to a individually defined term.

b) 411-020-0020: Heading change to "Reporting of Abuse and Neglect"; moving subsection (4) and (5) to respective section of rule for community and facility investigations.

c) 411-020-0100: Heading change to "Community Investigation, Documentation and Notification"; moving facility related rule to respective section of rule.

d) 411-020-0120: Heading change to "Facility Investigation, Documentation and Notification"; moving community related rule to respective section; change in investigatory language from finding of "abuse or neglect" to "wrongdoing" in respect to Adult Protective Service investigation reports.

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

Rule Caption: Addition of definitions for clarification, consistency and language updates.

Date:	Time:	Location:
11-20-06	2 p.m.	500 Summer St. NE, 137D Salem, OR 97301

Hearing Officer: Lisa Richards

Stat. Auth.: ORS 410.070, ORS 125

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Stats. Implemented: ORS 410.070

Proposed Amendments: 411-026-0000, 411-026-0010, 411-026-0020, 411-026-0030, 411-026-0040, 411-026-0050, 411-026-0060, 411-026-0070, 411-026-0080

Last Date for Comment: 11-21-06, 12 p.m.

Summary: Seniors and People with Disabilities is amending the Guardianship and Conservatorship rules related to:

- a) Addition of definitions to clarify practice;
- b) Replace repealed citations; and
- c) Promote consistency regarding field office practice and rule application.

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: Amends child support rules to mandate support disbursement by EFT and update confidentiality rules.

Date:	Time:	Location:
12-7-06	4-5 p.m.	38 N Central Ave. Conference Rm. 2 Medford, OR 97501
12-7-06	4-5 p.m.	2885 Chad Dr. Conference Rm. 1 Eugene, OR
12-7-06	4-5 p.m.	10142 SE Washington St. Conference Rm. B Portland, OR 97216
12-7-06	4-5 p.m.	1300 NW Wall St., Ste. 100 Lewis & Clark Rm. Bend, OR 97701

Hearing Officer: Diana DelRio, Regina Agerter, Kathay Duff, Ava Hounshell

Stat. Auth.: ORS 18.005, 25.020, 25.080, 25.265, 25.610, 180.345, 293.525, 416.455

Stats. Implemented: ORS 18.225, 18.400, 18.645, 25.020, 25.080, 25.150, 25.265, 25.387, 25.414, 25.610, 192.820 - 192.585, 293.250, 293.525, 416.425, 418.032, 418.042

Proposed Adoptions: 137-055-6010

Proposed Amendments: 137-055-1020, 137-055-1100, 137-055-1120, 137-055-1160, 137-055-1320, 137-055-4320, 137-055-5510, 137-055-6020, 137-055-6021, 137-055-6022, 137-055-6024, 137-055-6025, 137-055-6120, 137-055-6210

Last Date for Comment: 12-21-06

Summary: The changes to OAR 137-055-6020 mandates DOJ-DCS disburse support payments via electronic funds transfer via direct deposit or a stored value card unless an exception is granted. Changes to OARs 137-055-1020; 137-055-1100; 137-055-4320; 137-055-5510; 137-055-6010; 137-055-6021; 137-055-6022; 137-055-6024; 137-055-6025; 137-055-6120; 137-055-6210 change rule cities to correct cites. Changes to OAR 137-055-1120 defines "no longer a current support order" to include when there was never a support order and allows for case closure when another state requests closure and certain criteria is met. Changes to OAR 137-055-1160 reflect changes required due to ORS chapter 192, the Address Confidentiality Program and allows for an "Order for nondisclosure of information" and when the CSP will make an order. Changes to OAR 137-055-1320 enlarges on the definition of "reasonable evidence of possible domestic violence" to include situations and parties who have been accepted into the Address Confidentiality Program.

Rules Coordinator: Shawn Brenizer

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

Telephone: (503) 986-6240

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

Rule Caption: Extend the term of state explosives magazine certifications to align with federal explosives magazine certifications.

Stat. Auth.: ORS 476.030, 480.110 - 480.165, 183.705

Stats. Implemented: 480.110 - 480.165, 183.705

Proposed Amendments: 837-012-1200, 837-012-1210, 837-012-1220, 837-012-1230, 837-012-1240, 837-012-1250, 837-012-1260, 837-012-1270, 837-012-1280, 837-012-1290, 837-012-1300, 837-012-1310, 837-012-1320, 837-012-1330, 837-012-1340, 837-012-1350, 837-012-1360, 837-012-1370, 837-012-1380, 837-012-1390, 837-012-1400, 837-012-1410, 837-012-1420

Last Date for Comment: 11-21-06

Summary: To extend the term of explosives certifications, as allowed by ORS 183.705. This rule change will allow the extension of the length of magazine certifications issued by the Office of State Fire Marshal, to align with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) magazine certifications. Also included in these rule changes are housekeeping items, such as italicizing defined words, rather than capitalizing them.

Rules Coordinator: Laura Drager

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

Telephone: (503) 373-1540, ext. 211

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Department of Revenue
Chapter 150

Rule Caption: Calculation of corporate income, tax, credits. Apportionment of intangibles; software; personal property. 9-1-1 Tax exemption.

Date:	Time:	Location:
11-15-06	10 a.m.*	Fishbowl Conference Rm., Dept. of Revenue 955 Center St NE Salem, OR

* Register to testify beginning at 9:45. Call 503-947-2099 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: 305.100

Stats. Implemented: 314.385, 314.665, 315.511, 316.212, 317.090, 317.705, 318.020, 318.060, 401.794

Proposed Adoptions: 150-318.060, 150-314.665(3)

Proposed Amendments: 150-314.385(1)-(B), 150-314.665(2)-(A), 150-314.665(4), 150-316.212, 150-317.090, 150-317.705(3)(a), 150-318.020(2)

Proposed Repeals: 150-315.511(6)

Proposed Ren. & Amends: 150-401.000 Note (Or. Laws 1981, Ch. 533)-(A) to 150-401.794

Last Date for Comment: 11-22-06, 5 p.m.

Summary: 150-318.060 is adopted to clearly identify the type of interest from O.S. Government obligations that is exempt from Oregon corporate income taxation.

150-314.665(3) provides clarification of how income from the sale of "off the shelf" and custom software, and database services are treated in the sales factor for corporate apportionment purposes.

150-314.385(1)-(B) is amended to provide that corporations requesting an Oregon-only extension are not required to file the extension prior to the due date of the return.

150-314.665(2)-(A) is amended to provide consistency between the policy expressed in section (5) of the rule relating to property shipped to a purchaser in another state and the example immediately following. To delete section (7) because subsection (a) does not add clarity to information already provided in the statute or this rule, and subsection (b) is not authorized by the statute.

150-314.665(4) is amended to clarify that receipts from intangible personal property such as franchising and licensing agreements, located and used within Oregon, are Oregon receipts. Also provide

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guidance on costs not included in direct costs, and provide guidance on when intangible personal property is located in Oregon.

150-316.212 is amended to specify the types of penalties that may be applied under the withholding tax program.

150-317.090 is amended to provide that the corporate minimum tax applies to each affiliate doing business in Oregon that is included in the filing of a consolidated tax return, effective for tax years beginning on or after January 1, 2006.

150-317.705(3)(a) is amended to provide guidance as to the criteria that must be met under ORS 317.705 in order for a "single trade or business to exist.

150-318.020(2) is amended to delete duplicate language in (4)(a), remove unnecessary information about the excise tax from (4)(b), and move text from (4)(c) to (2)(f) for clarify.

150-315.511(6) is repealed due to sunset of the credit.

150-401.000 Note (Or. Laws 1981, Ch. 533)-(A) is renumbered to 150-401.794 and is clarified as to the types of governmental entities that are exempt from the telephone excise tax provided under ORS 401.794.

Rules Coordinator: Debra L. Buchanan

Address: 955 Center St NE Salem OR 97301-2555

Telephone: (503) 945-8653

Rule Caption: Board of Property Tax Appeals petitions; Tax deferral or special assessments; Mining claims; Manufactured structures.

Date: 11-15-06	Time: 10 a.m.*	Location: Fishbowl Conference Rm. Dept. of Revenue 955 Center St NE Salem, OR
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* Register to testify beginning at 9:45. Call 503-947-2099 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: 305.100, 311.735, 308.205

Stats. Implemented: 307.080, 308A.253, 308.875, 309.024, 309.026, 309.067, 309.100, 311.672, 311.708, 334.400, 457.450

Proposed Adoptions: 150-307.080

Proposed Amendments: 150-308.875-(A), 150-308A.253, 150-309.024, 150-309.026(2)-(A), 150-309.067(1)(b), 150-309.100(2)-(B), 150-309.100(3)-(C), 150-311.672(1)(a), 150-311.708, 150-457.450

Proposed Repeals: 150-334.400

Last Date for Comment: 11-22-06, 5 p.m.

Summary: 150-307.080 is adopted to clarify property that is subject to property tax on unpatented mining claims on federal lands.

150-308.875-(A) is amended to clarify and provide examples as to who qualifies as the "same owner" of both land and a manufactured structure for property tax purposes.

150-308A.253 clarifies when application must be made to qualify home sites associated with land that is zoned as farm or forest-land and qualified for special assessment of property taxes.

150-309.024 describes the records required to be kept by the county clerk related to Board of Property Tax Appeals meetings.

150-309.026(2)-(A) allows a board to consider petitions requesting an increase in one component of a properties value, provided the net result of the boards action does not result in an increase in total value of a property.

150-309.067(1)(b) describes persons the county governing body may not appoint to the pool of nonoffice-holding residents from which the county clerk may select persons to serve on a board of property tax appeals.

150-309.100(2)-(B) describes the process for withdrawing a petition made to a Board of Property Tax Appeals (BOPTA).

150-309.100(3)-(C) describes who may petition the Board of Property Tax Appeals (BOPTA) and who may sign a petition or represent certain property owners.

150-311.672(1)(a) specifies the property tax description information that the county must supply to the Department on the prop-

erty tax deferral application. Proposed amendments recognize a statutory change in who maintains certain information and how it is accessed.

150-311.708 specifies the property tax description information that the bonding district must supply to the department on the application for deferral of special assessment. Proposed amendments recognize a statutory change in who maintains certain information and how it is accessed.

150-457.450 clarifies how property taxes collected and excess urban renewal amounts are to be processed and distributed to comply with ORS 457.450 when an agency is required to notify the assessor to stop division of tax for a plan. The amendments being proposed update the rule to account for situations where multiple counties distribute taxes to an urban renewal agency for a plan.

150-334.400 is repealed following repeal of ORS 334.400.

Rules Coordinator: Debra L. Buchanan

Address: 955 Center St NE Salem OR 97301-2555

Telephone: (503) 945-8653

Rule Caption: Penalty waivers; tax-exempt fringe benefits; 2D barcode mandate; refunds; Claim of Right; Housekeeping.

Date: 11-15-06	Time: 10 a.m.*	Location: Fishbowl Conference Rm., Dept. of Revenue 955 Center St NE Salem, OR
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* Register to testify beginning at 9:45. Call 503-947-2099 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: 305.100, 305.145, 305.230, 314.385

Stats. Implemented: 305.145, 305.230, 314.385, 314.402, 314.415, 315.068, 315.156, 316.007, 316.153, 316.177, 316.992

Proposed Adoptions: 150-314.402(6), 150-316.153, 150-316.177, 150-316.992

Proposed Amendments: 150-305.145(4)(b), 150-305.145(4)(c), 150-305.230, 150-314.385(3), 150-314.415(5)(a), 150-315.068, 150-315.156, 150-316.007-(B)

Proposed Repeals: 150-314.415(1)(a)

Proposed Ren. & Amends: 150-314.415(1) to 150-314.415

Last Date for Comment: 11-22-06, 5 p.m.

Summary: 150-314.402(6) is adopted to transfer material from 150-305.145(4)(c) relating specifically to the waiver of penalty authorized under ORS 314.402(6).

150-316.153 is adopted to clarify which costs are and are not an actual cost of moving and setting up the mobile home for the purpose of the credit.

150-316.992 is adopted to transfer material from 150-305.145(4)(c) relating specifically to the waiver of penalty authorized under ORS 316.992.

150-316.177(1) is adopted to transfer material from 150-305.145(4)(c) relating specifically to the waiver of penalty authorized under ORS 316.177(1).

150-305.145(4)(b) is amended to clarify situations that qualify for waiver of penalty under ORS 305.145.

150-305.145(4)(c) is amended to revise the rule to reflect the new agency-wide policy on penalty waivers that enhance the long-term effectiveness, efficiency or administration of the tax system.

150-305.230 is amended to include same-gender domestic partners in the list of people eligible to represent a taxpayer before the department.

150-314.385(3) is amended to require that 2-D barcode be printed on all software-generated personal income tax returns that the department supports. In addition, to allow software companies to not print the decimal and cents when rounding dollar amounts.

150-314.415(5)(a) is amended to update carryback and carryforward periods to reflect the federal changes for loss years beginning with tax year 2001 and forward. Also updating year references to

NOTICES OF PROPOSED RULEMAKING

more current dates; updating citation references; and updating to current legislative style.

150-315.068 is amended to clarify that, in figuring either a credit or a deduction under the "claim of right" provisions of ORS 315.068, both the state and federal returns need to be recalculated to determine the amount of tax upon which the credit or subtraction is based.

150-315.156 is amended to conform to 2001 Legislation expanded the Crop Gleaning credit to include more than just gleaners.

150-316-007-(B) is amended to provide guidance on taxation of the imputed value qualified tuition reduction programs where the benefit is received by a same-gender domestic partner.

150-314.415(1)(a) is repealed and all language from this rule is transferred into 150-314.415.

150-314.415(1) is amended and renumbered to 150-314.415 and coordinates and cross-references language with 150-305.220 relating to interest start dates.

Rules Coordinator: Debra L. Buchanan

Address: 955 Center St NE Salem OR 97301-2555

Telephone: (503) 945-8653

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Rule Caption: Implementation of ORS 670.600 related to independent contractors.

Date:	Time:	Location:
11-15-06	10 a.m.*	Fishbowl Conference Rm. Dept. of Revenue 955 Center St NE Salem, OR

* Register to testify beginning at 9:45. Call 503-947-2099 to make other arrangements.

Hearing Officer: Staff

Stat. Auth.: 305.100, 670.600

Stats. Implemented: 316.162, 670.600

Proposed Adoptions: 150-670.600

Proposed Amendments: 150-316.162(2)(j)

Last Date for Comment: 11-15-06, 5 p.m.

Summary: 150-316.162(2)(j) is amended to add a reference to a new rule, 150-670.600.

150-670.600 is adopted to provide guidance to agencies referenced in ORS 670.600 as to how the statute will be implemented; to clarify the meaning of terms used in ORS 670.600; and to provide guidance to interested persons as to how the agencies referenced in ORS 670.600 will apply the provisions of that statute.

Rules Coordinator: Debra L. Buchanan

Address: 955 Center St NE Salem OR 97301-2555

Telephone: (503) 945-8653

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Department of Transportation, Board of Maritime Pilots Chapter 856

Rule Caption: Amends training for licensure on the Columbia-Willamette River pilotage ground.

Date:	Time:	Location:
11-30-06	10 a.m.	800 NE Oregon St. Rm. 140 Portland, OR 97232

Hearing Officer: Board of Maritime Pilots

Stat. Auth.: ORS 776.115(7)

Stats. Implemented: ORS 776.115(4)(a)(c)(e)

Proposed Amendments: 856-010-0010, 856-010-0011, 856-010-0012, 856-010-0015

Last Date for Comment: 11-30-06

Summary: Amends training for original licensing requirements and degrees of licenses for Columbia-Willamette River pilotage ground. Improves training by extending total training time, expanding the number of certified training trips, and provide flexibility in assigning training experiences. A few amendments address administrative details such as the schedule for submission of license renewal physicals and grading of exams.

Rules Coordinator: Susan Johnson

Address: Department of Transportation, Board of Maritime Pilots, 800 NE Oregon St. #507, Portland, OR 97232

Telephone: (971) 673-1530

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

Rule Caption: Determining Hearing Location for Implied Consent Hearings.

Date:	Time:	Location:
11-16-06	9 a.m.	ODOT Bldg., Rm. 122 355 Capitol St NE Salem, OR

Hearing Officer: Liz Woods

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410, 813.440

Stats. Implemented: ORS 813.410, 813.440

Proposed Amendments: 735-090-0101

Last Date for Comment: 11-16-06

Summary: ORS 809.410(4)(b) requires that an implied consent hearing be held in the county where the offense occurred or at any place within 100 miles of the place where the offense occurred, as established by the department by rule. The current rule focuses on when a telephone hearing can be conducted, however there is both a model rule — OAR 137-003-0045 and an Office of Administrative Hearing rule — OAR 137-003-0605 — that establish when a telephone hearing may be conducted. The proposed amendment to OAR 735-090-0101 is to specify that the location of the hearing is the physical location of the administrative law judge (ALJ) at the time scheduled for hearing. The proposed amendments will allow a telephone hearing as long as the ALJ is either in the county where the offense occurred or within 100 mile of where the offense occurred. If there is mutual agreement between the petitioning party and DMV a hearing (either by telephone or in person) can be conducted even if the ALJ is not in the county where the alleged offense occurred or at any place within 100 air miles of the place where the offense occurred.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Rule Caption: Issuance and Cancellation of Emergency Driver Permits and Special Student Permits.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.22, 807.230

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.31, 809.320

Proposed Amendments: 735-064-0230, 735-064-0235, 735-064-0237, 735-070-0010

Last Date for Comment: 11-21-06

Summary: OAR 735-064-0230 and 735-064-0235 deal with the issuance of emergency driver permits and special student driver permits. DMV is proposing amendments to these rules to allow the issuance of these permits to persons between 16 and 18 years of age. These proposed amendments are needed because of the adoption of the provisional license requirements in ORS 807.065, particularly the requirement that a person cannot be issued a provisional license without having an instruction permit for at least six months. These amendments also add a requirement that a person with an emergency driver permit or a special student driver permit have an instruction permit in order to facilitate the issuance of a provisional driver license when the person is otherwise eligible.

OAR 735-064-0237 and 735-070-0010 deal with cancellation and reinstatement. ORS 807.220(3)(i) specifies that an emergency

NOTICES OF PROPOSED RULEMAKING

driver permit that is canceled cannot be reissued for one year. Under ORS 807.230(9), if a special student driver permit is canceled the person may not obtain any driving privileges until old enough for a license. These rules are being amended to clarify eligibility for driving privileges when an emergency driver permit or special student driver permit is canceled. DMV is also proposing to amend OAR 735-070-0010 to specify when DMV will reissue a driver permit, driver license or identification card after a cancellation under ORS 809.310(2). Other changes to these rules are being made for clarity.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Rule Caption: Acceptable proof of completion of a motorcycle education course.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.070, 807.080, 807.170, 807.175

Stats. Implemented: ORS 807.070, 807.080, 807.170, 807.175

Proposed Amendments: 735-062-0080, 735-062-0140

Last Date for Comment: 11-21-06

Summary: OAR 735-062-0080 establishes when DMV will waive a drive test. Section (5) specifies that DMV will waive a motorcycle skills test if an applicant for a motorcycle endorsement brings a motorcycle education completion card from a department approved course. The rule currently specifies a course name that is different than the currently approved course. The rule also states that the completion card must have been issued on or after October 3, 1989, yet DMV accepts test scores for a period of two years. DMV proposes to amend OAR 735-062-0080 to state that the person must provide a motorcycle education course completion card dated within two years of application. OAR 735-062-0140 establishes what DMV will accept as proof of completion of a motorcycle rider education course — a requirement for applicants for a motorcycle endorsement who are under 21 years of age. The current rule states that the proof must include the instructor's certification number as assigned by the Motorcycle Safety Foundation (MSF). The current card provided by the department approved course does include an instructor's certification number from the currently approved course, but that number is not assigned by MSF. On January 1, 2004 a department developed curriculum was designated as the only approved course for motorcycle endorsement waiver purposes. It is at that time that OAR 735-062-0140 should have been revised to address the change in approved course. DMV proposes to amend OAR 735-062-0140 to state that the instructor certificate number is assigned by a motorcycle education course approved by the department, to not specify the name of the course in the name of the completion certificate, but to specify that the certificate must include the course name, which will allow the endorsement waiver to apply to any approved course. Other changes are made for clarity.

These amendments were made as a temporary rule effective August 22, 2006 and are now being proposed as permanent.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Modifies Planning Requirements for Access Management; Eliminates Approach Permit Fees; Extends Claim for Relief Remedies.

Date:
11-15-06

Time:
9:30 a.m.*

Location:
ODOT Bldg., Rm. 122
355 Capitol St NE
Salem, OR

Hearing Officer: Commissioner Stuart Foster

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.313, 374.345

Stats. Implemented: ORS 374.305 - 374.350, 374.990

Proposed Amendments: 734-051-0020, 734-051-0035, 734-051-0040, 734-051-0070, 734-051-0115, 734-051-0125, 734-051-0145, 734-051-0155, 734-051-0225, 734-051-0285, 734-051-0295, 734-051-0500, 734-051-0510

Last Date for Comment: 11-15-06, Close of Hearing

Summary: * The Oregon Transportation Commission meeting begins at 9:30 am. An agenda for the meeting will be available at http://www.oregon.gov/ODOT/COMM/otc_main.shtml specifying times for agenda items. However, the Commission may choose to take agenda items out of order, pull, defer or shorten presentation time of agenda item(s) to accommodate unscheduled business needs. Anyone wishing to be present for a particular item should arrive when the meeting begins to avoid missing an item of interest.

The need and purpose for the proposed rule changes are in three categories:

1. Statutory changes enacted by the 2005 Legislative Assembly and signed into law by the Governor.
2. Changes to address Oregon Department of Justice recommendations.
3. Changes to clarify, reorganize, or make grammatical corrections to existing rules.

1. Statutory changes:

ORS 374.313 was amended to authorize a 'claim for relief' against the Department by the owner of an approach road that was allowed by law prior to enactment of statutory permit requirements for approach roads. Such approaches are referred to as 'grandfathered' approaches in OAR 734-051. Proposed changes amend OAR 734-051-0500(1)(a) to extend the 'claim for relief' to include grandfathered approaches in accordance with the statutory amendment.

New administrative fees were enacted by the Department in March 2004. Under ORS 291.055(1), these new fees required ratification by the 2005 Legislative Assembly before adjournment in order to remain in effect. The 2005 Legislative Assembly adjourned without ratifying the new fees. In addition, ORS 374.310 was amended to prohibit the Department from charging a fee for issuance of a permit for construction of an approach road. The proposed changes amend OAR 734-051-0040, 0070, 0115 and 0125 by removing all reference to administrative fees in Table 1. Table 1 is deleted and all remaining tables in Division 51 are renumbered accordingly.

2. Changes to address Department of Justice (DOJ) recommendations:

The DOJ recommended changes to adoption requirements and compliance criteria for Interchange Area Management Plans (IAMP) and Access Management Plans (AMP). Existing rules require ODOT to approve these plans through Intergovernmental Agreements (IGA). The Department of Justice advised ODOT that an AMP or IAMP must be adopted by the ODOT in accordance with OAR 731-015-0065 rather than approved through an IGA. Revisions proposed for OAR 734-051-0155(2) require such adoption. Existing rules also require that the affected local governments adopt an AMP or IAMP into a Transportation System Plan, unless exempted. The Department of Justice recommended that local adoption is not always necessary or advisable, and may raise the risk of delays to project delivery. Proposed changes in OAR 734-051-0040(4), OAR 734-051-0155(4)(k) and (6)(i), and OAR 734-051-0285(7)(l), eliminate the requirement for local governments to adopt an IAMP or AMP. Proposed changes to OAR 734-051-0155(2) require the Department to obtain needed amendments to local comprehensive plans and transportation system plans and local ordinances to ensure the

NOTICES OF PROPOSED RULEMAKING

proposed AMP or IAMP is consistent with the local plans and ordinances.

Existing rules require an IAMP and AMP to comply with a prescribed list of criteria. Proposed changes to OAR 734-051-0155(4) and (6) allow ODOT more discretion to determine which criteria are applicable in a given context and require the AMP or IAMP to document why a criterion does not apply.

Existing rules OAR 734-051-0155(4)(e) and OAR 734-051-0155(6)(h) require an AMP and IAMP, respectively, to be consistent with adopted state and local plans. A proposed change separates the requirement for consistency with state plans from the requirement for consistency with local plans. A new criterion requires an AMP and an IAMP to include an evaluation of local plans and codes and to identify changes needed to achieve consistency with local plans. Proposed revisions to 0285(6) require that development of an Access Management Strategy (AMStrat) be coordinated with the local jurisdiction. These changes reinforce the requirement to work with affected local governments to develop effective policies and standards and ensure shared agreements are binding and enforceable by amending them into local plans, ordinances and development codes to implement an IAMP or AMP.

3. Changes to clarify, reorganize existing rule provision, or make grammatical corrections.

The following are some of the notable changes:

Existing text in OAR 734-0510-0035(2) states that Division 51 rules do not affect existing rights of owners of grandfathered approaches, which is inconsistent with other Division 51 rules. Proposed change to 0035(2) corrects this inconsistency.

Existing rules define two similar plans: Interchange Area Management Plan and Access Management Plan for an Interchange. Proposed changes remove the term 'Access Management Plan for an Interchange' from the rules and define the term 'Access Management Plan' to apply to either a segment of highway or an interchange. The changes eliminate confusion by better distinguishing an Interchange Area Management Plan from an Access Management Plan. Many sections in the Division 51 rules were revised to incorporate this change.

Existing rules contain nearly duplicate lists of criteria for an AMP in OAR 734-051-0155(3) and OAR 734-051-0285(7). Proposed changes delete the list of criteria in OAR 734-051-0285(7) and amend OAR 734-051-0285(4) to reference the criteria for AMPs under OAR 734-051-0155.

Other minor changes are proposed to simplify, clarify, reorganize existing rule provisions or make grammatical corrections.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Employment Department Chapter 471

Rule Caption: Amending OAR 471-040-0010, OAR 471-040-0040 and adopting OAR 471-040-0041.

Date: 11-22-06 **Time:** 9 a.m. **Location:** 875 Union St. NE
Salem, OR 97306

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657.270, 657.875

Stats. Implemented: ORS 657.280, 657.610, 657.875

Proposed Adoptions: 471-040-0041

Proposed Amendments: 471-040-0010, 471-040-0040

Last Date for Comment: 11-22-06, 5 p.m.

Summary: Amendments for OAR 471-040-0010 adds language for limited English proficient people in a late request for hearing, adds language for OAH to determine good cause on the late request for

hearing and adds language for OAH to schedule a hearing if it is determined that testimony is required.

Amendments to OAR 471-040-0040 redefines "good cause" and adds language that a party requesting reopening can set forth the reasons for missing the hearing in a written statement.

Adoption of OAR 471-040-0041 sets out language when and how to submit a late request for reopen.

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

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Rule Caption: Implementation of ORS 670.600 related to independent contractors.

Date: 11-15-06 **Time:** 10 a.m. **Location:** DOR Fishbowl Conf. Rm.
955 Center St. NE
Salem, OR 97311

Hearing Officer: Staff

Stat. Auth.: ORS 305.100, 670.600, 675 Generally

Stats. Implemented: ORS 670.600

Proposed Adoptions: 471-031-0181

Last Date for Comment: 11-15-06, 5 p.m.

Summary: OAR 471-031-0181 is being adopted to provide guidance to agencies referenced in ORS 670.600 as to how the statute will be implemented, to clarify the meaning of terms used in ORS 670.600, and to provide guidance to interested parties as to how the agencies referenced in ORS 67.6-00 will apply the provisions of that statute.

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

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Employment Department, Child Care Division Chapter 414

Rule Caption: Amending OAR 414-350-0050, 0100, 0110, 0120 correcting clerical errors and adding Assistant II language to 0110.

Date: 11-20-06 **Time:** 2 p.m. **Location:** 875 Union St NE
Salem, OR 97311

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 675A.260

Stats. Implemented: ORS 657A.260, 657A.270, 657A.280, 657A.290, 657A.300, 657A.310, 657A.390, 657A.400

Proposed Amendments: 414-350-0050, 414-350-0100, 414-350-0110, 414-350-0120

Last Date for Comment: 11-20-06, 5 p.m.

Summary: OAR 414-350-0050 adding "if applicable" to (1)(E)

OAR 414-350-0100 changing the word "level" to "step" (2)(c)

OAR 414-350-0110 adding "Assistant II" language that was dropped inadvertently

OAR 414-350-0120 adding Child Care website address for reviewing tables referred to in this rule

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

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Landscape Contractors Board Chapter 808

Rule Caption: Implementation of ORS 670.600 related to Independent Contractors.

NOTICES OF PROPOSED RULEMAKING

Date: 11-15-06
Time: 10 a.m.
Location: Fishbowl Conf. Rm.
Dept of Revenue
955 Center Street NE
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 670.600, 671.670
Stats. Implemented: ORS 670.600
Proposed Amendments: 808-003-0260
Last Date for Comment: 11-15-06, 5 p.m.

Summary: 808-003-0260 is amended to provide guidance to agencies referenced in ORS 670.600 as to how the statute will be implemented; to clarify the meaning of terms used in ORS 670.600; and to provide guidance to interested persons as to how the agencies referenced in ORS 670.600 will apply the provisions of that statute.

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

Oregon Department of Education Chapter 581

Rule Caption: Regulations of Private Career Schools; need procedural clarification.

Date: 11-28-06
Time: 1 p.m.
Location: Oregon Dept. of Education
Basement Rm. C
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS ch. 345
Stats. Implemented: 345.010, 345.015, 345.020, 345.030, 345.040, 345.060, 345.070, 345.080, 345.110, 345.113, 345.115, 345.117, 345.120, 345.210, 345.240, 345.320, 345.325, 345.330, 345.340, 345.400, 345.430,

Proposed Adoptions: 581-045-0038
Proposed Amendments: 581-045-0001, 581-045-0018, 581-045-0060, 581-045-0064, 581-045-0006, 581-045-0019, 581-045-0061, 581-045-0200, 581-045-0012, 581-045-0023, 581-045-0062, 581-045-0210, 581-045-0014, 581-045-0032

Proposed Renumberings: 581-045-0028 to 581-045-0039
Proposed Ren. & Amends: 581-045-0026 to 581-045-0036, 581-045-0027 to 581-045-0037
Last Date for Comment: 11-28-06, 5 p.m.

Summary: As ODE regulates Private Career Schools, more prescriptive rulemaking is required at various junctures. The current OAR changes are needed, in part, due to misalignment with another state agency and/or Federal guidelines.

Rules Coordinator: Paula Merritt
Address: 255 Capitol St. N.E., Salem, OR 97310
Telephone: (503) 947-5746

Rule Caption: Rules address requirements related to use of physical restraint/seclusion with students in public schools.

Date: 11-28-06
Time: 1 p.m.
Location: Oregon Dept of Education
Basement Rm. C
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.250
Stats. Implemented: ORS 339.250
Proposed Adoptions: 581-021-0062
Proposed Amendments: 81-021-0061
Last Date for Comment: 11-28-06, 5 p.m.

Summary: Rules require public schools to develop policies and procedures on the use of physical restraint and seclusion in schools. Policies and procedures must meet specified criteria. Schools must develop behavior support plans with specific content requirements and with parent participation. The rules address staff training, incident documentation, protections, debriefing, and notice to parents.

Rules Coordinator: Paula Merritt
Address: 255 Capitol St. N.E., Salem, OR 97310
Telephone: (503) 947-5746

Rule Caption: Adoption of instructional materials list for English/Language arts and English as a second language.

Date: 11-28-06
Time: 1 p.m.
Location: Oregon Dept of Education
Basement Rm. C
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 337.050
Stats. Implemented: ORS 337.050
Proposed Amendments: 581-011-0077
Last Date for Comment: 11-28-06, 1 p.m.

Summary: Adoption of instructional materials as specified in ORS 337.050 is done through the administrative rule making process. The adoption of OAR 581-011-0077 will add to the reference list programs in English/Language Arts and English as a second language in the following categories:

- Category 1 - English/Language Arts, Grades K-5/6
- Category 2 - English/Language Arts, Grades 6-8
- Category 3 - English/Language Arts, Grades 9-12
- Category 4 - English as a Second Language, Grades K-5/6
- Category 5 - English as a Second Language, Grades 6-8
- Category 6 - English as a Second Language, Grades 9-12

Rules Coordinator: Paula Merritt
Address: 255 Capitol St. N.E., Salem, OR 97310
Telephone: (503) 947-5746

Rule Caption: Amendment of Report Card Rule.

Date: 11-28-06
Time: 1 p.m.
Location: Oregon Dept. of Education
Basement Rm. C
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051, General Authority of Board
Other Auth.: Federal Law, NCLB 111(h)(2)
Stats. Implemented: ORS 329.105

Proposed Amendments: 581-022-1060
Last Date for Comment: 11-28-06, 5 p.m.

Summary: States and LEAs must issue report cards annually. While States and LEAs have the flexibility to determine the exact time during the year when they will issue report cards, the best practice would be to issue report cards as early as possible, so that schools have critical information for improving instruction and parents have critical information to make decisions regarding public school choice and supplemental educational services options.

The current rule only requires schools and districts disseminate reports cards by March 31 following report card issue, two months after the statutory publication date of January 30. Now report cards are produced prior to October 15th.

Amending this administrative rule will ensure best practice.

Rules Coordinator: Paula Merritt
Address: 255 Capitol St. N.E., Salem, OR 97310
Telephone: (503) 947-5746

Rule Caption: Adoption of AYP Substantive Appeals Administrative Rule

Date: 11-28-06
Time: 1 p.m.
Location: Oregon Dept. of Education
Basement Rm. C
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.051
Other Auth.: NCLB Section 1116
Stats. Implemented: ORS 329.051
Proposed Adoptions: 581-022-1065
Last Date for Comment: 11-28-06, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: Currently, a committee of ODE staff consider substantive appeals and evidence filed by districts and recommends final AYP determinations of schools and districts based on the results of the appeals to the Assistant Superintendent. These recommendations would more appropriately be made with LEA staff serving on the appeals committee.

Adoption of this rule will formalize the process for substantive appeals to include LEA staff.

Rules Coordinator: Paula Merritt
Address: 255 Capitol St. N.E., Salem, OR 97310
Telephone: (503) 947-5746

.....
Oregon Health Licensing Agency
Chapter 331

Rule Caption: Align continuing education requirements with the Board of Certification for an Athletic Trainer (BOC).

Stat. Auth.: ORS 688.724

Other Auth.: ORS 676.605, 676.607, 676.615

Stats. Implemented: ORS 688.724

Proposed Amendments: 331-105-0020, 331-105-0030, 331-110-0005, 331-110-0010, 331-110-0055, 331-120-0000, 331-120-0020, 331-125-0010, 331-135-0000

Last Date for Comment: 11-21-06

Summary: Conform the administrative rules to correspond with name change from National Athletic Trainer Association Board of Certification (NATABOC) to *Board of Certification for an Athletic Trainer (BOC)*, and define BOC which is the national organization that provides a certification program for the entry-level athletic trainer and establishes requirements for maintaining status as a certified athletic trainer.

Amend provisions for Oregon Law 1999, Chapter 736 to Oregon Revised Statutes Chapter 688.701 to 688.734 due to the 2001 Oregon State Legislature removing the repeal and permanently establishing the Board of Athletic Trainers.

Adjust administrative rules to meet the BOC's January 1, 2006, reduction of continuing education hours required from 80 to 75. The BOC lowered the allotted number for continuing education hours recognized for Cardio Pulmonary Resuscitation (CPR).

Change central agency name from Health Licensing Office to Oregon Health Licensing Agency as mandated by the 2005 Legislature.

Copies of the full text of proposed changes can be found on the Board's Web site at: http://oregon.gov/OHLA/AT/ATlaws_rules.shtml or by calling Samantha Patnode, Board Liaison at the Oregon Health Licensing Agency 503-378-8667, extension 4323.

Rules Coordinator: Patricia C. Allbritton
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287
Telephone: (503) 378-8667, ext. 4322

.....
Oregon Liquor Control Commission
Chapter 845

Rule Caption: Amend and adopt rules allowing initial Alcohol Server Education course to be given online.

Date: 11-21-06 **Time:** 10 a.m.–12 p.m. **Location:** 9079 SE McLoughlin Blvd, Portland, OR 97222

Hearing Officer: Katie Hilton
Stat. Auth.: ORS 471, including 471.030, 730(1) & (5)

Stats. Implemented: ORS 471.542, 471.547

Proposed Adoptions: 845-016-0016, 845-016-0036

Proposed Amendments: 845-016-0005, 845-016-0010, 845-016-0015, 845-016-0020, 845-016-0030, 845-016-0035, 845-016-0045, 845-016-0075

Last Date for Comment: 12-5-06

Summary: The Commission is exploring whether or not to allow the initial Alcohol Server Education (ASE) course to be given online. All alcohol servers and on-premises licensees must take an ASE course before licensure, and must renew/retake the training every five years.

Currently the initial course is presented only in a face-to-face classroom setting; the ASE renewal course is presented in both face-to-face and online formats. This package of ten rules would, should the Commission so choose, allow the initial course to be given online.

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

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Rule Caption: Repeal rule regarding pilot liquor stores within grocery stores.

Stat. Auth.: ORS 471.750(5)

Stats. Implemented: ORS 471.750

Proposed Repeals: 845-015-0199

Last Date for Comment: 12-1-06

Summary: This rule describes a pilot project wherein the Commission placed, for up to two years each, new liquor stores within existing grocery stores. The purpose of the pilot project was to place these new liquor stores and study their viability and impact on public safety and public convenience. We adopted the rule to create the pilot project in 2004. The pilot project was completed in early 2006. Since the project is completed and was a success, the Commission does not intend to continue the project, and the rule is no longer needed.

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

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Oregon Patient Safety Commission
Chapter 325

Rule Caption: Establishes the Oregon Patient Safety Reporting Program for pharmacies.

Date: 12-4-06 **Time:** 2 p.m. **Location:** 800 NE Oregon St., Rm. 130, Portland, OR

Hearing Officer: Shannon O'Fallon
Stat. Auth.: Ch. 686 OL 2003 (Sec. 4, 6, 9)

Other Auth.: ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820 - 442.835

Proposed Adoptions: 325-015-0001 – 325-015-0055

Last Date for Comment: 12-4-06

Summary: These rules taken together, establish the Oregon Patient Safety Reporting Program for all pharmacies licensed under ORS chapter 689. These rules also establish a pharmacy fee structure to partially fund the work of the Patient Safety Commission.

Rules Coordinator: James C. Dameron
Address: Oregon Patient Safety Commission, 1020 SW Taylor St., Suite 375, OR 97205
Telephone: (503) 224-9226

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Clarify earning crediting of police and fire units and member lump sum payments.

Date: 11-28-06 **Time:** 2 p.m. **Location:** Boardroom, PERS Headquarters, 11410 SW 68th Parkway, Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Proposed Amendments: 459-007-0025, 459-007-0300

Last Date for Comment: 12-22-06

Summary: OAR 459-007-0025 describes how earnings are credited to member lump sum payments. The proposed amendment clarifies the definition of "member lump sum payment" and modifies

NOTICES OF PROPOSED RULEMAKING

language in section (2) that restricts certain lump sum payments from receiving earnings.

OAR 459-007-0300 describes how earnings are credited to police and fire unit accounts allowed under ORS 238.440. The proposed amendments correct a citation in section (4)(b) and clarify the crediting of earnings to a lump sum unit purchase in section (8). The modifications incorporate the same crediting method currently used in OAR 459-007-0025 to make the earnings crediting process the same for all covered lump sum payments.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Rule Caption: Amend Division 5 Power of Attorney rules.

Date:	Time:	Location:
11-28-06	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Parkway Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Proposed Adoptions: 459-005-0100, 459-005-0110, 459-005-0120, 459-005-0130, 459-005-0140, 459-005-0150

Last Date for Comment: 12-22-06

Summary: OAR 459-005-0100 starts a series of rules regarding powers of attorney and how a member's attorney-in-fact qualifies and continues to conduct business on behalf of a PERS member. In the context, "member" is defined broadly to also include alternate payees and beneficiaries. Generally, the proposed modifications expand the rules to explicitly cover other types of fiduciaries appointed to act on behalf of members, such as guardians and conservators. Some changes would also eliminate prior provisions of the rules to streamline these transactions, simplifying the process.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Marine Board Chapter 250

Rule Caption: Consideration of rules for boating on the Illinois River in Curry County and the Siuslaw River in Lane County.

Date:	Time:	Location:
11-13-06	7 p.m.	Jot's Resort 74360 Wetterburn Loop Gold Beach, OR
11-14-06	7 p.m.	Port of Siuslaw 1499 Bay Street Florence, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110, 830.175

Stats. Implemented: ORS 830.110, 830.175

Proposed Amendments: 250-020-0082, 250-020-0221

Last Date for Comment: 11-30-06

Summary: The Marine Board considered petitions for boating rules on the Illinois River in Curry County and the Siuslaw River in Lane County. At the September 19 meeting in Salem, Board members directed Staff to initiate rulemaking action and schedule hearings to gather comments on additional boating rules for the Illinois River and the Siuslaw River. The Board will consider comments at the next regular meeting scheduled for December 14 in Salem, Oregon.

Rules Coordinator: Jill E. Andrick

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

Rule Caption: Periodic Rule Update for rules governing the Agency's Mandatory Boating Education Program.

Stat. Auth.: ORS 830.082, 830.084, 830.086, 830.094, 830.110

Stats. Implemented: ORS 830.082, 830.084, 830.086, 830.094, 830.110

Proposed Amendments: Rules in 250-018

Last Date for Comment: 11-30-06

Summary: At the September meeting of the Marine Board staff was directed to initiation of a formal rulemaking to seek public comment on proposed housekeeping revisions to OAR Chapter 250, Division 18 governing the agency's Mandatory Boating Safety Education Program and including specific language for Internet Course providers. Proposed amendments will be distributed to the mailing list for comments.

Rules Coordinator: Jill E. Andrick

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

Oregon University System Chapter 580

Rule Caption: Implements guidelines permitting criminal records checks for prospective OUS employees, contractors, volunteers and vendors.

Date:	Time:	Location:
11-15-06	10 a.m.	1431 Johnson Ln. Susan Campbell Hall 3rd Flr. Conference Rm. Eugene, OR

Hearing Officer: Ginger Shaw

Stat. Auth.: ORS 181.354, 352.012

Stats. Implemented: ORS 181.354

Proposed Adoptions: 580-023-0005, 580-023-0010, 580-023-0015, 580-023-0020, 580-023-0025, 580-023-0030, 580-023-0035, 580-023-0040, 580-023-0045, 580-023-0050, 580-023-0055, 580-023-0060, 580-023-0065

Last Date for Comment: 11-22-06

Summary: Authorizes the Chancellor's Office and OUS institutions to conduct criminal records checks on subject individuals who seek to provide services as an employee, contractor, vendor or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

Rules Coordinator: Marcia M. Stuart

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

Telephone: (541) 346-5749

Rule Caption: To establish tuition and fees for the 2007 summer session, including room and board rates.

Date:	Time:	Location:
12-5-06	10-11 a.m.	Rm. B214 Kerr Admin. Bldg. Oregon State University Corvallis, OR

Hearing Officer: Melanie Bennett

Stat. Auth.: ORS 351

Stats. Implemented:

Proposed Amendments: 580-040-0035

Last Date for Comment: 12-15-06

Summary: To establish Tuition and Fee rates for Summer Session 2007, including room and board rates.

Rules Coordinator: Marcia M. Stuart

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

Telephone: (541) 346-5749

NOTICES OF PROPOSED RULEMAKING

Oregon Watershed Enhancement Board Chapter 695

Rule Caption: Allows grant funding and establishes grant criteria during a declared salmon season state of emergency.

Date:	Time:	Location:
11-30-06	1 p.m.	Library Seminar Rm. Hatfield Marine Science Center 2030 SE Marine Science Dr. Newport, OR

Hearing Officer: Staff

Stat. Auth.: ORS 541.396

Other Auth.: Governor's Executive Order No. 06-06 and 06-07

Stats. Implemented: ORS 541.351 - 541.401

Proposed Adoptions: Rules in 695-007

Last Date for Comment: 12-6-06, 5 p.m.

Summary: The new rules in OAR 695-007 establish grant application and award criteria for restoration, inventory and data collection, outreach, and project development grants that support priority fish habitat enhancement and that are able to create work opportunities for fishers displaced by the 2006 reduction in salmon stocks. These rules are in response to the Governor's Executive Orders (No. 06-06 and 06-07) declaring a salmon season state of emergency. On July 20, 2006, the OWEB Board adopted temporary rules to provide grant process and criteria for exercising a preference for grants that hire displaced fishers to perform restoration and other related work. The adopted temporary rules expire on January 21, 2007 and these proposed permanent rules will continue to allow OWEB to exercise a grant preference for restoration and related projects that hire displaced fishers during the declared salmon season state of emergency. Public comment will be accepted on the proposed rules from November 15, 2006 through 5 p.m. on December 6, 2006. Copies of the rules will be available by November 15, 2006 on OWEB's website (www.oregon.gov/OWEB).

Rules Coordinator: Bonnie Ashford

Address: Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301

Telephone: (503) 986-0181

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**Parks and Recreation Department
Chapter 736**

Rule Caption: ATV Rule Changes as Required by Senate Bill 68.

Date:	Time:	Location:
11-15-06	6-8 p.m.	Florence Events Center 715 Quince Street Florence, OR 97439

Hearing Officer: Wayne Rawlins

Stat. Auth.: ORS 183, 390.124

Stats. Implemented: ORS 390.124(1)

Proposed Adoptions: Rules in 736-004

Proposed Amendments: Rules in 736-004

Proposed Repeals: Rules in 736-004

Last Date for Comment: 11-24-06

Summary: (1) The proposed rules will codify procedures necessary to implement Senate Bill 68 (SB68) which prohibits the operation of Class 1 All-Terrain Vehicles (also called ATVs or quads) on the ocean shore unless issued a permit from OPRD. SB68 states that OPRD may issue permits, without charge, for individuals with disabilities, emergency aid workers, biologists, wildlife monitors or other natural resources workers. (2) The ATV Account Allocation Committee recommends an administrative rule change that will allow the ATV Grant Program to provide grants of up to 100% of the value of real property acquisition projects for ATV riding areas. Current rules provide for grant awards of up to 80% of the project costs, leaving a 20% funding requirement for grantees to cover. (3) Current OPRD rules that relate to the ATV Program (Chapter 736, Division 4) are in need of some "clean-up" work to make them easier to read and use.

Rules Coordinator: Pamela Berger

Address: Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301

Telephone: (503) 986-0730

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Rule Caption: Revise Park Area rules regarding prohibited activities and fee collection.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.121 & 390.124

Proposed Amendments: 736-010-0030, 736-010-0040

Last Date for Comment: 11-30-06

Summary: Revise the General Park Area Rules to prohibit interfering with a park employee in the performance of their duties; prohibit entering or occupying a closed park facility; prohibit kayaking over water falls when the park manager has determined the activity to be a danger to participants; prohibit diving from rocks into a lake or stream or other body of water when the park manager has determined the activity to be a danger to participants; and require park visitors to pay rates established in OAR 736 Division 15 for facilities and services used at a park.

In April 2005 a major revision was made to Division 10 (General Park Area Rules) and Division 15 (Rates) of Chapter 736 of the Oregon Administrative Rules. All rules resulting in enforcement actions were collected in Division 10, while all rules establishing fees were collected in Division 15. After two seasons of enforcement, field staff has provided comments on the revised Division 10 rules and the need for any additional rules. The rules listed above were requested during that review process.

Rules Coordinator: Pamela Berger

Address: Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301

Telephone: (503) 986-0719

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Rule Caption: Revise the list of parks where the Day Use fee applies.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.121, 390.124

Proposed Amendments: 736-015-0030

Last Date for Comment: 11-30-06

Summary: Revise the list of parks where Day Use Fees apply, dropping Fogarty Creek and adding L. L. "Stub" Stewart State Park. Correct the name of Fall Creek Recreation Area (Winberry), which is currently listed as Fall Creek Recreation Site.

Rules Coordinator: Pamela Berger

Address: Parks and Recreation Department, 725 Summer St. NE, Ste. C, Salem, OR 97301

Telephone: (503) 986-0719

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Public Utility Commission Chapter 860

Rule Caption: In the Matter of a Rulemaking to Adopt and Amend Division 011 Rules.

Date:	Time:	Location:
11-28-06	9:30 a.m.	Public Utility Commission Main Hearing Rm., 1st Flr. 550 Capitol Street NE Salem, OR

Hearing Officer: Michael Grant

Stat. Auth.: ORS Ch 183, 192, 756, 757, 759

Stats. Implemented: ORS 192.420 - 192.505, 756.040, 756.060, 756.500 - 756.575

Proposed Adoptions: 860-011-0090, 860-011-0100, 860-011-0110

Proposed Amendments: 860-011-0080

Last Date for Comment: 11-28-06, 5 p.m.

Summary: Commission rules do not provide any process for the filing and processing of requests made under Oregon's Public Records Law. These proposed rules establish the requirements for making such requests, as well as the charges the Commission will impose to recover the costs incurred in responding to a request. The rules also

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clarify how the Commission will process public records requests seeking information that has been designated as confidential and exempt from disclosure.

The proposed rules also clarify the fees the Commission will charge to recover costs for annual subscriptions to agency orders, notices, rules and other publications, as well as fees and penalties for returned checks, untimely payment of fees required by statute, and late-filed statements and 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

Racing Commission Chapter 462

Rule Caption: Horse medication and miscellaneous provisions.

Date:	Time:	Location:
11-16-06	10 a.m.	Rm. 140 800 NE Oregon St. Portland, OR

Hearing Officer: Jeff Gilmour, Chair

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Proposed Adoptions: 462-160-0100, 462-160-0110, 462-160-0120, 462-160-0130, 462-160-0140, 462-160-0150

Proposed Repeals: 462-160-0010, 462-160-0020, 462-160-0030

Last Date for Comment: 11-16-06, Close of Hearing

Summary: Rules regarding veterinary practices, prohibited practices, medications and prohibited substances, testing procedures and trainer responsibility regarding use of medication in racing animals.

Rules Coordinator: Carol N. Morgan

Address: 800 NE Oregon Street, Suite 310, Portland, OR 97232

Telephone: (971) 673-0208

Secretary of State, Archives Division Chapter 166

Rule Caption: Revision to County and Special District Records Retention Schedule.

Date:	Time:	Location:
11-20-06	10 a.m.	State Archives 800 Summer St. NE Salem, OR 97310

Hearing Officer: Mary Beth Herkert

Stat. Auth.: ORS 192 & 357

Other Auth.: Title 42 CFR

Stats. Implemented: ORS 192 & 357

Proposed Amendments: 166-150-0065

Last Date for Comment: 11-20-06

Summary: Amends OAR 166-150-0065 to update retention periods due to changes in federal code.

Rules Coordinator: Julie Yamaka

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

Telephone: (503) 378-5199

Secretary of State, Elections Division Chapter 165

Rule Caption: Method of Calculating Total Eligible Voters as Required by Article XI, Section 11(8) Oregon Constitution.

Stat. Auth.: ORS 246.120, 246.150, 254.465, 254.470, Or. Const. Article XI, Sec. 11(8)

Stats. Implemented: Or. Const. Article XI, Sec. 11(8)

Proposed Amendments: 165-007-0130

Last Date for Comment: 11-24-06

Summary: The rule governs the calculation of eligible voters for purposes of determining whether the election has sufficient turnout for an election conducted under Article XI, section 11(8), of the Oregon Constitution. This rule is proposed for amendment to clarify language and update Appendix A.

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

ADMINISTRATIVE RULES

Board of Naturopathic Examiners Chapter 850

Rule Caption: Clarifies to Professional Development Providers the process for CE approval.

Adm. Order No.: BNE 1-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Adopted: 850-040-0240

Subject: Gives directions in what needs to be submitted for CE consideration when requesting professional development provider (PDP) status.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-040-0240

Continuing Education Program Approval: Professional Development Providers (PDP)

A Professional Development Provider (PDP) is any organization or individual offering CE to naturopathic physicians. PDP approval requests must consist of educational activities that serve to maintain, develop or increase the knowledge, skills and professional performance and relationships of naturopathic physicians in services for patients, the public, the profession. CE must offer education and skills recognized and accepted by the profession in areas pertaining to research, basic medical sciences, clinical practice, or public health care.

(1) Professional Development Provider (PDP) approval requests must be received by the Board at least 8 weeks before the event offering:

(a) the program must foster the continuing competency and skills in the practice of naturopathic medicine, and

(b) provide education in new, review, experimental research or specialized education and training specific to the practice of naturopathic medicine.

(2) CE credit hours will be determined in quarter hour increments.

(3) PDP approval requests must be submitted on an application form provided by the Board and contain the following:

(a) Title of the program;

(b) Syllabus or course outline for all offerings in the program;

(A) Pharmacy hours must be delineated in each request with supporting documentation and meet the standards set in 850-040-0210(3), and

(B) Natural Childbirth hours must be delineated with supporting documentation, and

(C) Ethics hours must be delineated with supporting documentation;

(c) Date(s);

(d) Start and end time for individual presentations;

(e) Total hours for entire program;

(e) Location(s) of presentation;

(f) A copy of the curriculum vitae for each presenter who must be a naturopathic physician, other licensed physician, or other professionally recognized health care educator with expertise in the subject matter;

(g) A signed letter of agreement provided by the Board, for each presenter stating the intent of the individual program, and disclosing any conflict of interests. Presenter must disclose at the beginning of each presentation any fiduciary or other conflict of interests, and

(h) A copy of the certificate of attendance or completion that is to be provided to attendees.

(4) PDP must maintain attendance records for all approved presentations for at least five years from the date of presentation.

(5) The PDP approval request must be received before any publication indicating approval or pending approval by this Board. In the event that "CE Approval", "Pending Board Approval" or other indications are published prior to the receipt of a complete CE application, credit will be denied.

(6) Any changes to an already approved program, including but not limited to, presenter, content, and length of program or sponsorship must be submitted for approval by the Board within two weeks of the changes. Any submission received after this time will be retroactively denied approval.

(7) The Board reserves the right to decline for consideration programs that are not submitted with adequate documentation.

(8) Approved PDP programs are valid for two years.

(9) It is the PDP responsibility to make a new application on a biennial basis from the date of original approval.

(10) CE approval submissions will not be considered for programs that:

(a) Misrepresent or mislead the end result or skill obtained by the education or training offered;

(b) Are proprietary in nature, promoting exclusive services, companies or products;

(c) Are community service oriented in nature;

(d) Are nonprofessional health related programs presented by a lay person(s);

(e) Are nonprofessional health related programs directed to the lay public;

(f) Are not relevant to the scope of practice of naturopathic medicine.

(g) Pertain to personal-growth/personal-help;

(h) Pertain to practice building; or

(i) Pertain to medical or insurance billing;

(11) A PDP program that has been submitted to the Board with inaccurate or misleading information will retroactively lose CE approval for the program, even if the program has already occurred.

(12) At its discretion, the Board may appoint a member of the Board or other designee to audit, by attendance, any program in order to verify appropriateness for approval of CE hours.

(13) The Board may require a taped copy of the entire presentation be provided for review after the initial presentation for verification of content.

(14) If a program has been denied approval, the provider may submit a request for review by the Board with additional substantiating documentation.

(15) If a PDP fails to follow the provisions of this rule, the Board may revoke, deny or limit the approval.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.102

Hist.: BNE 1-2006, f. & cert. ef. 10-13-06

Rule Caption: Clarifies to Licensees the process for CE approval.

Adm. Order No.: BNE 2-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Adopted: 850-040-0230

Subject: Give licensees directions in what needs to be submitted for CE consideration.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-040-0230

Continuing Education Approval: Licensee Submissions

Continuing education should support, develop, and increase the knowledge, skills, and professionalism of naturopathic physicians.

(1) CE approval requests must clearly foster the competency and skills of naturopathic physicians and

(a) Consist of new or review material on recognized naturopathic practices; or

(b) Research in the advancement of naturopathic medicine; or

(c) Education in areas of specialty practice when recognized by the Board; and

(d) Should be received by the Board at least four weeks prior to the event.

(2) CE approval requests received more than 30 days after the presentation may not be considered by the Board for credit.

(3) CE credit is determined in quarter hour increments.

(4) CE approval requests must be complete and submitted on an application form provided by the Board and contain the following:

(a) Title of the program;

(b) Syllabus or course outline for all offerings in the program;

(A) Pharmacy hours must be clearly delineated in each request with supporting documentation and meet the standards set in 850-040-0210(3),

(B) Hours in Obstetrics must be clearly delineated with supporting documentation, and

(C) Ethics education hours must be clearly delineated with supporting documentation;

(c) Date(s);

(d) Start and end time for individual presentations;

(e) Include the total hours for the entire program;

(f) Location(s) of presentation; and

(g) A copy of the curriculum vitae for each presenter, who must be a naturopathic physician, other licensed physician or other professionally acknowledged health care educator with expertise in the subject matter.

(5) The Board reserves the right to decline for consideration programs that are not submitted with adequate documentation.

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- (6) CE approval requests will not be considered for programs that:
 - (a) Are proprietary in nature, promoting exclusive services, companies or products;
 - (b) Misrepresent or mislead the end result or skill obtained by the education or training offered;
 - (c) Are community service seminars and activities;
 - (d) Are self-growth/self-help activities;
 - (e) Are practice building activities;
 - (f) Are medical or insurance billing presentations;
 - (g) Are nonprofessional health related programs presented by a lay person(s);
 - (h) Are nonprofessional health related programs directed to the lay public;
 - (i) Are not relevant to the scope of practice of naturopathic medicine.
- (7) A CE program request that has been submitted to the Board with inaccurate or misleading information will lose CE approval for the program even if it has already been presented.
- (8) If a program has been denied approval, the licensee may submit a request for review by the Board with additional substantiating documentation.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.102
Hist.: BNE 1-2006, f. & cert. ef. 10-13-06

Rule Caption: Clarifies the continuing education requirements.

Adm. Order No.: BNE 3-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Amended: 850-040-0210

Subject: Clarification of continuing education requirements; no new requirements, just reorganization and clarification of current rule.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-040-0210

Continuing Education

(1) Continuing education (CE) is required as part of the naturopathic physician's license renewal per OAR 850-030-0195. The purpose of CE is to offer education that promotes competency and skills necessary to assure the citizens of Oregon the highest standard of naturopathic medical care.

(a) Each licensee with an active license must obtain at least 25 hours in CE every year, with at least five of these hours in pharmacy;

(b) Each licensee holding an inactive license must obtain at least 10 hours of CE every year;

(c) A natural childbirth certificate requires 15 hours in obstetrics each year per OAR 850-035-0230;

(d) New licensees are not required to obtain CE in the initial year of licensure.

(e) Effective January 1, 2006, licensees with an active license must obtain at least 3 hours of medical ethics education every three years, which may be included as part of the annual CE requirement.

(f) Licensee must obtain one-time mandatory pain management education as required by ORS 409.500 through 409.570.

(A) If initial licensee was issued prior to January 1, 2006, licensee must obtain and show verification of this education with the renewal no later than December 2007;

(B) If initial license was issued after January 1, 2006 licensee must obtain and show verification of this education within 24 months of initial licensure;

(C) Credit for this required education will be given in the year education is obtained.

(2) No more than 15 hours of credit will be accepted in one subject area. CE obtained in December not used in the year the hours were obtained, may be used in the following year for CE credit.

(a) CE credit will be rounded to the nearest quarter hour.

(b) At least ten (10) hours of CE must be obtained through participation by attendance at approved seminars, conferences, grand rounds or other Board approved in-person activities.

(3) Licensees holding an active license must obtain at least five hours of Board approved CE annually in pharmacology. These hours may be part of the 25 hours of CE required for renewal. The following are examples of previously approved pharmacy programs:

(a) Substances listed in OAR 850-060-0225 and their application in patient care;

(b) Biopharmacology;

(c) Non-formulary substances or drugs relevant to patient care;

(d) Drug-drug, drug-herb, drug-nutrient interactions or contraindications;

(e) Research of formulary substances and drugs in conjunction with naturopathic medical care.

(4) Any licensee using intramuscular (IM) or subcutaneous (SC) or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, SC, or IV) must have qualifying education per OAR 850-060-0212.

(5) To be considered for approval, programs of continuing education for licensees must:

(a) Be presented by naturopathic physicians, other physicians or other professionally acknowledged health care educators with expertise in the subject matter;

(b) Foster the competency and skills of the naturopathic physician;

(c) Consist of education covering review, new, experimental, research or specialty subjects relevant to the practice of naturopathic medicine;

(d) Exclude the selling or promotion of proprietary products or practice building;

(e) Not misrepresent or mislead the end result/skill to be gained by the education or training offered.

(6) Licensees may receive credit for the qualifying verification. Licensees are encouraged to request pre-approval for any program not clearly meeting the criteria in this rule.

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals, or institutions; programs accredited by the Accreditation Council for Continuing Medical Education (ACCME); the American Council on Pharmaceutical Education (ACPE); or programs approved by the Board. A verification of attendance for all CE courses or activities showing hours claimed or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars: Verification of video or audio taped credit for previously Board approved presentations must include an original outline of the presentation as well as the name and date of the presentation and the date of review, length of taped course or seminar and sponsor information;

(c) Literature Review: credit for literature review is determined by the length of the article(s) and the complexity of the topic(s), not to exceed two hours of credit per submission. Verification must include concise information including an original outline on the literature reviewed which must be from a recognized peer review publication with the date of publication and author.

(d) Internet education: Internet education is accepted for credit in accordance with the standards of the ACCME or ACPE including verification of completion;

(e) Authoring: Credit may be given for being an author of an article related to naturopathic medicine in a professional publication or book. Credit is determined by the length of the article and the complexity of its content. Credit for such activities will be credited in the year the project is completed, with no more than 15 hours credited for each original publication. Verification must include a copy of the article or book.

(f) CPR: CPR courses in the year taken, with proof of current certification;

(g) Preceptorship: Preceptorship credit must be offered by qualifying persons per (5)(a) of this rule. Verification of preceptor hours must include the date and place, an outline of the information studied, and a signed acknowledgement from the preceptor;

(h) Protocol Writing: Credit may be given for participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. Verification must include a written record of hours of development and research, the names and addresses of the institutions involved, the name of supervisors and their signatures verifying qualified hours;

(i) Research: Credit may be given for participation in research related to the advancement of naturopathic medicine and should be directed by a Board recognized educational or medical institution or organization, or self-directed. Verification must include the type of research being conducted, purpose and summary of research, dates of participation and disclosure of any fiduciary relationships;

(j) Teaching/Presentation: Credit may be given for actual presentation hours for an initial course or initial seminar offering and up to three hours for preparation for each hour of the presentation, when subject is specific to professional level health education;

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(k) Graduate Level Education: Credit may be given for participation in an accredited graduate level health related program relevant to the practice of naturopathic medicine;

(l) Other courses or activities specifically authorized by the Board.

(7) Licensees may receive limited credit for the following:

(a) Up to a total of 10 hours of credit may be granted for CE obtained by participation on the Naturopathic Physicians Licensing Examinations (NPLEX) committee in the development and writing of the NPLEX examinations.

(b) Up to three hours of credit may be obtained by activities specific to patient charting and record keeping.

(8) Exception to the CE requirements in OAR 850-040-0210 is allowed for:

(a) Licensee maintaining an active license in Oregon but not living and practicing in Oregon may obtain up to 20 hours of CE by nonattendance activities that satisfy the program qualifications in OAR 850-040-0210;

(b) A full-time residency, which is CNME or Board approved, requiring at least 6 months of participation in the calendar year;

(c) A fellowship with a Board recognized professional organization, requiring at least six months of active participation in the calendar year;

(d) Licensees who have obtained prior Board approval to obtain all 25 hours of CE, including 5 in pharmacy, by approved audio and video presentations or approved internet education. Documentation supporting this exception must be approved by the Board prior to obtaining all CE by audio and video tapes or internet education.

(9) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-040-0210(6)(j);

(b) Community service seminars and activities;

(c) Self-growth/self-help activities;

(d) Practice building activities;

(e) Medical/insurance billing presentations;

(f) Nonprofessional level health related programs presented by a lay person;

(g) Nonprofessional level health related programs presented to the lay public;

(h) Proprietary programs, which promote exclusive services and/or products.

(i) Information not within or directly related to the scope of practice of naturopathic medicine.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0210, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 3-2006, f. & cert. ef. 10-13-06

Board of Nursing Chapter 851

Rule Caption: Rules Established for Advanced Practice Authority to Prescribe and Dispense Medications.

Adm. Order No.: BN 10-2006

Filed with Sec. of State: 10-5-2006

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Rules Adopted: 851-056-0000, 851-056-0004, 851-056-0006, 851-056-0008, 851-056-0010, 851-056-0012, 851-056-0014, 851-056-0016, 851-056-0018, 851-056-0020, 851-056-0022, 851-056-0024, 851-056-0026

Subject: These rules cover dispensing and prescribing by Nurse Practitioners and Clinical Nurse Specialists.

Rules Coordinator: KC Cotton—(971) 673-0638

851-056-0000

Definitions

(1) "Addiction" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving. Neither physical dependence nor tolerance alone, as defined by these rules, constitutes addiction.

(2) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject.

(3) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness, response to illness, health risks of individuals, families and groups, resources, strengths and weaknesses, coping behaviors, and the environment. The skills employed during the assessment process may include, but are not limited to, obtaining client histories, conducting physical examinations, and ordering, interpreting, and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and X-rays).

(4) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client/patient record established by the clinical nurse specialist or nurse practitioner.

(5) "Clinical education in patient management" means a set of structured learning activities, including but not limited to, supervised clinical practice in the pharmacological management of individual clients, as well as other learning activities to promote understanding of pharmacological interventions.

(6) "Diagnosis" means identification of actual or potential health problems or need for intervention based on analysis of the data collected.

(7) "Differential diagnosis" means the process of determining a medical diagnosis from among similar diseases and conditions based upon collection and analysis of clinical data.

(8) "Discrete pharmacology course" means an advanced pharmacology course with pharmacologically specific requirements, objectives, and content, which is offered for academic or continuing education credit, and is not integrated into other coursework.

(9) "Dispense" or "dispensing" means the labeling and distribution of a medication to the clinical nurse specialist's or nurse practitioner's client which is prepackaged by a manufacturer registered with the State Board of Pharmacy, or repackaged by a pharmacist licensed with the State Board of Pharmacy.

(10) "Dispensing authority" means to prepare and deliver substances to the client provided the authority is exercised in compliance with applicable federal and state laws.

(11) "Distribute" means the delivery of a drug other than by administering or dispensing, such as prepackaged samples.

(12) "Functional impairment" means:

(a) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by assessment of a health care provider qualified to diagnose physical condition/status.

(b) Practicing nursing when unable/unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting, and/or by the assessment of a health care provider qualified to diagnose mental condition/status.

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol, or mind-altering substances.

(13) "Pain" means an unpleasant sensory and emotional experience related to adverse nociceptive or neuropathic stimuli. It may also be idiopathic in nature.

(a) "Acute pain" is brief and responds to timely intervention or subsides as healing takes place. Inadequate treatment may delay recovery. Such pain responds to anti-inflammatory and opioid medications, as well as to other approaches.

(b) "Chronic pain" is on going or frequently recurring and may become unresponsive to intervention over time.

(c) "Intractable pain" means a pain state in which the cause cannot be removed or otherwise treated and no relief or cure has been found after reasonable efforts.

(14) "Pharmacodynamics" means the study of the biochemical and physiologic effects of drugs and their mechanism of action.

(15) "Pharmacokinetics" means the action of drugs in the body over a period of time.

(16) "Pharmacotherapeutics" means the study of the uses of drugs in the treatment of disease.

(17) "Physical dependence" means the physiologic adaptation to the presence of a medication characterized by withdrawal when its use is stopped abruptly.

(18) "Prescribe" means a written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances.

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Additionally, a prescription may be issued or required for use of over-the-counter medications.

(19) "Prescribing authority" means the legal permission to determine which drugs and controlled substances shall be used by or administered to a client.

(20) "Specialty" means the defined area of expertise such as that provided by academic education, clinical training, and may include additional legal and professional credentialing mechanisms.

(21) "Target audience" means a population for whom an educational program is designed.

(22) "Therapeutic device" means an instrument or an apparatus intended for use in diagnosis or treatment and in the prevention of disease or maintenance or restoration of health.

(23) "Tolerance" means the physiologic adaptation to a controlled substance over time, resulting in the need to increase the dose to achieve the same effect, or in a reduction of response with repeated administration.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0004

Prescriptive Authority Scope of Practice

(1) Prescribing, procuring or authorizing use of legend drugs, controlled substances, therapeutic devices, and other measures, provided in division 56, and dispensing drugs as provided in OAR 851-056-0020 consistent with the individual's scope of specialty and practice, within the approved Board of Nursing formulary.

(2) Standing orders, protocols, or written prescriptions may also be given for over-the-counter medications as clinically necessary.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0006

Application Requirements for Initial Prescriptive Authority in Oregon

(1) Current, unencumbered registered nurse license in the State of Oregon.

(2) Currently has or is eligible for an unencumbered nurse practitioner or clinical nurse specialist certificate in the State of Oregon.

(3) Submission of application and fees required by the Board. Fees are nonrefundable. An application not completed after one calendar year will be considered void.

(4) Evidence of successful completion of 45 contact hours of pharmacology as defined in 851-056-0008 including content related to the specialty scope of practice which shall be met through:

(a) Completion within two years prior to the application date; or

(b) Evidence of completion of a 30 hour discrete pharmacology course congruent with the specialty role sought with:

(A) An additional 15 CE hours in pharmacological management congruent with the area of clinical specialty completed in the two years prior to the application date; and

(B) Current prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility; or

(c) Evidence of completion of a clinical nurse specialist or nurse practitioner program within two years prior to application date, which included a 45 hour pharmacology course and subsequent clinical practicum in pharmacologic management of individual patients prior to graduation.

(5) Evidence of successful completion of required clinical education in patient management. An applicant may be considered to meet this requirement through:

(a) Completion of a directly supervised clinical practicum of no less than 150 hours which includes differential diagnosis and applied pharmacological management of patients congruent with the specialty role sought; or

(b) Evidence of unencumbered prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility with a minimum of 400 hours utilizing prescriptive authority and patient management within the past two years.

(6) Evidence of successful completion of accredited graduate level nursing courses documented by CE or academic credit. Such courses must include physical assessment, pathophysiology, and clinical management sufficient to prepare the applicant for safe prescribing with individual patients. Integrated courses taken before January 1, 1996 may be considered if content otherwise meets all requirements for equivalency.

(7) Applicants for initial certification as a nurse practitioner shall meet all requirements for prescriptive authority. Clinical nurse specialists

may obtain and renew certification with the Board without prescriptive authority.

(8) Initial applicants seeking prescriptive authority who do not meet Oregon's pharmacology requirements shall complete a pharmacology course from a list approved by the Board, equal to a minimum of 45 contact hours.

(9) Nurse practitioners who were certified in Oregon prior to July 1, 1997, and who did not have prescriptive authority as of that date, are not required to obtain prescriptive authority.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0008

Pharmacology Course Requirements

45 contact hours may be obtained as part of a discrete offering within the formal advanced educational program or through structured continuing education programs from a list approved by the Board.

(1) The pharmacology course shall be approved by the Board according to the following standards:

(2) The course content shall include:

(a) Applicable federal/state laws;

(b) Prescription writing;

(c) Pharmacokinetic, pharmacodynamic and pharmacotherapeutic principles;

(d) Use of prescriptive pharmacological agents in the prevention of illness and restoration and maintenance of health;

(e) Informational resources; and

(f) Clinical application related to specific scope of practice.

(A) Specific tests are used to determine successful completion of the course.

(B) The target audience includes clinical nurse specialists and/or nurse practitioners.

(C) Learner objectives include the specialty scope of advanced practice for which the applicant seeks certification.

(D) Written verification of participation and successful completion of the course is provided by the course sponsor.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.372, 678.380

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0010

Requirements for Prescription Writing

(1) A written prescription shall include the date, printed name, legal signature, specialty category/title, business address, and telephone number of the prescribing nurse practitioner or clinical nurse specialist in addition to the required patient and drug information.

(2) Prescriptions may be written for over-the-counter drugs, durable medical equipment (DME) and devices.

(3) Prescriptions shall be signed by the prescriber with the abbreviated specialty title of the nurse practitioner as per OAR 851-050-0005(9) or the title CNS as per OAR 851-054-0015.

(4) Drugs in the formulary may be prescribed, administered, or distributed in combination.

(5) The nurse practitioner or clinical nurse specialist shall comply with all applicable laws and rules in prescribing, administering, and distributing drugs, including compliance with the labeling requirements of ORS chapter 689.

(6) A nurse practitioner or clinical nurse specialist shall only prescribe controlled substances in conjunction with their own valid and current DEA registration number appropriate to the classification level of the controlled substance.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0012

Formulary for Clinical Nurse Specialists and Nurse Practitioners with Prescriptive Authority

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

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

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurses with prescriptive authority shall be all the

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drugs in the Drug Facts and Comparisons dated September 2006, with the exception of certain drugs and drug groups which are listed below.

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

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

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

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

(b) Clinical nurse specialists may provide care for individuals and populations within their specialty scope of practice;

(c) Prescribing is limited by the individual's scope of practice and knowledge base within that scope of practice;

(d) Clinical nurse specialists and nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005; or 851-054-0020 and 0021;

(e) Clinical nurse specialists and nurse practitioners shall be held strictly accountable for their prescribing decisions;

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

(4) Nurse practitioners and clinical nurse specialists with prescriptive authority are authorized to prescribe:

(a) All over-the-counter drugs;

(b) Appliances and devices.

(5) Nurse practitioners and clinical nurse specialists are authorized to prescribe the following drugs as listed in "Drug Facts and Comparisons" dated September 2006:

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

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

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

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam);

(C) Dofetilide (Tikosyn); and

(D) Bosentan (Tracleer).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents — all drugs with the following provisions:

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

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

(xi) Pentobarbital;

(xii) Secobarbital;

(xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and

(xiv) Levorphanol.

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

(C) Chymopapain is excluded.

(D) Ziconotide (Prialt) is excluded.

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

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

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

(k) Dermatological Agents — all drugs except Psoralens;

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

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropal (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsin Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan);

(K) Unoprostone Isopropyl (Rescula);

(L) Pegaptanib Sodium (Macugen);

(M) Triptan Blue (VisionBlue);

(N) Retisert; and

(O) Ranibizumab (Lucentis).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox);

(F) Ibritumomab Tiuxetan (Zevalin);

(G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar);

(H) Sclerosol; and

(I) Clofarabine (Clolar).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

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

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0014

Renewal of Prescriptive Authority

Prescriptive authority may be renewed by the Board provided there is satisfactory compliance with the following:

(1) Evidence that all requirements for renewal of the Oregon nurse practitioner or clinical nurse specialist certificate have been met and the certificate has been renewed;

(2) Evidence that there are no encumbrances on the certificate which would affect prescription writing; and

(3) Evidence that continued competency requirements are met through:

(a) 100 contact hours of continuing education in the two years prior to renewal which includes the following:

(A) As of January 2, 2007, at least 50% shall consist of formal academic or continuing education which offers CME or CE credit in the specialty area of practice, including at least 15 hours of pharmacotherapeutic content at the level consistent with the scope of specialty practice at the advanced nursing level; and

(b) Completion of a 45 contact hour pharmacology course within the two years preceding renewal which meets Board requirements or 400 hours of utilizing prescriptive authority at an advanced practice level; or

(c) Graduation from a clinical nurse specialist or nurse practitioner program within the two years preceding renewal and continuing education hours prorated from the date of graduation.

(4) Nurse practitioners and clinical nurse specialists who have the authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances shall submit evidence of the most current DEA Certificate to the Board office. Prescriptive authority renewal must be accompanied by evidence of DEA certification, if held.

(5) Nurse practitioners and clinical nurse specialists who do not hold DEA certification must verify this to the Board in writing at the time of renewal.

(6) Submission of an application and fees required by the Board. Fees are nonrefundable.

(7) Applicants who fail to renew their prescriptive authority on or before the biennial birthdate deadline shall be delinquent and pay a delinquent fee. Successful renewal requires that all other criteria for eligibility

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are met. Practice with expired prescriptive authority is subject to a civil penalty and potential discipline.

Stat. Auth.: ORS 678.101, 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0016

Conduct Derogatory to the Standards for Prescriptive or Dispensing Authority

(1) The Board may deny, suspend or revoke the authority to write prescriptions and/or dispense drugs for the causes identified in ORS 678.111(1) or with proof that the authority has been abused.

(2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to nursing standards and is defined as:

(a) Prescribing, dispensing, or distributing drugs not listed in the formulary;

(b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;

(c) Prescribing, dispensing, or distributing drugs to an individual who is not the clinical nurse specialist's or nurse practitioner's client or is not within the scope of practice or type of client population served;

(d) Prescribing, dispensing, or distributing drugs for personal use;

(e) Prescribing, dispensing, administering, or distributing drugs while functionally impaired;

(f) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards or practice;

(g) Failure to properly assess and document client assessment when prescribing, dispensing, administering, or distributing drugs;

(h) Selling, purchasing, trading, or offering to sell, purchase or trade any drug sample;

(i) Dispensing medications without dispensing authority granted by the Board or other dispensing authority issued by the State of Oregon;

(j) Charging a client or any third party payer in a grossly negligent manner.

Stat. Auth.: ORS 678.111, 678.113, 678.150

Stats. Implemented: ORS 678.350, 678.370, 678.372, 678.375, 678.380, 678.385

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0018

Distributing Drug Samples

(1) Any clinical nurse specialist or nurse practitioner who has prescription writing authority may receive prepackaged complimentary samples of drugs included in the Oregon State Board of Nursing formulary for prescription writing and distribute these samples to clients.

(2) Drug samples which are controlled substances must be maintained in accordance with OAR 851-056-0026 and any applicable state and federal requirements.

(3) All sample distribution shall be clearly documented in the patient's chart and the patient shall be provided with information needed for safe use.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.372, 678.380

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0020

Dispensing Authority

(1) An "applicant" for dispensing authority must be an unencumbered Oregon certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing.

(2) Applicants shall submit an application and information as required by the Board.

(3) Applicants must demonstrate, through a description of the clinical nurse specialist's or nurse practitioner's patient population, a lack of readily available access to pharmacy services as provided in ORS 678.390 and that the grant of dispensing authority to the applicant would correct this lack of access.

(4) The applicant shall show evidence of completion of the following dispensing program:

(a) Documented review of content regarding safe dispensing listed below:

(A) Board of Nursing handbook "Nurse Practitioner and Clinical Nurse Specialist Prescriptive Authority in Oregon";

(B) "The Drug Enforcement Administration Pharmacist's Manual" (2004);

(C) OAR 851 division 56;

(D) ORS Chapter 689 and OAR Chapter 855;

(E) U.S. Consumer Product Safety Commission publication "Poison Prevention Packaging: A Text for Pharmacists and Physicians," and;

(F) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (2006); and

(G) Information on available electronic or hard copy prescription drug references which provide information to professionals authorized to dispense prescription medications.

(b) Successful self examination as provided by the Board on these materials.

(5) Dispensing under this authority is limited to patients that meet any of the following criteria:

(a) Lack of patient access to a pharmacy due to the following:

(A) The patient lives outside the boundaries of a metropolitan statistical area as defined by the federal Office of Management and Budget;

(B) The patient lives 30 or more highway miles from the closest hospital within the major population center in a metropolitan statistical area as defined by the federal Office of Management and Budget; or

(C) The patient lives in a county with a population of less than 75,000.

(b) The patient faces a financial barrier to purchase prescriptions, including but not limited to:

(A) The patient receives services from a health care safety net program;

(B) The patient is eligible for participation in a patient assistance program of a pharmaceutical company.

(c) Patients of a certified nurse practitioner seen at a qualified institution of higher education as defined by ORS 399.245.

(6) The staff of the Board shall provide written notice to the Oregon Board of Pharmacy upon receipt and again upon approval of such application.

(7) Applicants must provide complete and accurate information requested by the Board. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

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

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.675, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0022

Renewal of Dispensing Authority

Dispensing authority may be renewed with each renewal of prescriptive authority upon submission of application, and documentation that the nurse practitioner or clinical nurse specialist and their patients continue to meet criteria in OAR 851-056-0020(5). Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.675, 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0024

Drug Delivery and Dispensing

(1) Policies and procedures: A nurse practitioner or clinical nurse specialist with dispensing authority shall follow procedures established by federal and state law for:

(a) Drug dispensing, storage, security and accountability;

(b) Maintenance of all drug records;

(c) Procedures for procurement of drugs.

(2) Dispensing:

(a) Drugs shall be prepackaged by a pharmacy or manufacturer registered with the Oregon State Board of Pharmacy, and provide on the label:

(A) The name and strength of the drug. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be on the label.

(B) The quantity of the drug;

(C) Cautionary statements, if any, required by law;

(D) The name, address, and phone number of the practitioner's practice site; and

(E) The manufacturer's expiration date, or an earlier date if preferable, after which the patient should not use the drug.

(b) The nurse practitioner or clinical nurse specialist shall label prescription drugs with the following information:

(A) Name of the patient;

(B) Name of the prescriber;

(C) Date of dispensing;

(D) Directions for use; and

(E) Initials of the person dispensing.

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(F) Dispensed prescription medication shall be pre-labeled or, in the absence of this, hand-labeled with its physical description, including any identification code that may appear on tablets and capsules.

(c) The clinical nurse specialist or nurse practitioner shall personally dispense drugs to the patient.

(d) Drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act unless the patient requests a non-complying container.

(e) The nurse practitioner or clinical nurse specialist shall provide a means for patients to receive verbal and written information on drugs dispensed to the patient. The written drug information shall include:

- (A) Drug name and class;
 - (B) Proper use and storage;
 - (C) Common side effects;
 - (D) Precautions and contraindications; and
 - (E) Significant drug interactions.
- (3) Drug security, storage and disposal:

(a) In the absence of the person authorized to dispense and prescribe, drugs shall be kept in a locked cabinet or drug room which is sufficiently secure to deny access to unauthorized persons.

(b) Controlled substances shall be maintained in a secure, locked container at all times.

(c) All drugs shall be stored in areas which will assure proper sanitation, temperature, light, ventilation, and moisture control.

(d) Drugs which are outdated, damaged, deteriorated, misbranded, or adulterated shall be physically separated from other drugs until they are destroyed or returned to their supplier.

(e) Controlled substances, which are expired, deteriorated, or unwanted, shall be disposed of in conformance with current State and Federal Regulations, including but not limited to, 21 CFR 1307.21 and OAR 855-080-0105.

(4) Drug records:

(a) A drug dispensing record shall be maintained separately from the patient record and kept for a minimum of three years. The dispensing record shall show, at a minimum, the following:

- (A) Name of patient;
- (B) Brand name of drug, or generic name and manufacturer or distributor;
- (C) Date of dispensing; and
- (D) Initials of nurse practitioner or clinical nurse specialist.

(b) A physical copy of the prescription for each medication dispensed shall be retained in the patient chart and shall be produced upon request.

(c) All records required by these rules or by federal or state law shall be readily retrievable and available for inspection by the Board and the Board of Pharmacy.

(d) A patient record shall be maintained for all patients to whom the nurse practitioner or clinical nurse specialist dispenses medications.

(5) Clinical nurse specialists and nurse practitioners with dispensing authority shall be responsible for safe storage, distribution, and destruction of all drugs under their authority.

(6) Clinical nurse specialists and nurse practitioners granted dispensing authority under this rule shall comply with the labeling and record keeping requirements of OAR 851-050-0164.

(7) A person granted dispensing authority under this rule shall have available at the dispensing site a hard copy or electronic version of prescription drug reference works commonly used by professionals authorized to dispense prescription medications.

(8) A person granted dispensing authority under this rule shall permit representatives of the Oregon State Board of Pharmacy, upon receipt of a complaint about that person's dispensing practices and notice to the Board of Nursing, to inspect a dispensing site.

Stat. Auth.: ORS 678.390
Stats. Implemented: ORS 673.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06

851-056-0026

Rules Relating to Controlled Substances

(1) In the administration, distribution, storage, prescribing, and dispensing of controlled substances, nurse practitioners, and clinical nurse specialists shall comply with all applicable requirements in the Code of Federal Regulations (CFR), Title 21, and state law, including but not limited to, ORS Chapter 430 and 475 and OAR Chapter 415 and 855.

(2) Nurse practitioners and clinical nurse specialists shall not dispense a controlled substance without current dispensing authority. Distribution of prepackaged, complimentary drug samples is not considered dispensing (ORS 689.005(9)).

(3) Clinical nurse specialists and nurse practitioners who have authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances must verify evidence of such with their prescriptive authority renewal application. A nurse with prescriptive authority may choose to decline DEA certification and must verify so in writing.

(4) Storage and inventory of controlled substances:

(a) Samples or quantities of controlled substances shall be stored in a securely locked cabinet on the premises of the nurse practitioner's or clinical nurse specialist's practice location.

(b) Clinical nurse specialists and nurse practitioners who receive samples or quantities of controlled substances shall be responsible for the security, inventory, and disposal of these drugs.

(c) Nurse practitioners and clinical nurse specialists shall maintain inventory records of controlled substances that they receive or distribute for a period of three years. The records shall include:

- (A) Drug name, amount received, date received, drug expiration date;
- (B) Drug name, amount distributed, date distributed, to whom distributed;
- (C) Drug name and the date and place where it was returned for destruction.

(d) Controlled substances that are expired, deteriorated, or unwanted shall be returned to a DEA registered disposal facility. This does not include controlled substances which are properly wasted at the facility where they were to be administered. In this context, "properly wasted" means the on-site destruction of a controlled substance in conformance with applicable state and federal law. Nurse practitioners and clinical nurse specialists shall not personally destroy controlled substances.

(e) Controlled substances must be transported in a secured, locked container.

(f) Client records shall state the distribution of controlled substance samples.

(g) Theft of controlled substances shall be immediately reported upon discovery to the DEA and to any other required authorities.

(h) Clinical nurse specialists and nurse practitioners who receive controlled substances shall cooperate with the Board in their inspection of records and physical inventory of controlled substances. Inventory of all controlled substances shall be taken by the prescriber responsible for their receipt and storage every year on the same date as the biennial inventory required by 21 CFR 1304.13.

(i) If requested by the Board, any nurse practitioner or clinical nurse specialist who receives controlled substances shall submit a copy of inventory records from the preceding two years for review.

(5) Prescribing controlled substances:

(a) Nurse practitioners and clinical nurse specialists shall only prescribe the controlled substances from Schedules II-V, as authorized by the Oregon State Board of Nursing. Clinical nurse specialists and nurse practitioners shall only prescribe at the level provided for on their DEA certificate.

(b) No controlled substances shall be prescribed by unless included on the Board's formulary.

(c) Schedule II controlled substances shall not be prescribed for the purposes of weight reduction or control. Schedule III-IV controlled substances may be prescribed for weight reduction in accordance with FDA product guidelines.

(d) Clinical nurse specialists and nurse practitioners shall not prescribe, dispense, or order controlled substances, including Methadone, for narcotic addiction treatment.

(6) Intractable or chronic pain management:

(a) Nurse practitioners and clinical nurse specialists may prescribe or administer controlled substances to a person in the course of their treatment for a diagnosed condition causing pain, defined in OAR 851-056-0000(13).

(b) The diagnosis and treatment of intractable or chronic pain requires documentation of the following:

(A) A recent diagnosis of the condition (if acute or unstable), or past diagnosis (if chronic and stable) causing pain, by one or more licensed practitioners specializing in the treatment of the body area, system, or organ perceived as the source of pain; and

(B) A written material risks notice specific to the patient's condition and treatment; and

(C) A consultation and review of the pain treatment plan where clinically indicated if the patient shows limited or no improvement.

(c) Nurse practitioners and clinical nurse specialists must have a complete discussion with the patient or person authorized to make health care decisions for the patient regarding the diagnosis, as well as the risk, benefits, alternatives, side effects, and potential for addiction and withdrawal of

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the controlled substance, along with any other applicable precautions. These discussions must be documented in the patient record. Documentation must include a plan for periodic review of patient response and follow-up.

(d) Nurse practitioners and clinical nurse specialists shall document patient use of controlled substances for chronic or intractable pain, including history and assessment to rule out substance abuse. Evidence of patient addiction or abuse requires referral and/or transfer of care for further diagnosis and treatment.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.111, 678.370, 678.372, 678.375, 678.380, 678.385, 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06

Rule Caption: Rules for Clinical Nurse Specialists Revised.

Adm. Order No.: BN 11-2006

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Notice Publication Date: 8-1-06

Rules Amended: 851-054-0010, 851-054-0020, 851-054-0040, 851-054-0050, 851-054-0100

Subject: These rules cover the standards and scope of practice for Clinical Nurse Specialists.

Rules Coordinator: KC Cotton—(971) 673-0638

851-054-0010

Purposes and Definitions

(1) Purposes of these rules:

(a) To implement the provisions of ORS 678.370 to 678.390 governing the certification of Clinical Nurse Specialists (CNS) by the Oregon State Board of Nursing.

(b) To define the scope of practice of the CNS.

(c) To establish standards for safe practice for the CNS.

(d) To serve as a guide for the Board to evaluate CNS practice.

(2) Definitions as used in these rules:

(a) "Assessment" means a process of collecting information regarding a client's health status using tools, techniques, and methodologies based on theory and research. The skills employed during the assessment process include collecting, analyzing and evaluating data in order to diagnose symptoms, functional problems, risk behaviors and health status, and to develop interventions and plans of care.

(b) "Client" means the recipient of CNS services for whom the CNS has established a provider relationship. A provider relationship is established through assessment and planning for the recipient.

(c) "Clinical Nurse Specialist" (CNS) is a registered nurse who has been approved and certified by the Board to provide health care in an expanded specialty role.

(d) "Collaboration" is a process involving the CNS and one or more members of the health care team working together to achieve common goals, each responsible for their particular area of expertise.

(e) "Consultation" means interaction between the CNS and the consultee for the purpose of transmitting or obtaining information or advice.

(f) "Continuing Education hours" are contact hours of education. One contact hour is equal to 50 minutes of instruction. Ten contact hours are equal to one Continuing Education Unit (CEU).

(g) "Diagnosis" means identification of actual or potential health problems or need for intervention, based on analysis of the data collected.

(h) "Medical equipment" means medical supplies and durable or disposable equipment ordered by the CNS which are related to or required for self-care, or the plan of care.

(i) "National Certification" means a certificate of recognition in a specialty area issued by a national nursing organization.

(j) "Order" means written or verbal directives by the CNS to other members of the health care team.

(k) "Organization" means a system or network that provides patient care.

(l) "Population" means the collection of individuals in a community or a group of individuals defined by age, health status, lifestyle, disease and/or geographic location.

(m) "Prescribe" means written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances.

(n) "State Certification" means certification to practice advanced nursing as authorized by the Oregon State Board of Nursing.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.370, 678.372
Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06

851-054-0020

Clinical Nurse Specialist Scope of Practice

The Clinical Nurse Specialist (CNS) independently provides advanced theory and research-based care to clients, and facilitates attainment of health goals. Within the practice of advanced nursing, the CNS provides innovation in nursing practice, based upon clinical expertise, evidence-based decision making, and leadership skills. The CNS practices within three spheres of influence. These three spheres of influence are: individual clients and populations; nurses and other multidisciplinary team members; and organizations. Practice may target one or more spheres of influence.

(1) The CNS may practice with individual clients and populations of clients.

(a) Individual client care includes, but is not limited to:

(A) Assessing the client using tools, techniques, and methodologies based on theory and research;

(B) Diagnosing symptoms, functional problems, risk behaviors, and health status of the client;

(C) Developing a mutually derived therapeutic plan of care with the client;

(D) Designing, implementing, and evaluating nursing interventions by using data, research, and theoretical knowledge;

(E) Selecting, recommending, and ordering medical equipment, laboratory and screening or diagnostic tests for the client;

(F) Selecting, recommending and ordering prescription medications and devices as authorized per division 56 consistent with specialty and scope of practice.

(G) Establishing standing orders related to nursing interventions and specific plans of care;

(H) Encouraging disease prevention, health promotion and health maintenance;

(I) Providing referrals for the client to other health care services or providers as indicated.

(b) Population care includes, but is not limited to:

(A) Planning, implementing and evaluating data collection;

(B) Selecting, ordering, and recommending screening and diagnostic tests for individuals within the population;

(C) Interpreting and analyzing population data to formulate diagnoses in the area of needs, functional problems, risks, and health issues;

(D) Reviewing and revising diagnoses based on subsequent data collection;

(E) Innovating, implementing, guiding, evaluating, and revising population-focused plans and programs;

(F) Encouraging disease prevention, health promotion and health maintenance;

(G) Establishing criteria for referral within a population;

(H) Establishing algorithms, standing orders, or practice guidelines related to specific populations;

(I) Informing the population about its health and promoting other community systems that influence health;

(J) Assessing need for and participating in activities to change health and social policies that affect the health of the community.

(2) The CNS may practice with nurses and other members of the multidisciplinary care team to advance the practice of nursing and improve client care. This practice includes, but is not limited to:

(a) Consulting and collaborating to identify and manage health care issues;

(b) Providing leadership in the utilization of research in practice;

(c) Coaching nursing staff in clinical practice development;

(d) Identifying knowledge deficits of target groups providing health care;

(e) Developing, providing and evaluating educational and other programs that enhance the practice of nursing personnel and/or other members of the health care team.

(3) The CNS may practice with organizations to provide clinical expertise and guidance. This practice includes, but is not limited to:

(a) Using system-wide change strategies based on an assessment of the needs and strengths of the organization;

(b) Initiating collaborative relationships among teams to facilitate interdisciplinary practice;

(c) Collaboratively developing and evaluating research-based and client-driven systems and processes;

(d) Creating, advising, and influencing system-level policy that affects programs of care;

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(e) Evaluating and recommending equipment and products being used in patient care for efficacy, efficiency, cost-effectiveness, and client/consumer satisfaction.

(4) The CNS may provide expertise that includes, but is not limited to:

- (a) Summarizing, interpreting, and applying research results;
- (b) Teaching, coaching, and mentoring health care members in the evaluation and use of research;
- (c) Planning, directing, and evaluating multidisciplinary programs of care for clients;
- (d) Evaluating client outcomes and cost effectiveness of care to identify needs for practice improvement;
- (e) Conducting and participating in research and research protocols;
- (f) Designing and establishing standing orders related to nursing interventions.

(5) The CNS scope of practice may include:

- (a) Prescribing, ordering, administering and dispensing medications per division 56 regulations and requirements.
- (b) Receiving and distributing drug samples.
- (c) Obtaining DEA registration for controlled substances in Schedule II-V.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06

851-054-0040

Eligibility for Initial Certification

(1) An applicant for certification as a Clinical Nurse Specialist (CNS) shall:

(a) Hold or obtain a current unencumbered registered nurse license in Oregon;

(b) Hold a graduate degree in nursing, or a post-masters certificate in nursing demonstrating evidence of CNS theory and clinical concentration. The program shall meet the following educational standards:

- (A) The program shall be at least one academic year in length;
- (B) There shall be faculty and/or clinical instructors who are academically and experientially qualified in nursing, and who maintain expertise within the CNS scope of practice;
- (C) NLNAC or CCNE accreditation.

(D) Applicants who graduate or obtain a post-masters certificate on or after January 1, 2007 shall have completed 500 hours of clinical practice within the program; or prior to state certification:

- (i) Complete a formal academic program offering any remaining hours of clinical practice; or
- (ii) Complete a Board approved clinical continuing education course offering supervised clinical practice for any remaining hours.

(c) Meet the practice requirement through verification of:

(A) Graduation from a CNS educational program within the past five years; or

(B) Practice within the CNS scope of practice for at least 960 hours within the five years preceding the application. Verification of practice hours is subject to random audit.

(2) If an applicant does not meet the practice requirement in 851-054-0040(1)(c), the applicant shall:

(a) Submit for Board approval, a detailed plan for precepted practice that includes: competencies that support the CNS scope of practice; names and qualifications of CNS preceptor(s); and a description of the nature of the proposed unpaid, voluntary, precepted clinical experience.

(A) If the applicant has practiced at least 960 hours within the six years prior to the date of application, the practice plan shall provide for 250 hours of preceptorship. Documented practice hours within the CNS scope for the past two years may be recognized and may reduce the required hours, except that, in no case shall the precepted practice be less than 120 hours.

(B) If the applicant has practiced at least 960 hours within the CNS scope for the ten years prior to the date of application, the practice plan shall provide for 400 hours.

(C) If the applicant has not practiced at least 960 hours within the CNS scope for the ten years prior to the date of application, the practice plan shall provide for 500 hours.

(b) Obtain a limited certification for precepted practice. The limited certification shall be issued only upon receipt of a completed CNS application, application for limited certification, Board approval of the plan for supervised practice, and payment of all applicable fees. The limited certification is valid only for precepted practice that has been approved in advance by the Board, and will be valid for one year from the date of issue.

One extension of the limited certificate may be granted upon approval and payment of fee, provided there is a current valid application for certification on file and no disciplinary action has been taken against the applicant. This extension will be valid for one year from date of approval.

(c) Successfully complete the precepted hours of practice supervised by the CNS preceptor. Successful completion shall be verified by a final evaluation submitted by the supervising CNS to the Board to verify that the applicant is competent to practice in the CNS scope at a safe and acceptable level, and that the number of required hours of precepted practice were completed.

(d) Submit evidence of continuing education to total 20 contact hours for each year out of practice. Continuing education taken concurrent with the reentry plan may be applied towards the total continuing education requirement, provided all hours are complete by the end of the preceptorship.

(3) The applicant shall submit all fees required by the Board with the application. The fees are not refundable. An application that remains incomplete after one year shall be considered void.

(4) Clinical Nurse Specialists seeking prescriptive authority will need to meet all additional requirements in division 56. These requirements may be obtained as part of a re-entry program plan approved by the Board.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372, 678.385, 678.390

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 10-2001, f. & cert. ef. 7-9-01; BN 6-2006, f. & cert. ef. 5-8-06; BN 11-2006, f. & cert. ef. 10-5-06

851-054-0050

Renewal of Clinical Nurse Specialist Certification

Renewal of the Clinical Nurse Specialist (CNS) certification shall be on the same schedule as the renewal of the registered nurse license. The requirements for renewal are:

(1) Current unencumbered license as a registered nurse in Oregon; and

(2) Practice as a CNS for no less than 960 hours within the five years prior to renewal or have completed a preceptorship as established in OAR 851-054-0040(2); and

(3) 40 contact hours of continuing education accumulated during the current certification period. As of January 2, 2007, at least 50% shall consist of formal academic or continuing education documented by CME or CE credit in the specialty area of practice. A Clinical Nurse Specialist with prescriptive authority must meet additional CE requirements as specified in division 56.

(4) The CNS shall affirm and document completion of the continuing education and practice hours on the application renewal form. Verification of all hours and credits is subject to random audits by the Board. Falsification of continuing education or practice hours is grounds for disciplinary action.

(5) The CNS shall maintain accurate records of any claimed CE hours and practice hours for no less than five years from date of submission to the Board.

(6) An applicant for renewal who has graduated from the CNS program less than two years prior to the first renewal will not be required to document the full 40 contact hours of continuing education. Continuing education will be prorated on a monthly basis based on the length of time between graduation and the date of the first renewal.

(7) The applicant shall submit the required fees with the application. Fees are not refundable. An application shall be void if not completed during the current biennial renewal cycle.

(8) An applicant for renewal up to 30 days past the expiration date shall meet all requirements for renewal and pay a delinquent fee.

(9) Any individual whose CNS certification is delinquent may not practice as a CNS until certification is complete, subject to civil penalty.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.370, 678.372 & 678.385, 678.390

Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06

851-054-0100

Disciplinary Action on Clinical Nurse Specialist Certification

(1) The Board may deny, suspend or revoke the authority of a Clinical Nurse Specialist (CNS) to practice under a limited or full certificate for the causes identified in ORS 678.111(1), and OAR 851-045-0015 and 0016.

(2) Revocation, suspension, or any other encumbrance of a registered nurse license, or any special authority to practice as a CNS, in another state, territory of the United States, or any foreign jurisdiction may be grounds for denial of Clinical Nurse Specialist certification in Oregon.

(3) In addition to standards identified in OAR 851-045-0015, it shall be conduct derogatory to nursing standards for the CNS to:

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- (a) Charge the client or any third-party payer in a grossly negligent manner;
- (b) Use ordering or prescriptive authority without sufficiently documented evidence of advanced nursing assessment and establishment of the client/provider relationship;
- (c) Prescribe or dispense medications without specific authority under state or federal law;
- (d) Practice as a CNS in a specialty area or scope of practice not supported by the licensee's clinical and didactic training.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.150, 678.370, 678.372, 678.385 & 678.390
Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 11-2006, f. & cert. ef. 10-5-06

Rule Caption: Re-entry Rules Revised.

Adm. Order No.: BN 12-2006

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Rules Amended: 851-031-0005, 851-031-0070, 851-031-0080

Subject: These rules establish the standards for licensure of Registered Nurses and Licensed Practical nurses. These amendments update the rules for re-entry into nursing.

Rules Coordinator: KC Cotton—(971) 673-0638

851-031-0005

Definitions

- (1) "Address of Record" means the home address of a licensee, submitted on the initial application or by written notification of change.
- (2) "Application" means a request for licensure including all information identified on a form supplied by the Board and payment of required fee.
- (3) "Approved Nursing Program" means a pre-licensure educational program approved by the Board for registered or practical nurse scope of practice; or an educational program in another state or jurisdiction approved by the licensing board for nurses or other appropriate accrediting agency for that state.
- (4) "Clinical Component" means a course or session in which a student obtains nursing experience in a practice setting. The course or session may relate to activities that use nursing knowledge but not in a direct client/patient interaction, or may relate to nursing practice directly with clients/patients.
- (5) "Commission on Graduates of Foreign Nursing Schools (CGFNS)" is a credentials evaluation/testing service for graduates of schools outside the U.S.
- (6) "Completed application" means an application and all supporting documents related to licensure requirements.
- (7) "Comprehensive Nursing Assessment" is an extensive data collection addressing current health status and anticipated or emerging changes in that status; recognizing alterations in health status; integrating biological, psychological, spiritual, and social aspects of care; recognizing the need to communicate and consult with other healthcare providers; and using this broad analysis to plan, implement, and evaluate nursing care.
- (8) "Credentials Evaluation" means an independent determination, by a Board approved service, through review of transcripts and other relevant material, whether an educational program is or is not equivalent to nursing education in the United States.
- (9) "Delinquent Renewal" means late receipt of a renewal application and fee up to 60 days following license expiration.
- (10) "English Language Proficiency" means the ability to use and comprehend spoken and written English at a level sufficient for safety within the scope of practice.
- (11) "Examination" means the licensing examination endorsed by the National Council of State Boards of Nursing, Inc. which may be the State Board Test Pool Examination (SBTPE) or the NCLEX-RN® or -PN®.
- (12) "Expired license" means that the license has lapsed and is void, the nurse has not renewed Oregon licensure or been granted Retired or Inactive status and is not authorized to practice nursing but may elect to return to active status by meeting the Board's standards.
- (13) "Graduate" means to qualify in the field of nursing by completing an approved program from a university, college or school that offers an academic degree, a diploma, a certificate or a transcript denoting fulfillment of an approved program.
- (14) "Inactive Nurse" status means that the nurse has applied for inactive status, is not currently authorized to practice nursing in Oregon but may elect to return to active practice by meeting the Board's standards.

(15) "Individualized Re-entry Plan" means a plan developed by the re-entry nurse to utilize formal course work and supervised clinical practice for the purpose of meeting requirements for re-entry.

(16) "International Nurse" means an individual who is credentialed to practice as a nurse in a country other than the United States or its jurisdictions.

(17) "Limited License" means a registered nurse or practical nurse license with conditions which specifically limit its duration or full use for practice.

(18) "Long Term Care Facility" means a licensed skilled nursing facility or intermediate care facility as those terms are used in ORS 442.015, an adult foster home as defined in ORS 443.705 that has residents over 60 years of age, a residential care facility as defined in ORS 443.400 or an assisted living facility.

(19) "Name Change" means establishing the legal basis through documentation for a change in the name of record.

(20) "Name of Record" means the name to which the applicant is legally entitled, submitted on the initial application, or changed at the written request of the applicant with documentation of the legal basis for the change.

(21) "Official Transcript" means a transcript received directly from the school, bearing the official seal or other designation the school identified, showing the date of graduation or program completion and the degree, diploma or certificate awarded, if applicable.

(22) "Prelicensure Program" means a program of study in which achievement of the educational requirements for nursing licensure are achieved in the process of obtaining a higher degree (e.g., direct-entry master's or doctoral degree programs during which the requirements for a baccalaureate degree in nursing are achieved but the baccalaureate degree is not conferred; baccalaureate degree programs during which the requirements for an associate degree in nursing are met but the degree is not conferred).

(23) "Re-entry" is the process of licensing a nurse who does not meet the practice requirements at the time of application for licensure by examination, endorsement, reactivation, or reinstatement.

(24) "Reexamination" means subsequent examination(s) after one or more failures.

(25) "Reactivation" is the process of relicensing after the license is expired 61 or more days.

(26) "Reinstatement" is the process of relicensing when the license has been subject to disciplinary sanction by the Board.

(27) "Retired Nurse" is an honorary title given a nurse previously licensed in good standing in Oregon and does not authorize the nurse to practice nursing.

(28) "United States" or "U.S." includes all states and jurisdictions of the United States.

Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.040, 678.050, 678.101, 678.150 & 678.410
Hist.: NB 4-1997, f. 3-6-97, cert. ef. 5-1-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 2-2002, f. & cert. ef. 3-5-02; BN 17-2002, f. & cert. ef. 10-18-02; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2006, f. & cert. ef. 10-5-06

851-031-0070

Re-entry into Nursing

(1) An applicant who does not meet the nursing practice requirement as stated in OAR 851-031-0006(3)(e) must complete an approved re-entry program or individualized plan prior to issuance of a license to practice. The applicant shall:

- (a) Meet all standards for eligibility established in 851-031-0006(1)(2)(3) except for the nursing practice requirement.
- (b) Provide documentation of having successfully completed within the two years preceding issuance of the license:
 - (A) A Board-approved re-entry program (as specified in OAR 851-031-0080), or
 - (B) The licensing examination for the level of licensure sought, or
 - (C) An individualized re-entry plan as specified in OAR 851-031-0070(4).
- (c) Satisfactorily complete required supervised clinical practice as specified in 851-031-0070(2).

(2) Standards for supervised clinical practice. The nurse shall obtain a limited license to practice prior to engaging in supervised clinical practice.

(a) Supervised clinical practice for nursing re-entry shall be in the student role and unpaid.

(b) A nurse who has less than 960 hours of nursing practice in the five-year period immediately preceding application for licensure shall com-

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plete a re-entry program or individualized plan that includes a minimum of 160 hours of supervised clinical practice.

(c) Up to 160 additional hours of supervised clinical practice may be required when recommended to the Board by the re-entry program director, nurse preceptor or nurse manager/supervisor. Additional required supervised clinical practice is subject to the availability of a qualified preceptor, willingness of the facility to provide the experience, and availability of the program director to supervise/coordinate the experience.

(3) Standards for the limited license for re-entry.

(a) The limited license may be issued to a nurse who:

(A) Meets all requirements for licensure except for completion of the re-entry requirement;

(B) Submits verification of enrollment in an approved re-entry program; or

(C) Receives Board approval of an individualized re-entry plan.

(b) A limited license issued under these rules is to be used only for completion of an approved re-entry program or individualized re-entry plan, and required supervised clinical practice for re-entry.

(c) The limited license expires on successful completion of the re-entry program or individualized plan, on withdrawal from an approved re-entry program or individualized plan, or in one year, whichever comes first. At the discretion of the Board, a one-year extension of the limited license may be granted on written request and submission of a fee.

(d) An applicant who fails to successfully complete the re-entry program or individualized re-entry plan and required supervised clinical experience may reapply for licensure, re-entry, and a limited license. The applicant is required to complete all requirements set forth in 851-031-0070(1)(2).

(4) Standards for Individualized re-entry plans. The nurse choosing to complete an individualized plan for re-entry shall submit, in writing, the following for Board approval:

(a) Summary of nursing education and practice with rationale for use of an individualized plan for re-entry into nursing practice;

(b) Anticipated timeframe for completing all required components, including acquisition/demonstration of current knowledge and required supervised clinical practice;

(c) Clinical competencies/outcomes to be achieved and the mechanism for evaluating competence in nursing practice on completion of the plan;

(d) Plan for obtaining and demonstrating knowledge/competence in nursing, as identified in OAR 851-031-0080(2)(c);

(e) Plan for obtaining required hours of supervised clinical practice as specified in OAR 851-031-0070(2). The plan shall identify:

(A) The agency or agencies and contact person(s) where required supervised clinical experience will be obtained. A signed contract/agreement with each agency is required. The contract/agreement shall include but is not limited to:

(i) Learning objectives/outcomes for the re-entry experience;

(ii) Provisions for client and re-entry nurse safety;

(iii) Unit(s) on which the experience is to occur with the name of the preceptor on each unit, if applicable;

(iv) A provision allowing the agency to nullify the contact/agreement in the event of client safety issues.

(B) The name and credentials of the registered nurse preceptor(s).

Each nurse preceptor shall:

(i) Hold a current unencumbered registered nursing license in Oregon.

(ii) Agree to directly supervise and evaluate the re-entry nurse;

(iii) Have no less than two years of registered nursing experience, of which at least six months shall be in the setting in which the clinical experience is to occur; and

(iv) Be recommended by the nurse executive or immediate supervisor in that setting.

(f) Documentation of successful completion of the individualized re-entry plan shall be provided in writing, and shall include:

(A) Completion of program objectives/outcomes;

(B) Completion of required supervised clinical practice hours

(C) Achievement of predetermined competencies;

(D) Recommendation for licensure by clinical preceptor and nurse manager.

Stat. Auth.: ORS 678.150

Stat. Implemented: ORS 678.113 & 678.150

Hist.: NER 25, f. 9-22-75, ef. 10-10-75; NER 2-1980, f. & ef. 3-3-80; NER 5-1981, f. & ef. 11-24-81; NER 6, 1983, f. & ef. 12-9-83; NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0187; NB 12-1997, f. & cert. ef. 9-29-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2006, f. & cert. ef. 10-5-06

851-031-0080

Standards for Re-Entry Programs

(1) Re-entry programs shall be approved by the Board before their implementation and at least every 5 years thereafter.

(a) An application for program approval shall include:

(A) The intended size and type of re-entry program;

(B) A written program plan addressing the standards for approval in OAR 851-031-0080(2);

(C) Projected number and type of faculty;

(D) Description and availability of educational and clinical practice facilities and resources, as appropriate; and

(b) Program changes requiring Board approval:

(A) Change in program director;

(B) Major change in curriculum or instructional design;

(C) Intent to close or substantially reduce program enrollment.

(2) Standards for Approval:

(a) Faculty qualifications:

(A) The program director, each instructor, clinical instructor, and clinical preceptor shall hold a current unencumbered license to practice as a registered nurse in Oregon.

(B) The re-entry program director and all instructors newly appointed after January 2, 2007 shall have:

(i) A minimum of a bachelor's degree in nursing,

(ii) No less than three years of registered nursing experience;

(iii) Evidence of academic and/or experiential preparation for teaching.

(C) Each clinical instructor shall have no less than three years of registered nursing experience and evidence of academic preparation or experience in education.

(D) Each clinical preceptor shall:

(i) Agree to directly supervise and evaluate the re-entry nurse;

(ii) Have no less than two years of registered nursing experience, of which at least six months shall be in the setting in which the clinical experience is to occur;

(iii) Be recommended by the nurse executive or immediate supervisor in that setting.

(b) Faculty Responsibilities. The faculty shall:

(A) Plan, implement, evaluate, and revise the educational program;

(B) Select and evaluate clinical facilities for supervised clinical practice;

(C) Develop and use written examinations and clinical performance measures based on the registered or practical nurse scope of practice to evaluate student achievement of program objectives/required competencies;

(D) Develop, implement, and evaluate policies related to student admission, retention, and progression, and policies related to program operations;

(E) Provide for student evaluation of the program.

(c) Curriculum

(A) Curriculum shall be consistent with the law governing the practice of nursing as defined in division 45 and division 47 of the Nurse Practice Act.

(B) Curriculum plan shall identify:

(i) Course length, methods of instruction, and planned learning experiences;

(ii) Course content and practice requirements for completion of the program;

(iii) Competencies achieved on completion of the program.

(C) The curriculum shall include, but not be limited to, a minimum of 120 hours instruction in current nursing practice, encompassing:

(i) The scope of nursing practice, legal/ethical perspectives, the current health care system, and working within interdisciplinary teams;

(ii) The nursing process, critical thinking, prioritizing, decision-making, and cultural competence in nursing practice;

(iii) The prescribing/directing, management, assignment, and supervision of nursing care;

(iv) Nursing care of clients with alterations in body systems;

(v) Current nursing procedures and processes including use of technology in patient management, nursing practice and documentation;

(vi) Comprehensive nursing assessment;

(vii) Documentation including legal aspects of documentation;

(viii) Application of pharmacologic knowledge and administration of medications.

(d) Supervised clinical practice:

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(A) The student shall hold a current full or limited license at the level for which the re-entry course is being taken prior to engaging in supervised clinical practice to meet competency requirements.

(B) Supervised clinical practice shall be appropriate to the student's level of licensure and plan for competency development;

(C) Prior to required supervised clinical practice, the facility shall provide relevant orientation appropriate to the planned clinical experience;

(D) Instructor-supervised clinical practice may be provided.

(E) The faculty-to-student ratio for instructor-supervised clinical practice shall be no greater than 1:9. A lower ratio shall apply when dictated by student/client safety and learning effectiveness.

(e) Documentation of successful completion of the re-entry program shall include:

(A) Completion of program objectives/outcomes;

(B) Completion of required supervised clinical practice hours;

(C) Achievement of predetermined competencies;

(D) Recommendation for licensure by the re-entry program director and the clinical preceptor.

(f) The program shall notify the Board in writing on each student's successful completion of the program, withdrawal from the program prior to completion, or failure to meet required objectives/competencies.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.113 & 678.150

Hist.: NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0189; NB 12-1997, f. & cert. ef. 9-29-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 1-2003, f. & cert. ef. 3-6-03; BN 12-2006, f. & cert. ef. 10-5-06

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Rule Caption: Nurse Practitioner Rules Revised.

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Rules Repealed: 851-050-0120, 851-050-0125, 851-050-0130, 851-050-0131, 851-050-0140, 851-050-0155, 851-050-0160, 851-050-0162, 851-050-0163, 851-050-0164, 851-050-0170

Subject: These rules cover the standards and scope of practice for nurse practitioners.

Rules Coordinator: KC Cotton—(971) 673-0638

851-050-0000

Definitions

(1) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness; response to illness; health risks of individuals, families and groups; resources; strengths and weaknesses, coping behaviors; and the environment. The skills employed during the assessment process may include, but are not limited to: obtaining client histories, conducting physical examinations, ordering, interpreting and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and x-rays).

(2) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client/patient record established by the nurse practitioner.

(3) "Collaboration" means working with another health care provider to jointly provide client care.

(4) "Consultation" means discussion with another health care provider for the purpose of obtaining information or advice in order to provide client care.

(5) "Counseling" means a mutual exchange of information through which advice, recommendations, instruction, or education are provided to the client.

(6) "Delinquent Renewal" means the renewal of a nurse practitioner certificate previously held in Oregon which is expired.

(7) "Diagnosis" means identification of actual or potential health problems or need for intervention, based on analysis of the data collected.

(8) "Direct Supervision" means the licensed/certified nurse practitioner or physician is physically present at the practice site, and able to intervene if necessary.

(9) "Distance learning" means education provided by written correspondence or electronic medium for students not located at the site of the school.

(10) "Evaluation" means the determination of the effectiveness of the intervention(s) on the client's health status.

(11) "Holistic Health Care" means an approach to diagnosis and treatment of clients, which considers the status of the whole person (physical, emotional, social, spiritual, and environmental).

(12) "Initial certification" means the first certification granted by the Board. This may follow the applicant's completion of a nurse practitioner program or be granted to an applicant in Oregon who has been recognized by and has practiced as a nurse practitioner in another state or jurisdiction.

(13) "Intervention" means measures to promote health, to protect against disease, to treat illness in its earliest stages, and to manage acute and chronic conditions and/or illness. Interventions may include, but are not limited to: issuance of orders, direct nursing care, prescribing or administering medications or other therapies, and consultation or referral.

(14) "Management" means the provision and/or coordination of the care that the client receives related to physical and psycho-social health-illness status;

(15) "Nurse Practitioner" (NP) means a registered nurse who provides health care in an expanded specialty role. The title nurse practitioner and specialty category of practice shall not be used unless the individual is certified by the Board.

(16) "Nurse Practitioner Orders" means written or verbal instructions or directions by the nurse practitioner for interventions, diagnostic tests, evaluations, drugs, or treatment modalities. Nurse practitioners may establish protocols and standing orders.

(17) "Practice requirement" in an expanded specialty role means independent clinical practice in the specialty role of certification providing health care or other such activities, which have a clinical focus and are at an advanced nursing level. These activities include, but are not limited to, teaching, consulting, supervision and research related to the specialty area of certification.

(18) "Provision of Care" means holistic health care, which is continuous and comprehensive. Health care includes:

(a) Health promotion;

(b) Prevention of disease and disability;

(c) Health maintenance;

(d) Rehabilitation;

(e) Identification of health problems;

(f) Management of health problems;

(g) Referral.

(19) "Referral" means directing the client to other resources for the purpose of assessment or intervention.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.380

Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. & cert. ef. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06

851-050-0001

Standards for Nurse Practitioner Programs

The Board's standards for nurse practitioner programs for initial applicants are as follows:

(1) The nurse practitioner program shall be a minimum of one academic year in length; however, programs completed before January 1, 1986 and post-Masters programs completed for the purpose of changing category of nurse practitioner certification may be less than one academic year in length if the program otherwise meets all requirements.

(2) Faculty who teach within the nurse practitioner program shall be educationally and clinically prepared in the same specialty area(s) as the theory and clinical areas they teach and shall include advanced practice nurses.

(3) The curriculum shall contain theory and clinical experience in the nurse practitioner specialty role/category specified in OAR 851-050-0005(6) for which application is being made, preparing the graduate to meet all competencies within the scope including physical assessment, pharmacology, pathophysiology, differential diagnosis and clinical management.

(4) The number of contact hours of clinical experience shall be equal to or greater than the number of contact hours of nurse practitioner theory.

(5) Programs that provide for advanced placement of students shall provide documentation that such students meet the equivalent of the program's current curriculum and standards.

(6) Written program materials shall accurately reflect the mission, philosophy, purposes, and objectives of the program.

(7) Programs shall demonstrate appropriate course sequencing, including completion of all pre-licensure nursing curriculum requirements before advancement into nurse practitioner clinical coursework.

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(8) Preceptors shall meet clinical and licensure qualifications for the state in which they practice.

(9) Distance learning programs shall meet all standards of OAR 851-050-0001.

(10) Coursework taken within the nurse practitioner program must be taken at the graduate level, if completed after January 1, 1986.

(11) Nurse practitioner programs outside of the United States must meet all standards of OAR 851-050-0001. Such programs shall be determined by Board credentials review to be equivalent to graduate nurse practitioner programs offered in the United States which prepare the nurse practitioner for practice within the advanced nursing specialty scope. Nationally recognized accreditation standards may be applied by the Board at the Board's discretion, in accordance with the Oregon Office of Degree Authorization regulations.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: NB 3-1990, f. & cert. ef. 4-2-90; NB 8-1993, f. & cert. ef. 8-23-93; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06

851-050-0005

Nurse Practitioner Scope of Practice

(1) Purpose of Scope of Practice:

(a) To establish acceptable levels of safe practice for the nurse practitioner.

(b) To serve as a guide for the Board to evaluate nurse practitioner practice.

(c) To distinguish the scope of practice of the nurse practitioner from that of the registered nurse.

(2) The role of the nurse practitioner will continue to expand in response to societal demand and new knowledge gained through research, education, and experience.

(3) The nurse practitioner provides holistic health care to individuals, families, and groups across the life span in a variety of settings, including hospitals, long term care facilities and community-based settings.

(4) Within his or her specialty, the nurse practitioner is responsible for managing health problems encountered by the client and is accountable for health outcomes. This process includes:

(a) Assessment;

(b) Diagnosis;

(c) Development of a plan;

(d) Intervention;

(e) Evaluation.

(5) The nurse practitioner is independently responsible and accountable for the continuous and comprehensive management of a broad range of health care, which may include:

(a) Promotion and maintenance of health;

(b) Prevention of illness and disability;

(c) Assessment of clients, synthesis and analysis of data and application of nursing principles and therapeutic modalities;

(d) Management of health care during acute and chronic phases of illness;

(e) Admission of his/her clients to hospitals and/or health services including but not limited to home health, hospice, long term care and drug and alcohol treatment;

(f) Counseling;

(g) Consultation and/or collaboration with other health care providers and community resources;

(h) Referral to other health care providers and community resources;

(i) Management and coordination of care;

(j) Use of research skills;

(k) Diagnosis of health/illness status;

(l) Prescribing, dispensing, and administration of therapeutic devices and measures, including legend drugs and controlled substances as provided in division 56 of the Oregon Nurse Practice Act, consistent with the definition of the practitioner's specialty category and scope of practice.

(6) The nurse practitioner scope of practice includes teaching the theory and practice of advanced practice nursing.

(7) The nurse practitioner is responsible for recognizing limits of knowledge and experience, and for resolving situations beyond his/her nurse practitioner expertise by consulting with or referring clients to other health care providers.

(8) The nurse practitioner will only provide health care services within the nurse practitioner's scope of practice for which he/she is educationally prepared and for which competency has been established and maintained. Educational preparation includes academic coursework, workshops or seminars, provided both theory and clinical experience are included.

(9) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(a) Acute Care Nurse Practitioner (ACNP) — The Acute Care Nurse Practitioner independently provides health care to persons who are acutely or critically ill;

(b) Adult Nurse Practitioner (ANP) — The Adult Nurse Practitioner independently provides health care to adolescents and adults;

(c) Nurse Midwife Nurse Practitioner (NMNP) — The Nurse Midwife Nurse Practitioner independently provides health care to women, focusing on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases, and reproductive health. Counseling related to sexuality, relationship, and reproductive issues is included in this scope.

(d) College Health Nurse Practitioner (CHNP) — The College Health Nurse Practitioner independently provides health care to essentially normal clients in the college setting. As of March 12, 1987, no additional College Health Nurse Practitioners shall be initially certified.

(e) Family Nurse Practitioner (FNP) — The Family Nurse Practitioner independently provides health care to families and to persons across the lifespan;

(f) Geriatric Nurse Practitioner (GNP) — The Geriatric Nurse Practitioner independently provides health care to older adults;

(g) Neonatal Nurse Practitioner (NNP) — The Neonatal Nurse Practitioner independently provides health care to neonates and infants.

(h) Pediatric Nurse Practitioner (PNP) — The Pediatric Nurse Practitioner independently provides health care to persons newborn to young adulthood;

(i) Psychiatric/Mental Health Nurse Practitioner (PMHNP) — The Psychiatric/Mental Health Nurse Practitioner independently provides health care to clients with mental and emotional needs and/or disorders;

(j) Women's Health Care Nurse Practitioner (WHCNP) — The Women's Health Care Nurse Practitioner independently provides health care to adolescent and adult females. The scope of practice includes treating the male partners of their female clients for sexually transmitted diseases and reproductive health. Counseling related to sexuality, relationship, and reproductive health is included in this scope.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 1-1992, f. & cert. ef. 2-13-92; NB 7-1992, f. & cert. ef. 7-15-92; NB 4-1994, f. & cert. ef. 8-2-94; NB 9-1994, f. & cert. ef. 12-7-94; NB 2-1995, f. & cert. ef. 4-12-95; NB 7-1996, f. & cert. ef. 10-29-96; NB 6-1997, f. & cert. ef. 5-13-97; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2006, f. & cert. ef. 10-5-06

851-050-0006

Re-Entry Requirements

(1) If the practice requirement in OAR 851-050-0004 has not been met, applicants shall:

(a) Obtain a limited license as a registered nurse in the State of Oregon; or hold a current, unencumbered Oregon registered nurse license.

(b) Submit an application for a limited license, which meets educational requirements of OAR 851-050-0002(1), or an application for delinquent renewal of previous certification as a nurse practitioner in Oregon. An application, which is not completed, becomes void after one year from date of receipt.

(c) Submit a plan of study for approval, which specifies:

(A) Clinical sites, patient population, objectives, competency evaluation, and supervisory relationship of preceptor;

(B) Number of practice hours required and how their completion shall be met.

(d) Submit names and qualifications for approval of preceptors which are Oregon certified nurse practitioners and/or Oregon licensed MD/DO physicians in the same specialty area as the nurse practitioner certification specialty.

(e) Determine practice hours in consultation with the Board to ensure one of the following options have been met:

(A) 300 hours of supervised practice if the applicant has practiced less than 960 hours in the last five years, or has completed a nurse practitioner program within the last two years and has not worked a minimum of 192 hours. Advanced practice hours completed during these time frames may be applied to reduce the total number of supervised clinical practice hours required, except that in no case shall the precepted practice be less than 150 hours.

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(B) 600 hours of supervised practice if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years. Advanced practice hours completed during the six year time frame may be applied to reduce the total number of supervised clinical practice hours required except that in no case shall the precepted practice be less than 300 hours.

(C) 1000 hours of supervised practice if the applicant has not practiced at least 960 hours in the last ten years. Advanced practice hours completed during the ten year time frame may be applied to reduce the total number of supervised clinical practice hours required except that in no case shall the precepted practice be less than 500 hours.

(D) If the applicant has not practiced at least 960 hours within the last ten years, the re-entry requirement shall be met through successful completion of a nurse practitioner post masters certificate program which meets the requirements of OAR 851-050-0001, or of a comprehensive series of nurse practitioner courses within a CCNE or NLNAC accredited nurse practitioner program in the specialty sought. The plan of study shall be submitted in advance for Board approval before enrollment. The plan of study shall cover the entire scope of the advanced specialty area under which the applicant was previously certified/licensed, and must include both clinical and didactic hours. The program of study shall include advanced pharmacology which meets the requirements of OAR 851-056-0008, pathophysiology, physical assessment, differential diagnosis, and clinical management. The institution shall provide documentation, which demonstrates previous credits, courses, or competency testing applied to meet final completion. Proof of completion of this plan of study shall be provided to the Board in the form of official transcripts documenting completion of all required coursework.

(2) In addition to meeting the re-entry practice requirement, all participants will submit evidence of 100 hours of continuing education completed within the last two years by the completion of their re-entry precepted practice. The continuing education hours must include an advanced pharmacology course meeting the criteria in OAR 851-056-0008, physical assessment, treatment modalities, client management and laboratory/diagnostic studies with content related to the NP scope of practice being sought. The continuing education may be obtained in the following ways, provided that no less than 50% is comprised of CME or CE accredited courses at the advanced practice specialty level:

- (a) Independent learning activities, e.g. reading professional journals;
- (b) Unstructured learning activities, e.g. professional meetings and clinical rounds;
- (c) Structured learning activities, e.g. seminars and workshops.

(3) The re-entry participant shall practice under a limited certificate, and successfully complete clinical practice directly supervised by the approved preceptor in the same area of practice. Application for a limited certificate shall be made prior to the beginning of the supervised clinical practice. The limited certificate shall be valid for one year, with one renewal of an additional one year permitted. The supervising practitioner shall submit a final evaluation to the Board to verify that the applicant's knowledge and skills are at a safe and acceptable level and verify the hours of supervised practice. An application for a limited license for re-entry without issuance after one calendar year shall be considered void.

(4) Supervised practice hours shall be without compensation.

(5) Upon successful completion of the supervised practice hours, the nurse practitioner certificate will be issued with an expiration date that coincides with the applicant's registered nurse license.

(6) Re-entry hours must be completed within a two-year time frame from the issuance of the limited license.

(7) Successful completion of Board approved advanced practice re-entry will satisfy requirements for the registered nurse re-entry.

(8) Prescriptive authority will be issued only upon completion of precepted hours to applicants meeting all criteria in OAR 851-056-0006. Written documents during precepted practice shall be signed with the nurse practitioner specialty title, followed with "Re-entry" and the preceptors co-signature.

(9) The applicant shall submit all fees required by the Board with the application. The fees are not refundable.

Stat. Auth.: ORS 678.101, 678.150

Stats. Implemented: ORS 678.380

Hist.: BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06

851-050-0138

Renewal of Nurse Practitioner Certification

(1) Renewal of certification shall be on the same schedule as the renewal system of the registered nurse license. The requirements for recertification are:

(a) Current unencumbered license as a registered nurse in the state of Oregon.

(b) Submission of all required application fees. Fees are not refundable. An application that has not been completed during the current biennial renewal cycle shall be considered void.

(c) Completion of 100 clock hours of continuing education related to advanced practice nursing and to the area(s) of specialty certification. As of January 2, 2007, no less than 50% shall be comprised of CME or CE accredited courses at the advanced practice specialty level.

(A) Continuing education must be obtained in the following ways:

(i) Independent learning activities e.g., reading professional journals;

(ii) Unstructured learning activities, e.g. professional meetings and clinical rounds;

(iii) Structured learning activities, e.g. seminars and workshops.

(B) Continuing education hours shall be documented on the renewal form.

(C) An applicant for renewal who has graduated from the nurse practitioner program less than two years prior to his/her first renewal will not be required to document the full 100 clock hours of continuing education. The applicant's continuing education will be prorated on a monthly basis based on the length of time between graduation and the date of the first renewal.

(D) Nurse practitioners shall maintain accurate documentation and records of any claimed continuing education and practice hours for no less than five years from the date of submission to the Board.

(2) Verification of practice hours which meet the practice requirement in OAR 851-050-0004.

(3) Renewal may be denied if the applicant does not meet the practice requirement or the continuing education requirement for renewal.

(4) Applications for renewal up to 60 days past the expiration date shall meet all requirements for renewal and pay a delinquent fee.

(5) Any individual whose nurse practitioner certification is expired may not practice or represent themselves as a nurse practitioner in Oregon until certification is complete, subject to civil penalty.

Stat. Auth.: ORS 678.150 & 678.380

Stats. Implemented: ORS 678.380

Hist.: NER 34, f. & ef. 10-1-76; NER 5-1981, f. & ef. 11-24-81; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0310; NB 2-1992, f. & cert. ef. 2-13-92; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06

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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 9-2006

Filed with Sec. of State: 10-9-2006

Certified to be Effective: 10-9-06

Notice Publication Date: 7-1-06

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*, 388 Or 44 (2005)

Rules Coordinator: Michael R. Washington—(503) 945-8978

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.

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(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 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; PAR 5-2006, f. & cert. ef. 6-14-06; PAR 6-2006(Temp), f. & cert. ef. 6-15-06 thru 12-11-06; PAR 9-2006, f. & cert. ef. 10-9-06

Bureau of Labor and Industries Chapter 839

Rule Caption: Amendments to July 1, 2006 PWR rates.

Adm. Order No.: BLI 33-2006

Filed with Sec. of State: 9-28-2006

Certified to be Effective: 10-1-06

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: This rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2006 to include amendments effective October 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 July 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 July 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 July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 30, 2006).

(c) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 14, 2006).

(d) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective August 4, 2006).

(e) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 1, 2006).

(f) Amendment to Oregon Determination 2006-02 (effective October 1, 2006).

(g) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 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 July 1, 2006, 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

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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; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06

Rule Caption: Amendment to conform injured workers' reinstatement rights with statutes.

Adm. Order No.: BLI 34-2006

Filed with Sec. of State: 10-3-2006

Certified to be Effective: 10-4-06

Notice Publication Date: 8-1-06

Rules Amended: 839-006-0131

Subject: OAR 839-006-0131(1)(d) 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. OAR 839-006-0131(1)(d) was temporarily amended on March 13, 2006. The temporary rule expired September 8, 2006.

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 bonafide 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; Administrative correction 9-21-06; BLI 34-2006, f. 10-3-06, cert. ef. 10-4-06

Rule Caption: Clarifying eligibility of re-employed uniformed service personnel for leave under Oregon Family Leave Act.

Adm. Order No.: BLI 35-2006

Filed with Sec. of State: 10-3-2006

Certified to be Effective: 10-4-06

Notice Publication Date: 7-1-06

Rules Amended: 839-009-0210

Subject: The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. The rule amendment clarifies that, under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.

Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-009-0210

Definitions

(1) "Alternate duty" means work assigned to an employee that may consist of:

(a) The employee's same duties worked on a different schedule; or
(b) Different duties worked on the same or different schedule.

(2) "Child," for the purposes of parental and sick child leave only (not for the purposes of serious health condition leave), means a biological, adopted, foster or stepchild, the child of an employee's same sex-domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:

(a) Under the age of 18; or
(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d).

(3) "Covered employer" means any employer employing 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

(4) "Eligible employee" means an employee employed in the State of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsection (c) of this section.

(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.

(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must be employed by a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the

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original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR Part 785).

(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA. [Note: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC 2601-2654 (FMLA).]

(d) For the purpose of qualifying as an eligible employee, the employee need not work solely in the State of Oregon.

(5) "Family member" means the spouse, same-sex domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, parent-in-law, parent of same-sex domestic partner or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-sex domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave is taken.

(6) "FMLA" is the federal Family and Medical Leave Act, 29 USC 2601.

(7) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(8) "Health care provider" means:

(a) The person primarily responsible for providing health care to an eligible employee or to a family member of an eligible employee; and

(b) Who is a physician licensed to practice medicine or surgery, including a doctor of osteopathy; or

(c) A podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a licensed physician's assistant, a direct entry midwife, a nurse-midwife or a clinical social worker authorized to practice and perform within the scope of a professional license as provided by law; or

(d) A Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Mass; or

(e) A chiropractor, but only to the extent that a chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(9) "In loco parentis" means in the place of a parent, having financial and day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(10) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(11) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(12) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (4).

(13) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(14) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section 14 of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;

(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

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 35-2006, f. 10-3-06, cert. ef. 10-4-06

Rule Caption: Amendments to July 1, 2006 PWR rates.

Adm. Order No.: BLI 36-2006

Filed with Sec. of State: 10-4-2006

Certified to be Effective: 10-4-06

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: This rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 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 July 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 July 1, 2006, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 30, 2006).

(b) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July

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14, 2006).

(c) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective August 4, 2006).

(d) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 1, 2006).

(e) Amendment to Oregon Determination 2006-02 (effective October 1, 2006).

(f) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 1, 2006).

(g) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006).

(h) Correction to October 1, 2006 Amendment to Oregon Determination 2006-02 (effective October 4, 2006).

(i) Amendments/Corrections to October 1, 2006 Amendment to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective October 4, 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 July 1, 2006, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stat. Auth.: ORS 279C.815, 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; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06

Department of Agriculture Chapter 603

Rule Caption: Biofuel specifications, dispenser labeling, delivery documentation, and motor fuel quality regulation updates.

Adm. Order No.: DOA 17-2006

Filed with Sec. of State: 9-26-2006

Certified to be Effective: 9-26-06

Notice Publication Date: 8-1-06

Rules Amended: 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0440, 603-027-0490

Subject: Adopt the 2006 Edition ASTM International specifications for gasoline, diesel fuel, biodiesel, E85 fuel ethanol, and M85 fuel methanol; diesel fuel dispenser labeling requirements; biofuel dispenser labeling requirements; delivery documentation requirements; and update Oregon's motor fuel quality regulations based upon the national model regulations published in the 2006 Edition of the National Institute of Standards and Technology (NIST) Handbook

130 entitled Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-027-0410

Definitions

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2006 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.

(3) "Antiknock Index (AKI) "means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI=(RON+MON)/2$. This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, (R+M)/2 Octane.

(4) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(5) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(6) "Aviation Gasoline" means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(7) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(8) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(9) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(10) "Biodiesel Blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(11) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements.(Ref. ASTM D 976.)

(12) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)

(13) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(14) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(15) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.

(16) "Director" means the Director of Agriculture.

(17) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(18) "Distillate." means any product obtained by condensing the vapors given off by boiling petroleum or its products.

(19) "EPA" means the United States Environmental Protection Agency.

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(20) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).

(21) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.

(22) "Fuel Injector Cleanliness" means a characteristic of the fuel which allows engine operation without fuel contribution to excessive injector deposits.

(23) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(24) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.

(25) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(26) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

(27) "Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.

(28) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.

(29) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(30) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.

(31) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.

(32) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

(33) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(34) "Motor Vehicle Fuel" means gasoline, diesel or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.

(35) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicles fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.

(36) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(37) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(38) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(39) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(40) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(41) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420(5).

(42) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(43) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(44) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(45) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(46) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(47) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(48) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420(4).

(49) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06

603-027-0420 Standard Fuel Specifications

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(4) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a

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cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1 – March 31 of each year.

(5) Premium Diesel Fuel — All diesel fuel products identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, “Standard Specification for Diesel Fuel Oils” and must conform to at least two of the following requirements:

(a) Energy Content — A minimum energy content of 38.65 MJ/L, gross (138,700 BTU/gallon, gross) as measured by ASTM Standard Test Method D 240;

(b) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(c) Low Temperature Operability — A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 – March 31 of each year;

(d) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM D 6468 (180 minutes, 150 OC);

(e) Fuel Injector Cleanliness — A Coordinating Research Council (CRC) rating of 10.0 or less and a flow loss of 6.0 percent or less as determined by the Cummins L-10 Injector Deposit Test.

(A) When a fuel uses a detergent additive to meet the requirement, upon the request of the Director, the fuel marketer shall provide test data indicating the additive being used has passed the Cummins L-10 Injector Depositing Test requirements when combined with Caterpillar 1-K (CAT 1-K) reference fuel. The Director may also request records or otherwise audit the amount of additive being used to ensure proper treatment of fuels according to the additive manufacturer’s recommended treat rates.

(i) Upon the request of the Director, the fuel marketer shall provide an official “Certificate of Analysis” of the physical properties of the additive.

(ii) Upon the request of the Director, the fuel marketer shall provide a sample of detergent additive in an amount sufficient to be tested with CAT 1-K reference fuel in a Cummins L-10 Injector Depositing Test. If the sample does not meet the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the sample meets the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the Department of Agriculture.

(B) When a fuel marketer relies on the inherent cleanliness of the diesel fuel to pass the Cummins L-10 Injector Depositing Test or if the fuel requires a lower detergent additive level than the amount required when the additive is used with the CAT 1-K reference fuel, the fuel marketer shall provide, upon the request of the Director, annual test results from an independent laboratory that confirms the fuel meets the requirements of OAR 603-027-0420(5)(e). The time of the fuel sampling and testing shall be at the Director’s discretion. The Director may witness the sampling of the fuel and the sealing of the sample container(s) with security seals. The Director may request confirmation from the testing laboratory that the seals were intact upon receipt by the laboratory. The final test results shall be provided to the Director. All costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the annual test complies, any additional testing at the request of the Director shall be paid for by the Department of Agriculture.

(6) Biodiesel; B100 biodiesel intended for blending with diesel fuel shall meet the requirements of ASTM D 6751, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.”

(7) Biodiesel Blends; Blends of biodiesel and diesel fuels shall meet the following requirements:

(a) The base diesel fuel shall meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(b) The biodiesel blend stock shall meet the requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

(c) Exception; Biodiesel may be blended with diesel fuel whose sulfur or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(8) Aviation Gasoline shall meet the requirements of ASTM D 910, “Standard Specification for Aviation Gasoline.”

(9) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, “Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines.”

(10) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, “Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines.”

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06

603-027-0430

Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation. When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the quantity, the name of the product, the particular grade of the product, the word “Winter” or “Winterized” diesel if applicable, the word “Premium” diesel and a declaration of all performance properties that qualifies the fuel as premium diesel as required in OAR 603-027-0420(5) if applicable, the applicable automotive fuel rating, the name and address of the seller and buyer, and the date and time of the sale. In addition, for gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent. Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person’s registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state. Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel and biodiesel blends, and diesel fuel sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s), the type of product, the particular grade of the product, type of oxygenate contained if applicable, and the applicable automotive fuel rating.

(c) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 “Standard Fuel Specifications”.

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by “With a Lead Substitute” (e.g. “Unleaded With a Lead Substitute”). The lettering of the lead substitute declaration shall not be less than 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1. [Table not included. See ED. NOTE.]

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by “Diesel” and grades “No. 1-D S15”, “No. 1-D S500”, “No. 1-D S5000”, “No. 2-D S15”, “No. 2-D S500”, “No. 2-D S5000”, or “No. 4-D”. Each retail or nonretail dispenser of diesel fuel shall be labeled “Diesel” and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and

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conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in OAR 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Labeling of Premium Diesel. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers identified as premium diesel must display either:

(a) A label that includes all qualifying parameters as specified in OAR 603-027-0420(5) Premium Diesel Fuel affixed to each retail and nonretail dispenser. The label shall include a series of check blocks clearly associated with each parameter. The boxes for the parameters qualifying the fuel must be checked. All other boxes shall remain unchecked. The marketer may check as many blocks as apply (see **Example 1**); or

(b) A label that includes only the parameters selected by a marketer to meet the premium diesel requirements as specified in OAR 603-027-0420(5) Premium Diesel Fuel. In either case, the label must display the following words (see **Example 2**):

(A) "PREMIUM DIESEL FUEL" in a type at least 12 millimeters (1/2 inch) in height by 1.4 millimeters (1/16 inch) stroke (width of type).

(c) When applicable, as determined by the label option and qualifying parameters chosen by the marketer, the label must also display the following information and letter type size:

(A) The words "Energy Content", "Cetane Number", "Low Temperature Operability", "Thermal Stability", and "Fuel Injector Cleanliness" in a type at least 6 millimeters (1/4 inch) in height by 0.75 millimeter (1/32 inch) stroke (width of type).

(B) A declaration of the minimum Energy Content (minimum 38.65 MJ/L gross (138,700 BTU/gallon), if energy content is chosen as a qualifying parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(C) The minimum cetane number guaranteed (at least 47.0) if cetane number is chosen as a qualifying parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) in stroke (width of type).

(D) The date range of low temperature operability enhancement, (e.g., October - March) along with the qualifying test method (ASTM D 4539 or ASTM D 2500), if low temperature operability is chosen as a qualifying parameter, in a type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(E) **Example 1:** [Example not included. See ED. NOTE.]

(F) **Example 2:** [Example not included. See ED. NOTE.]

(d) The label must be conspicuously displayed on the upper-half of the product dispenser front panel in a position that is clear and conspicuous from the driver's position.

(6) Biodiesel:

(a) Identification of Product. Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(b) Labeling of Retail and Non-Retail Dispensers Containing More than 5% Biodiesel. Each retail and non-retail dispenser of biodiesel or biodiesel blend containing more than 5% biodiesel shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel Blend". (Examples: B100 Biodiesel; B60 Biodiesel Blend; B20 Biodiesel Blend)

(c) Documentation for Dispenser Labeling Purposes. The operator of retail and non-retail dispensers shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

(d) Exemption. Biodiesel blends containing 5% or less biodiesel by volume are exempted from requirements in OAR 603-027-0430(6)(a), (b), and (c).

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline shall be identified by Grade 80, Grade 100, or Grade 100LL.

(8) Fuel Ethanol:

(a) Identification of Fuel Ethanol. Fuel ethanol shall be identified by the capital letter E followed by the numerical value volume percentage of ethanol. (**Example: E85**)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel ethanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (**Example: E85 Ethanol**).

(c) Additional Labeling Requirements. Fuel ethanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (**Example: M85**)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word "methanol." (**Example: M85 Methanol**).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06

603-027-0440

Storage Tanks

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste, is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, E85 fuel ethanol, M85 fuel methanol, and aviation gasoline.

(b) Water in Gasoline, Diesel, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 50 millimeters (2 in) in depth when measured with water indicating paste in any tank utilized in the storage of biodiesel, diesel, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling. The fill connection for any motor vehicle fuel or aviation gasoline storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06

603-027-0490

Enforcement Proceedings; Civil Penalties

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use, Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting pro-

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viding for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved and;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed, if any;

(d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and/or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430(1)(b) through (6)(b)):

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

(ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;

(iv) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430(2)(c).);

(v) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;

(vi) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;

(vii) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-027-0420(1)(c)).

(viii) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;

(ix) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;

(x) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(4);

(xi) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(5);

(xii) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(xiii) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xiv) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xv) Biodiesel or biodiesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(6).

(B) Storage Tank(s); Motor vehicle fuel storage tank(s) not correctly identified as to the product contained (Ref. OAR 603-027-0440(2))

(C) Documentation, Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430(1)(a)):

(i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.

(D) Documentation, Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430(1)(a)); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel and biodiesel blends, and diesel fuel sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, E85 fuel ethanol, M85 fuel methanol, and aviation gasoline exceed allowable limits (Ref. OAR 603-027-0440(1)(a));

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440(1)(b)).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420(1)(b) and 603-027-0430(1)(a));

(B) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420(1) through (4));

(C) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420(3));

(D) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420(4));

(E) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420(5));

(F) Biodiesel B100 intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420(6));

(G) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420(7));

(H) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420(9));

(I) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420(10)).

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

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06

Rule Caption: 2nd round direct cash assistance to commercial troll salmon fishers.

Adm. Order No.: DOA 18-2006(Temp)

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06 thru 3-31-07

Notice Publication Date:

Rules Adopted: 603-009-0200, 603-009-0210, 603-009-0220, 603-009-0230, 603-009-0240, 603-009-0250, 603-009-0260

Subject: This rule provides a framework and criteria for the 2nd round direct assistance payments to eligible fishers in the Oregon Commercial Troll Salmon Fleet.

Rules Coordinator: Sue Gooch—(503) 986-4583

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603-009-0200

Definitions 2nd Round Direct Assistance to Commercial Troll Salmon Fishers

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Department" means the Oregon Department of Agriculture.

(2) "Director" means the director of the Oregon Department of Agriculture.

(3) "Fisher" means an Oregon resident holding a current Oregon Troll Salmon Permit issued by the Oregon Department of Fish and Wildlife.

(4) "Gross Landing Value" means monetary value of the food fish, or part thereof, including eggs and other by-products, at the point of landing as usually determined by the first exchange between the harvester and the first purchaser.

(5) "Oregon Resident" means a person who resides permanently in Oregon; or a person who maintains a permanent place of residence in Oregon, spends more than 180 days per year in Oregon and files income taxes in Oregon.

(6) "Infrastructure" means the assets necessary to maintain the Oregon commercial troll salmon fishery, including but not limited to: fishing boats, moorage, safety equipment, and fishers.

(7) "Commission" means the Oregon Salmon Commission.

(8) "Salmon Assistance Program" means the total funds allocated by the governor through the Strategic Reserve Fund authorized June 2006, combined with the total funds allocated by the Emergency Board in September 2006, and distributed by the Oregon Department of Agriculture and Oregon Economic and Community Development Department.

(9) "1st Round funding" means the funds authorized by the governor through the Strategic Reserve Fund in June 2006 and distributed by the Oregon Department of Agriculture and Oregon Economic and Community Development Department.

(10) "2nd Round funding" means the funds authorized by the Legislative Emergency Board in September 2006 and distributed by the Oregon Department of Agriculture and Oregon Economic and Community Development Department.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0210

Purpose

These rules provide criteria and procedures for administration of the 2nd round funding to Oregon's commercial troll salmon fishers as part of the Salmon Assistance Program. The purpose of the Salmon Assistance Program is to aid in maintaining an efficient system of production and distribution of salmon in Oregon.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0220

Eligible Fishers

To receive 2nd Round funding in the Salmon Assistance Program, fishers must meet the following criteria:

(1) Fisher must be a current Oregon resident;

(2) Fisher must hold a current valid Oregon salmon troll fishing permit; and

(3) Fisher must have salmon vessel landings on record with the Oregon Department of Fish and Wildlife for the 2003, 2004, 2005 or 2006 commercial troll salmon seasons.

(4) Fishers with Oregon commercial troll salmon landings for the 2006 season (up to the date of application) may not be eligible for financial assistance if the value of the current 2006 landings is greater than the highest value received in 2003, 2004, or 2005. Those fishers who only have Oregon commercial troll salmon landings on record with the Oregon Department of Fish and Wildlife for the 2006 season may be eligible for some assistance.

(5) Fishers with landings on multiple vessels during the 2003, 2004, 2005, or 2006 Oregon commercial troll salmon seasons must provide the vessel numbers and permit numbers for each year of the salmon season.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0230

Standards to Determine Eligibility

To determine awards for the Salmon Assistance Program, the director will consider 1st Round funding for each eligible fisher as well as 2nd

Round available funds to cover expenses necessary to maintain the infrastructure of the Oregon's commercial troll salmon fishing fleet. Fishers meeting the Eligible Fisher Criteria, OAR 603-009-0220, will be considered eligible for 2nd Round funding. Salmon Assistance Program payments will not exceed a fisher's highest gross landing value for the 2003, 2004, or 2005 seasons. Gross landing values for each eligible fisher will be verified with records maintained by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0240

Application Procedures

(1) All fishers who have on file, salmon landing records verified by the Oregon Department of Fish and Wildlife for the years 2003, 2004, 2005, or 2006, are deemed to have applied for 2nd Round funding. However, each eligible fisher who did not submit an application in the 1st Round must complete and submit a "Request for Contact Information" form to the Oregon Department of Agriculture by the due date specified on the form. Failure to submit the "Request for Contact Information" form by the due date will make the fisher ineligible for 2nd Round funding.

(2) Each eligible fisher who submitted an application for the 1st Round funding need not submit a "Request for Contact Information" form, as the Oregon Department of Agriculture has on file, contact information from 1st Round applications.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0250

Review Process of Applications

A review committee appointed by the director will perform a final evaluation of eligible fishers and make recommendations about the distribution of financial assistance for the 2nd Round funding and the Salmon Assistance Program. The primary basis for distribution will be the salmon landing records on file with the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

603-009-0260

Financial Assistance Payments

(1) The director will evaluate the recommendations of the review committee and will make a determination as to the distribution of the 2nd Round funding for the financial assistance payments. These recommendations may include a minimum and maximum payment to be made to any eligible fisher for the Salmon Assistance Program.

(2) Approval of 2nd Round financial assistance agreement payments will be made based on factors including but not limited to: landing records from the Oregon Department of Fish and Wildlife for the 2003, 2004, 2005, or 2006 commercial troll salmon fishing seasons, and amount of funds available for distribution.

(3) Denial of request. If an application is denied, the department will provide a letter to the applicant explaining the reason for denial.

(4) The director's determination as to each proposal is a contested case subject to the provisions of ORS chapter 183. A hearing request shall be made in writing to the director by the party or by the party's authorized representative. To be considered timely, a request for a hearing must:

(a) Be in writing;

(b) Be received by the director within 10 calendar days from the date the notice was received by the party.

Stat. Auth.: ORS 561 576, 285B.266

Stats. Implemented: ORS 561 576, 285B.266

Hist.: DOA 18-2006(Temp), f. & cert. ef. 10-13-06 thru 3-31-07

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**Department of Community Colleges and
Workforce Development
Chapter 589**

Rule Caption: Implements procedures for distribution of Strategic Fund; correction of grammar and capitalization.

Adm. Order No.: DCCWD 6-2006

Filed with Sec. of State: 10-3-2006

Certified to be Effective: 10-4-06

Notice Publication Date: 8-1-06

Rules Amended: 589-002-0100

Subject: Authority for distribution of the Community College Support Fund is already granted by OAR 589-002-0100, but a mecha-

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nism for distribution of the Strategic Fund is not identified in current rule language. This rule amendment outlines the procedures to be used for disbursement of Strategic Fund monies. Non-substantive grammar and capitalization corrections are implemented.

Rules Coordinator: Linda Hutchins—(503) 378-8649 x 474

589-002-0100

Distribution of Community College Support Fund

(1) Purpose Statement:

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short- and long-term interests include the consideration of such things as comparable District funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's Community College distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level.

(b) The State Board through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adoption of a policy-driven distribution formula. The overarching policy levers, chosen by the State Board have been structured to support access and quality and to do so with equity for Oregon students.

(c) The State Board, the Department, and the seventeen Oregon Community Colleges plan to pursue equalization of resources regardless of funding levels. This goal is reflected in the following principles:

(A) An expectation that equalization will be achieved in six years.

(B) Significant additional funds in a biennium compared to the previous biennium will benefit every college. The State Board will determine what level is significant on a biennial basis.

(C) Historic share of total public resources will be based on the immediate previous year for every year, with the exception of 2005–06. For 2005–06, historic share of public resources will be based on the average of 2003–04 and 2004–05.

(D) Buffered FTE will be used in the formula. The buffering is accomplished by using a three-year weighted average as defined in section (8)(b).

(E) If significant additional resources are available compared to the previous biennium, equalization can go faster. The State Board will determine what level is significant on a biennial basis.

(F) The resource level available compared to the previous biennium may impact the pace of progress toward equalization.

(2) For purposes of this rule, the following definitions apply:

(a) "Total Public Resources." The Community College Support Fund formula considers 100% of the next year's imposed property tax revenue and the General Fund appropriation from the legislature.

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule. Property tax revenues raised through voter approval of any local option or capital construction levy are not to be included as a resource to be distributed through the funding formula.

(c) "Community College Support Fund" is defined as those funds received through the State's General Fund appropriation and distributed to the community colleges for the purpose of funding educational programs.

(d) "Full-Time Equivalent (FTE) Enrollment" is defined as 510 clock hours for all coursework and for all terms including a fall 12-week term. For an 11-week fall term, the following calculation will be used; 11/12 of 510 hours or 467.5 hours.

(e) "Total Reimbursable FTE" is defined as the sum of 40% of second year prior to current FTE, 30% of third year prior to current FTE, and 30% of fourth year prior to current FTE.

(f) "Historic Share of Public Resources" is defined as the percent of statewide non-base total public resources allocated to each Oregon community college in the prior period. With the exception of 2005–06, historic share of public resources is calculated by dividing each college's total public resources from the prior year, exclusive of the base, by total weighted

reimbursable FTE from the prior year. For 2005–06, historic share of public resources is calculated by dividing each college's average total public resources from the 2003–04 and 2004–05 fiscal years, exclusive of the base, by the amount of frozen reimbursable FTE used in both the 2003–04 and 2004–05 fiscal years.

(g) "Equalization" is defined as equal public resource support per FTE, regardless of institution, and exclusive of the base. Equalization is measured by dividing Total Public Resources, exclusive of the base, by weighted reimbursable FTE.

(3) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by Senate Bill 1022 of the Third Special Session of the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day.

(e) All payments made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue shall be based on the Department's best estimate of quarterly entitlement using enrollment and property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(4) Districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner.

(5) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in OAR 589-006-0400.

(6) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each Community College's Total Reimbursable FTE base but only for those students who take part in coursework offered within Oregon's boundaries.

(7) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support contracted out-of-district (COD) programs and corrections programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these programs shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. Each Community College having a COD contract shall receive a biennial appropriation equal to the same percentage share of funding it received in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation; funding for individual corrections programs will be determined in consultation with the Department of Corrections.

(b) The State Board may establish a Strategic Fund.

(A) There are two basic categories for these funds. Incentivized statewide initiatives and activities and requests from individual Districts for assistance in meeting new requirements and expectations stemming from legislative change.

(B) The Commissioner will use a committee of stakeholders and Department staff to determine overall priorities for funding that consider the State Board work plan and initiatives.

(C) Strategic Funds provided to incentivize statewide activities or assist Community Colleges in meeting legislative expectations are provided only for the biennium in which funding is approved. Strategic Funds allocated for either purpose will not be considered in the distribution of funds through the formula described in section 8 for the current biennium or future biennia.

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(D) Any unused monies remaining in the current biennium's Strategic Fund will be allocated through the formula described in section 8 at the end of the biennium.

(E) The Commissioner will review, rank, and approve proposals to incentivize statewide activities. After each proposal is approved, the Commissioner will provide the State Board with a report detailing the purpose of the activity, the amount of Strategic Fund monies approved, and the proposal's merit as assessed under the following parameters:

(i) Purpose of the proposal

(ii) How does the activity support the initiatives and work plans of the Department and the State Board.

(iii) Does the activity relate to the Department's Key Performance Measures or other program-specific measures?

(iv) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(v) If future funding is needed, how will those resources be obtained?

Is the activity sustainable?

(vi) What is the activity's impact on the State three years from now? Five years from now?

(vii) What change is anticipated?

(viii) How will progress be measured?

(F) The Department will bring all requests for assistance in meeting new requirements or expectations stemming from legislative change to the State Board for discussion and consideration.

(G) The Department will assess the requests for assistance in meeting new requirements or expectations of the Legislature based on the following parameters:

(i) Purpose of the proposal.

(ii) How will the funds be used? To sustain or increase enrollment (not supplanting existing funds)?

(iii) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(iv) If future funding is needed, how will those resources be obtained?

Is the activity sustainable?

(v) What is the proposal's impact on the Community College three years from now? Five years from now?

(vi) How will progress be measured?

(H) The Department will provide a recommendation and reasoning to the State Board on whether the request merits funding.

(c) For 2005–07, \$1,187,565 shall be subtracted from the amount appropriated to the Community College Support Fund before the formula is calculated. These funds shall be used to support targeted investments including distributed learning activities.

(d) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium, and will be distributed in equal payments as described in section 3 and through a distribution formula as described in section 8.

(8) Distribution of funds to Community College Districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment. Each community college district shall receive a base payment of \$600 for each FTE up to 1,100 and \$300 per FTE for unregularized enrollments between actual enrollment numbers and 1,100 FTE. The base payment may be adjusted by the State Board each biennium. The base payment for each District will be adjusted according to the size of the District. District size for purposes of this adjustment will be determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

(A) 0–750 FTE 1.3513;

(B) 751–1,250 FTE 1.2784;

(C) 1,251–1,750 FTE 1.2062;

(D) 1,751–2,250 FTE 1.1347;

(E) 2,251–2,750 FTE 1.0641;

(F) 2,751–3,250 FTE 1.0108;

(G) 3,251–3,750 FTE 1.0081;

(H) 3,751–4,250 FTE 1.0054;

(I) 4,251–4,999 FTE 1.0027;

(J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to progress toward a distribution of funds based on FTE students. The equalized amount per FTE is determined by dividing total public resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board or the Legislature — by Total Reimbursable FTE. The Department shall make the calculation based on

submission of FTE reports by the districts and in accordance with established FTE principles.

(A) A three-year weighted average of Total Reported Reimbursable FTE by the Community Colleges will be used.

(B) For 2005–06 through 2007–08: FTE will be “thawed” from its current level one year at a time, beginning in 2005–06 when actual 2003–04 FTE is included in the formula. Beginning in 2007–08, the weighted average of FTE will consider only actual FTE. The “frozen” 96,027 total reimbursable FTE statewide was set by the State Board in 2002–03.

(i) The calculation for 2005–2006 Total Reimbursable FTE is 2003–04 actual enrollments (weighted at 40%); 2002–03 enrollments set at 96,027 (weighted at 30%); 2001–02 enrollments set at 96,027 (weighted at 30%).

(ii) The calculation for 2006–07 Total Reimbursable FTE is 2004–05 actual enrollments (weighted at 40%); 2003–04 actual enrollments (weighted at 30%); 2002–03 enrollments set at 96,027 (weighted at 30%).

(iii) The calculation for 2007–08 Total Reimbursable FTE is 2005–06 actual enrollments (weighted at 40%); 2004–05 actual enrollments (weighted at 30%); 2003–04 actual enrollments (weighted at 30%).

(C) All future calculations will use a three-year weighted average with second year prior to current actual enrollment weighted at 40%, third year prior to current actual enrollment weighted at 30% and fourth year prior to current actual enrollment weighted at 30%.

(c) Equalization. The State Board of Education expects to achieve Equalization in funding for all community college students in six years.

(A) Progress to Equalization is defined as: On an individual Community College level, progress toward Equalization will close the gap between non-base total public resource support per FTE and fully equalized non-base total public resource support per FTE by some fraction per year.

(B) The proposed model calculates how far each Community College's non-base allocation is from full equity every year, then moves incrementally toward Equalization each year. Each Community College makes the same percentage movement to Equalization each year unless the harm limit (described in section (8)(d)) is invoked. Community Colleges at or near equity do not move much in real dollars under the equity adjustment. Community Colleges further from equity move more in real dollars under the equity adjustment.

(C) In early years, the focus is on stability as Community Colleges adjust to Equalization. A smaller proportion of funds is distributed through Equalization and a larger proportion is distributed based on historic share of public resources. As the timeframe progresses, this proportion reverses, and in later years more funds are distributed through Equalization.

(d) Harm Limit. The harm limit is designed to prevent individual Community Colleges from losing more than a certain percent of non-base total public resources from one year to the next due to Equalization. The harm limit does not limit losses in total public resources due to changes in FTE enrollment, changes in the General Fund appropriation, or changes in public resources. The harm limit is determined by combining the percent change in state appropriation funds from one year to the next with an adjustment percent determined by the State Board each year. In determining the adjustment, and therefore the total harm limit that results from combining the adjustment with the percent change in resources, the Board should consider the following issues:

(A) The total harm limit must not unnecessarily impede progress toward Equalization in the expected six-year period.

(B) The total harm limit should be adequate to ameliorate unreasonable negative effects of Equalization.

(e) Distribution of Significant Additional State Resources. In a biennium when significant additional state resources are available compared to the state appropriation in the previous biennium, in each year of the biennium:

(A) Fifty percent of additional state resources will be allocated through the Equalization methodology.

(B) The remaining fifty percent of additional state resources will be allocated based on the Community College's historic share of public resources.

(C) The State Board will determine on a biennial basis what level of additional resources is considered significant.

(D) The State Board retains the authority to alter the percent of significant additional state resources allocated according to equity and historic share of public resources for each biennium, beginning in 2007–09.

(9) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula

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during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

Stat. Auth.: ORS 326.051 & 341.626
Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665
Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04; DCCWD 1-2005, f. & cert. ef. 7-13-05; DCCWD 2-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 6-2006, f. 10-3-06, cert. ef. 10-4-06

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

Rule Caption: Implements HB2181 by establishing license terms; standardizing license application and continuing education course requirements.

Adm. Order No.: BCD 13-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 6-1-06

Rules Adopted: 918-030-0000, 918-030-0010, 918-030-0020, 918-030-0040, 918-030-0050, 918-030-0060, 918-030-0120, 918-030-0125, 918-030-0130, 918-030-0135, 918-030-0150, 918-030-0210, 918-030-0220, 918-030-0230, 918-030-0240, 918-030-0250, 918-030-0410, 918-030-0910, 918-030-0920, 918-035-0000, 918-035-0005, 918-035-0010, 918-035-0020, 918-035-0040, 918-035-0050, 918-035-0060, 918-035-0070, 918-035-0080, 918-035-0090

Rules Amended: 918-030-0030, 918-030-0100, 918-030-0200, 918-225-0640, 918-225-0670, 918-225-0691, 918-282-0033, 918-282-0100, 918-282-0110, 918-282-0185, 918-282-0205, 918-282-0355, 918-282-0365, 918-400-0380, 918-695-0040, 918-695-0120, 918-695-0125

Rules Repealed: 918-030-0000(T), 918-030-0010(T), 918-030-0020(T), 918-030-0030(T), 918-030-0040(T), 918-030-0050(T), 918-030-0060(T), 918-030-0100(T), 918-030-0120(T), 918-030-0125(T), 918-030-0130(T), 918-030-0135(T), 918-030-0150(T), 918-030-0200(T), 918-030-0210(T), 918-030-0220(T), 918-030-0230(T), 918-030-0240(T), 918-030-0250(T), 918-030-0410(T), 918-030-0910(T), 918-030-0920(T), 918-035-0000(T), 918-035-0005(T), 918-035-0010(T), 918-035-0020(T), 918-035-0040(T), 918-035-0050(T), 918-035-0060(T), 918-035-0070(T), 918-035-0080(T), 918-035-0090(T), 918-225-0640(T), 918-225-0680, 918-225-0685, 918-225-0691(T), 918-225-0900, 918-225-0910, 918-225-0920, 918-225-0930, 918-225-0940, 918-225-0950, 918-225-0960, 918-225-0970, 918-282-0100(T), 918-282-0110(T), 918-282-0335, 918-282-0365(T), 918-283-0000, 918-283-0010, 918-283-0020, 918-283-0030, 918-283-0040, 918-283-0050, 918-283-0060, 918-283-0070, 918-400-0380(T), 918-695-0010, 918-695-0040(T), 918-695-0200, 918-695-0300, 918-695-0310, 918-695-0320, 918-695-0330, 918-695-0340, 918-695-0350, 918-695-0360, 918-695-0370, 918-695-0380, 918-695-0390

Subject: These rules implement HB 2181 by instituting license expiration dates and terms to replace the date and terms repealed by the bill and by standardizing license procedures. The rules establish criteria for retaking of failed examinations, establish continuing education requirements for licensees, and clarify processes for approving continuing education courses and instructors, and requirements for persons who fail to renew their licenses by the renewal date.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-030-0000

Purpose and Scope

OAR chapter 918, division 30 establishes the general licensing requirements and procedures for individuals and businesses licensed by the appropriate board or by Building Codes Division. These rules apply to individuals and businesses required to be licensed under provisions of ORS chapters 447, 460, 479.510 to 479.945, 480.510 to 480.990 and 693.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0010

Definitions

As used in OAR chapter 918, division 30 and division 35, terms are defined as follows unless context requires otherwise:

(1) "Applicant" means a person that applies for a license in the manner established by these rules.

(2) "Appropriate Board" means the advisory board that has authority over a particular license or licensee.

(3) "Appropriate rules" refers to the administrative rules containing specific licensing criteria that are located in OAR chapter 918 division 225, division 282, division 400, division 695 and division 780.

(4) "Code cycle" means the period from adoption of the current Oregon Specialty Code to the adoption of a new Oregon Specialty Code. Adoption refers to the base model code and does not mean amendment of the Oregon Specialty Code.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Lawful work experience" means work experience in a jurisdiction that was gained in compliance with that jurisdiction's regulations. Lawful experience may include:

(a) Work experience gained while licensed for the scope and type of work performed; and

(b) Work experience gained while in the employ of a licensed employer when the employee is not required to have a license.

(7) "Person" means individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, and public agencies. "Person" also means the owner or holder of a direct or indirect interest in a corporation, association, firm, partnership, limited liability company or joint stock company if:

(a) The interest allows the owner or holder to participate in the management of the business; and

(b) The owner or holder of the interest has either had a division issued license revoked or been the recipient of a notice of proposed civil penalty from the director or the appropriate board.

(8) For purposes of ORS 447.040, 479.620, 480.630 and any other license regulated by ORS chapter 455, "engaging in the business" means to advertise or solicit, contract or agree to perform, or to perform, work for which a license or permit is required under Oregon law, including but not limited to a single instance.

(9) "Reciprocal Jurisdiction" means a state with a current reciprocal licensing agreement with the state of Oregon.

(10) "Registered" when referring to an apprenticeship program or a training committee means that the program or committee has been registered under the standards adopted by the Oregon Bureau of Labor and Industries or approved by the appropriate advisory board.

(11) "Valid" license means a license issued by either the appropriate board or division that has not expired and has not been suspended or revoked.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0020

Application Process

(1) An applicant must apply for a license on a division form or by completing an online application available through the division's Web site.

(2) In order to be approved the application must include:

(a) Applicable examination and application fees; and

(b) Verification of training, work experience or other documentation submitted in the manner established by OAR 918-030-0030.

(3) Nothing in chapter 918, division 030 prevents an applicant for a license from faxing or scanning and e-mailing documents.

(4) An applicant may not sit for an examination or receive a license unless the division approves the application.

(5) An applicant required by statute or appropriate rule to pass a written examination must score at least 75 percent correct.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

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918-030-0030

Qualifying Criteria

All applicants must submit proof of qualifying criteria as required by the appropriate rules and in the manner established by this rule.

(1) Submit training and experience verification as follows:

(a) A certificate of completion from a registered apprenticeship program, or a referral letter from either the registered training committee or a board approved training program stating the applicant is qualified to take the examination. The division will accept completion from an apprenticeship program that is not registered only if it meets the Oregon standard for apprenticeship training.

(b) A copy of a valid license from a reciprocal jurisdiction or a letter from the reciprocal jurisdiction stating that the applicant is currently licensed. Only reciprocal jurisdiction licenses obtained through examination meet this requirement; or

(c) Other verification of equivalent training and experience submitted in the manner established in OAR 918-030-0040 and 918-030-0050.

(2) Electrical license applicants who are required to submit proof of related training classes may alternatively submit verification of twice the amount of equivalent work experience required for the license.

(3) Applicants required to take an examination must submit proof of a high school diploma, GED or international equivalent. A college degree will substitute for the requirements of this section.

(4) For purposes of qualifying for a license, the division will consider no more than 2,000 hours of experience per year.

(5) Only lawful work experience is accepted. The appropriate board or division determines whether an applicant's work experience is lawful. If an applicant disagrees with the determination, the applicant must provide evidence clearly demonstrating that, at the time the disputed work was performed, the work experience was lawful under the laws of the jurisdiction in which work was performed.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 19-2004, f. 9-30-04, cert. ef. 10-1-04; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0040

Other Verification

(1) Applicants submitting other verification of equivalent training and experience under OAR 918-030-0030(1)(c), must provide verification from the following persons:

(a) Verification from a current or previous employer actively involved with the applicant's work; or

(b) If the current or previous employer is no longer in business, is deceased or otherwise cannot be located, verification from the individual that supervised the work; or

(c) Only if both the employer and the supervisor cannot be located, verification from a co-worker that was directly involved in the work performed. Co-worker verification must be accompanied by supporting documentation, such as employment records, showing that the verifier worked with the applicant and has knowledge of the work performed.

(2) The appropriate board may approve alternate verification of training and experience on a case-by-case basis.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0050

Verification of Military Training and Experience

(1) Experience and training gained through the military is evaluated on a case-by-case basis. The experience and training must be equivalent to the license criteria established by the appropriate rules.

(2) Military training and experience must be submitted as follows:

(a) Official documentation from supervising officials showing the type and approximate hours of work experience; or

(b) Other reliable documentation verifying training and experience if supervisory officials cannot be located.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0060

Reapplying After Failed Examination

(1) An applicant who fails an examination may reapply for the license at any time as provided in OAR 918-030-0020. There is no waiting period to reapply after a failed exam.

(2) An applicant who reapplies is not required to re-qualify for examination or provide work history information unless the requirements for the license have changed since the applicant originally applied for the license.

(3) Exam retakes are scheduled no less than 30 days from the date of the failed exam, except that exam retakes for the general supervising electrician and limited supervising electrician licenses are scheduled no less than 90 days from the date of the failed exam.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0100

Continuing Education Generally

(1) OAR 918-030-0100 to 918-030-0150 establishes continuing education requirements for licensees.

(2) The hourly continuing education requirements can be met by approved class, online or correspondence courses.

(3) When a continuing education course is taught in more than one session, credit is only granted upon completion of the entire course.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 2-2004, f. 2-13-04, cert. ef. 4-1-04; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0120

Licenses Requiring 24 Hours of Continuing Education

(1) During each three-year license cycle, the following license holders are required to complete 24 hours of approved continuing education, including one code-change course:

(a) General Supervising Electrician;

(b) Limited Supervising Electrician;

(c) General Journeyman Electrician;

(d) Journeyman Plumber;

(2) The following licenses transition to a three-year cycle beginning July 2008. Until then holders of the following licenses are required to complete 8 hours of continuing education each year:

(e) Class 2 Boiler — Pressure Vessel Installer;

(f) Class 3 Boiler — Building Service Mechanic;

(g) Class 4 Boiler — Boilermaker;

(h) Class 5 Boiler — Pressure Piping Mechanic;

(i) Class 5A Boiler — Process Piping Mechanic; and

(j) Class 5B Boiler — Refrigeration Piping Mechanic.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0125

Licenses Requiring 16 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 16 hours of approved continuing education, including one code-change course:

(1) Limited Residential Electrician

(2) Limited Journeyman Manufacturing Plant Electrician

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0130

Licenses Requiring 8 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 8 hours of approved continuing education, including one code-change course if required by the appropriate board:

(1) Limited Maintenance Electrician;

(2) Class A Limited Energy Technician;

(3) Class B Limited Energy Technician; and

(4) Solar Heating and cooling System Plumbing Installer.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0135

Licenses Requiring 4 Hours of Continuing Education

During each three-year license cycle, the following license holders are required to complete 4 hours of approved continuing education, including one code-change course if required by the appropriate board:

(1) Limited Renewable Energy Technician; and

ADMINISTRATIVE RULES

(2) Limited Journeyman Sign Electrician.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0150

New Licensee Continuing Education Requirements

(1) New licensees must complete the following continuing education requirements prior to renewal:

(a) No continuing education is required if license is obtained within 6 months of license expiration date; or

(b) The lesser of 8 hours of continuing education or the minimum requirement for the license is required if the license is obtained within 12 months of the license expiration date; or

(c) The lesser of 16 hours of continuing education or the minimum requirement for the license is required if the license is obtained within 24 months of the license expiration date.

(2) New licensees are not required to complete a code-change course.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0200

License Renewal Process

(1) License renewals must be completed on or prior to the license expiration date by:

(a) Submitting a renewal application or completing the online renewal form;

(b) Completing all continuing education requirements; and

(c) Paying the appropriate application fee.

(2) The division mails one renewal notification to the last known address of the licensee at least 30 days prior to license expiration. It is the responsibility of the licensee to notify the division of a change in the licensee's address.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 7-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0210

License Expiration Dates

(1) All licenses expire on a three-year cycle established in **Table 1-A**, unless renewed.

(2) The license expiration date is printed on all licenses.

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

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0220

Transitional Rule for License Expiration Dates

Nothing in these rules shall prevent the following licenses from renewing as follows:

(1) All combination licenses expire on July 1, 2006 unless renewed. Combination licenses next expire on July 1, 2008 and every three years thereafter.

(2) All contractor licenses except the electrical elevator contractor licenses expire on July 1, 2006 unless renewed. Contractor licenses described in this section next expire on July 1, 2008 and every three years thereafter.

(3) All boiler licenses, including the boiler business license expire annually on July 1, unless renewed. Boiler licenses shall continue to expire annually until July 1, 2008 and then shall expire every three years thereafter.

(4) The elevator contractor mechanical license expires on July 1, 2006 unless renewed. Licenses described in this section next expire on July 1, 2007 and every three years thereafter.

(5) A holder of a journeyman plumber license that expires on April 1, 2007 shall be issued a license that expires on April 1, 2011, if the license holder renews the license prior to the April 1, 2007 expiration date. A license holder described in this section must complete 24 hours of approved continuing education prior to April 1, 2011 in order to renew the license.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0230

Failure to Renew

(1) A licensee who fails to renew a license must not perform work requiring the expired license.

(2) A licensee who fails to renew a license may obtain a valid license within one year of the date the license expired if the licensee:

(a) Reapplies for the license;

(b) Pays the application fee; and

(c) Completes all outstanding continuing education requirements that accrued prior to license expiration.

(3) A licensee who fails to renew under OAR 918-030-0200 and fails to obtain a valid license in Section (2), must apply for the license under OAR 918-030-0020, including passing the appropriate examination.

(4) Applicants reapplying under sections (2) or (3) of this rule are not required to re-qualify for examination or provide work history information unless the requirements for the license have changed since the applicant originally applied to the division.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0240

Extension for Hardship or Illness

(1) The appropriate board or the division may extend the period for complying with continuing education requirements or for complying with renewal requirements in cases of hardship or illness.

(2) Requests for extension must:

(a) Be in writing;

(b) Describe the hardship or illness;

(c) Describe why the applicant is unable to comply; and

(d) State when the person will complete the continuing education requirements.

(3) A hardship or illness extension will not be granted for:

(a) Failure or inability to pay renewal fees; or

(b) Renewal applications that are lost or otherwise are not delivered to the applicant.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0250

Extension for Call to Military Service

(1) The appropriate board or the division may extend the period for complying with continuing education requirements or renewal requirements if the licensee was ordered to military duty for a period of 60 days or more.

(2) Request for extension must:

(a) Be in writing; and

(b) Include a copy of military orders.

(3) Following release from duty, the licensee shall comply with renewal requirements or complete continuing education in a manner acceptable to the board or the division.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0410

Definitions

As used in OAR 918-030-0400 through 0490 and ORS chapter 446, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Corrected license" means a manufactured structures dealer license or a limited manufactured structures dealers license that has been modified from the information supplied in the original application, i.e. name change, or address change.

(2) "Dealer" means a person who is required to be licensed pursuant to ORS 446.691, 446.696, 446.701 or 446.706.

(3) "Dealership," "place of business," or "business location," means a location within the State of Oregon, where a dealer engages in the business of selling manufactured structures.

(4) "Location," "main business location," or "main dealership," means a location identified and listed as the dealer's main business location on the original business license application.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

ADMINISTRATIVE RULES

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0910

Combination Licenses

The division, with the approval of the appropriate advisory board, shall establish license categories for contractors or businesses who hold two or more contractor or business licenses established under ORS 479.510 to 479.945, 480.510 to 480.670, chapter 447 and chapter 460 that are valid for two years.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-030-0920

Visible Identification Badge

(1) For the purpose of this rule, a visible identification badge is an individual license, registration or certification issued by the division or an appropriate advisory board. This rule does not apply to contractors, businesses or inspectors.

(2) Individuals performing elevator, electrical, boiler, pressure vessel, or plumbing work, which requires a license, shall wear and visibly display their license. A licensee does not need to wear and visibly display their license if doing so would create a danger or unsafe condition for the licensee or for the public, provided the licensee can demonstrate proof of licensure to an inspector, investigator or other employee empowered to enforce the state building code.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0000

Purpose and Scope

OAR chapter 918, division 35 establishes standards and procedures for approval of continuing education courses by the appropriate board or division. These rules apply to continuing education providers and instructors for purposes of gaining and maintaining approval of continuing education courses and instructors.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0005

Definitions

As used in OAR chapter 918 division 035 terms are defined as established in OAR 918-030-0010.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0010

Authority for Course and Instructor Approval

(1) The appropriate board or the division approves continuing education courses and instructors, subject to the standards and procedural requirements established in OAR chapter 918, division 35.

(2) The appropriate board may delegate authority for course or instructor approval to a committee or the Building Codes Division. The committee or division must report all approved courses to the appropriate board.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0020

Timeline for Approval; Term of Approval

(1) Application for course or instructor approval may be made at any time during the code cycle.

(2) Application for course approval prior to code adoption as defined in OAR chapter 918, division 008 may be made at any time after the notice of proposed rulemaking hearing for the adoption of the new code has been filed with the Secretary of State.

(3) Courses and instructors are approved for the duration of the code-cycle and courses may be taught prior to the effective date of that code.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0040

Minimum Requirements for Continuing Education Course Approval

Continuing education courses must meet the following minimum requirements:

(1) Course instructors must be approved by the appropriate board or the division pursuant to these rules;

(2) The minimum course length is two hours or the equivalent for online or correspondence courses;

(3) Courses must cover the most current appropriate specialty code including Oregon amendments;

(4) The course must include the material described in OAR 918-035-0050; and

(5) The course must comply with the policies and procedures established by the appropriate board or the division for ensuring the quality and effectiveness of the course.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0050

Code-Change Course Content

The appropriate board or the division develops content requirements for continuing education code-change courses. The content requirements must include but are not limited to the following:

(1) Permit processes and requirements;

(2) Instruction on the scope of work allowed under a given license;

(3) Rule and law changes, including alternate method rulings and interpretations; and

(4) Code instruction, in specific areas deemed appropriate by the board or division.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0060

Instructor Approval

(1) Instructors may apply for approval as part of the course approval procedure or may apply for approval independent of the course approval process.

(2) Approved instructors must be qualified by training or experience to teach the subject matter of the course. Qualifications may be evidenced by:

(a) An appropriate license;

(b) A relevant degree; or

(c) Other expertise recognized by the board or the division.

(3) Applicants for instructor approval must:

(a) Apply on a division-approved form; and

(b) Submit proof of qualifications to the board or the division.

(4) Approved instructors and division staff who instruct continuing education courses shall receive continuing education credit for courses taught.

(5) Division staff teaching courses in the normal course of their duties are considered approved instructors for the purposes of these rules.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0070

Approval Procedure

(1) Applications for course approval must include:

(a) Brief description of the course;

(b) Detailed course outline, which shall include:

(A) Specific reference to the course content requirements established by the appropriate board or division; and

(B) The amount of time spent on each content area;

(c) Course objectives and learning outcomes;

(d) Provider contact information;

(e) Name or names of instructors;

(f) Instructor qualifications, unless the instructor has already been approved by the division;

(g) Number of credits requested;

(h) List or samples of all program materials;

(i) Documentation demonstrating compliance with the policies and procedures for ensuring the quality and effectiveness of the course;

(j) Course prerequisites, if any; and

ADMINISTRATIVE RULES

(k) Agreement to allow division to evaluate course and instructor.

(2) Courses qualifying for approval as code-change courses must include the code-change material specified by the appropriate board or the division under OAR 918-035-0050 for the specific license type(s).

(3) Subsequent applications for the same program may incorporate by reference all or part of the original application.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0080

Recording Continuing Education Credits

(1) Providers must submit a list of course attendees in a method specified by the division.

(2) Providers must document course completion and give proof of course completion to each attendee.

(3) Providers shall retain records of attendees for each course for at least 5 years from the date of the course. Providers shall provide a copy of the record to the division at the division's request.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-035-0090

Suspension or Revocation of Program or Instructor Approval

The board or the division may assess a civil penalty or take any other appropriate action including suspension or revocation of approval of a continuing education course or instructor if the provider or instructor fails to meet the requirements in this division of rules, including but not limited to:

(1) The requirement that courses be taught by an approved instructor;

(2) Failure to teach the required material or course content for the approved course;

(3) Providing inaccurate information indicating that a course or instructor has been approved; or

(4) Providing an inaccurate list of course attendees.

Stat. Auth.: ORS 183.335

Stat. Implemented: ORS 183.335

Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-225-0640

Business and Trade License Fees

(1) Licenses required by ORS 480.630 shall be issued by the division to applicants who meet the requirements for the license and apply as established in OAR division 30.

(2) The application fee for a business license shall be \$165 and the application fee for a trade license shall be \$27.50. Licenses may be renewed as established in OAR division 30 for a fee equal to the application fee.

Stat. Auth.: ORS 480.630, 183.335

Stat. Implemented: ORS 480.630, 183.335

Hist.: BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-225-0670

Fees for Inspector Examination, Certification and Renewal

(1) Fee for each National Board examination, \$165.

(2) Fee for Certificate of Competency Examination, \$110.

(3) Fee for annual renewal of Certificate of Competency, \$27.50.

(4) Fee to administer continuing education program to be added to the cost of annual renewals of certified individuals, \$10.

(5) Fee to prepare and provide continuing education programs, \$66 per hour or part thereof.

Stat. Auth.: ORS 480.605

Stat. Implemented: ORS 480.605

Hist.: DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; Renumbered from 814-025-0016; BCA 5-1991, f. & cert. ef. 3-15-91; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0040; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 2-2003, f. & cert. ef. 2-3-03; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-225-0691

Boiler, Pressure Vessel and Pressure Piping Installation, Alteration or Repair Licensing Requirements

Persons installing, altering or repairing boilers and pressure vessels shall be licensed under these rules and may only work within the scope of their license.

(1) Persons desiring to obtain certification under these rules shall:

(a) Meet the qualifications for that license;

(b) Apply as established by the division in OAR division 30.

(2) Definitions. For the purpose of this rule:

(a) "Direct Supervision" means the person supervised is in the physical presence of a qualified licensed person at the job site and the person doing the supervision is directly assigned to monitor and direct the activities of the person supervised. Direct supervision must be on a ratio of one qualified licensed person to one trainee/helper.

(b) "Qualified Licensed Person" means a person who holds a Class 2, 3, 4, 5, 5-A or 5-B certification and is authorized to do the work involved without supervision;

(c) "Supervision" means the individual person assigned to perform supervision under sections 6, 7 and 10 of this rule is directly and specifically assigned to monitor and direct the activities of the person being supervised. Both the person performing supervision and those being supervised shall be prepared to identify each other.

(3) Class 1 Trainee/Helper License. A person holding this license may install, alter or repair boilers, pressure vessels and pressure piping providing the work is of a mechanical nature only. Work performed shall be under the direct supervision of a qualified licensed person. No ASME Code welding is permitted. There are no minimum qualifications required for applicants to obtain this license.

(4) Class 2 Pressure Vessel Installer License. A person holding this license may install or repair unfired pressure vessels by any non-welded method of attachment.

(a) There are no minimum qualifications required to obtain this license. Applicants shall pass an examination testing the applicant's knowledge of the **Boiler and Pressure Vessel Law**, ORS 480.510 to 480.665; OAR chapter 918, division 225; and **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Section VIII, Division 1, General Requirements**.

(b) Persons who install refrigeration process equipment assembled and sold as a modular unit by the manufacturer and who do not attach piping to a pressure vessel during the installation are exempt from this rule. To qualify for this exemption, the attachment shall be made by any method other than fusion welding.

(5) Class 3 Building Service Mechanic License. A person holding this license may install or repair boilers (including boiler and non-boiler external piping) and unfired pressure vessels by a non-welded method of attachment. Applicants shall:

(a) Have at least 2,000 hours of experience installing and repairing boilers verified as established in OAR division 30;

(b) Pass an examination testing the applicant's knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, IV, VI, VII and VIII**, and **CSD-1**;

(B) The State of Oregon Boiler Safety Program Study Guide;

(C) Building Service Systems (Hydronics) for boilers and related appurtenances, American Society of Mechanical Engineers/ASME B31.1 Power Piping and B31.9 Building Service Piping; and

(D) Structural and mechanical blueprints with the ability to interpret specifications.

(6) Class 4 Boilermaker License. A person holding this license may install, alter or repair boilers and pressure vessels (excluding non-boiler external piping) by welding or other methods of attachment. Applicants shall:

(a) Have 2,000 hours of experience doing welding and 2,000 hours of experience doing non-welding applications involving boilers or pressure vessels. Experience must be verified as established in OAR division 30; the verification must cover welding and non-welding applications separately; and

(b) Pass an examination testing the applicant's knowledge of:

(A) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665; OAR chapter 918, division 225; and the general requirements of the **American Society of Mechanical Engineers, Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII and IX, CSD-1, B31.1 and B31.9**;

(B) General boilermaker skills and procedures;

(C) Blueprint reading, layout and shop mathematics;

(D) Interpreting plans and specifications covering installation, alteration, repair, fabrication and erection of boilers and pressure vessels;

(E) Welding process, metallurgy and other procedures particularly applicable to boilers and pressure vessels; and

(F) The State of Oregon Boiler Safety Program Study Guide.

(c) Class 4 Boilermakers may also perform the scope of work allowed under section (7) of these rules providing;

(A) Work may only be done under the supervision of a qualified licensed person under section (7) of these rules; and

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(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(7) Class 5 Pressure Piping Mechanic License. A person holding this license may:

(a) Fabricate, install, alter and repair pressure piping; and

(b) Install boilers and pressure vessels by attachment of piping connections;

(c) Install, assemble and repair cast iron sectional boilers.

(A) Applicants shall have a minimum of 2,000 hours of experience performing pipe-welding on ASME B31 pressure piping and 2,000 hours of experience performing work on pressure piping and boilers. Experience must be verified as established in OAR division 30; and

(B) Pass an examination testing the applicant's knowledge of:

(i) American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII, IX, CSD-1 and B31 Pressure Piping;

(ii) Structural and mechanical blueprints with the ability to interpret specifications;

(iii) Pressure piping systems and controls;

(iv) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225;

(v) The State of Oregon Boiler Safety Program Study Guide; and

(vi) Welding and brazing processes, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(d) Class 5 Pressure Piping Mechanics may also perform the scope of work allowed under section (6) of these rules providing;

(A) Work may only be done under the supervision of a qualified licensed person under section (6) of these rules; and

(B) Prior to any welding, the individual must qualify to supervisor's employer's welding procedures.

(8) Class 5-A Process Piping Mechanic License. A person holding this license may fabricate, install, alter or repair B31.3 process piping. Applicants shall:

(a) Have a minimum of 2,000 hours of experience performing pipe-welding or brazing on B31.3 process piping and 2,000 hours of experience performing work on pressure piping. Experience must be verified as established in OAR division 30; and

(b) Pass an examination testing the applicant's knowledge of:

(A) **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.3;**

(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, chemical bonding procedures, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(9) Class 5-B Refrigeration Piping Mechanic License. A person holding this license may fabricate, install, alter or repair B31.5 refrigeration piping. Applicants shall:

(a) Have a minimum of 2,000 hours of experience performing pipe-welding or brazing on B31.5 refrigeration piping and 2,000 hours of experience performing work on pressure piping. Experience must be verified as established in OAR division 30; and

(b) Pass an examination testing the applicant's knowledge of:

(A) American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section B31.5;

(B) Structural and mechanical blueprints with the ability to interpret specifications;

(C) Pressure piping controls;

(D) Boiler and Pressure Vessel Laws, ORS 480.510 to 480.665 and OAR chapter 918, division 225; and

(E) Welding, brazing, heat treatment, metallurgy and other procedures applicable to pressure piping systems.

(10) Class 6 Welder License. A person holding this license may weld on boilers, pressure vessels or pressure piping while employed by an approved welding employer. Work may only be performed under the supervision of a person certified under sections (6) through (9) of this rule as applicable. More than one welder may be supervised by one appropriately qualified licensed person under this license.

(a) A Class 6 Welder may also perform the scope of work under section (3) of this rule providing the work performed is under the direct supervision of a qualified licensed person under sections (4) through (9) of these rules.

(b) Applicants shall be qualified as a welder in accordance with the **American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section IX, Part QW**. The employer shall attest in writing that the applicant is qualified under that code section and is currently qualified to that employer's welding procedures. This written statement is not transferable to another employer.

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

Stat. Auth.: ORS 480.545, 480.630, 183.335

Stats. Implemented: ORS 480.630, 183.335

Hist.: BCD 7-2003, f. 3-14-03, cert. ef. 7-1-03; BCD 13-2003, f. 6-26-03, cert. ef. 7-1-03; BCD 3-2004(Temp), f. & cert. ef. 3-8-04 thru 9-3-04; BCD 9-2004, f. 6-21-04, cert. ef. 7-1-04; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 11-2006, f. & cert. ef. 9-5-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0033

Limited Renewable Energy Contractor

In addition to the requirements of OAR 918-282-0000, a limited renewable energy contractor:

(1) Engages in the business of or makes the limited types of electrical installations limited to 25 kva and 600 volts nominal or less, specified in ORS 479.630(17);

(2) Continuously employs at least one general supervising electrician, general journeyman electrician or limited renewable energy technician to act as signing supervising electrician to:

(3) Obtain and sign permits; and

(4) Supervise the electrical installations authorized by ORS 479.630(17).

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.630

Hist.: 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 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0100

Electrical Licensing in General

(1) An electrical license is issued to an individual and allows the holder to make certain regulated electrical installations. Individual electrical licensing laws are in ORS 479.630. The following rules implement the individual electrical licensing laws. Application and examination requirements as well as continuing education and renewal requirements are located in OAR division 30.

(2) When the rules refer to a "valid" electrical license, this means a license issued by the Electrical and Elevator Board that has not expired, or been suspended or canceled.

Stat. Auth.: ORS 479.730, 183.335

Stats. Implemented: ORS 479.730, 183.335

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0110

General Licensing Exemptions

In addition to the exceptions provided in ORS 479.540, electrical licenses are not required to:

(1) Replace light bulbs, fluorescent tubes or approved fuses, or to connect approved portable electrical equipment to permanently installed and properly wired receptacles;

(2) Do experimental electrical work or testing of electrical products in electrical shops, educational institutions, industrial plants or recognized testing laboratories;

(3) Operate, maintain, repair and replace broadcast equipment of commercial radio and television stations; or

(4) Install limited energy systems not exceeding 100 voltampere ("VA") in Class 2 and 3 systems limited to:

(a) Single station smoke or ionization detectors installed in buildings three stories or less in height;

(b) Closed circuit television systems installed in buildings three stories or less in height;

(c) Master Antenna Television ("MATV") systems installed in buildings three stories or less in height; or

(d) Intercom and audio systems installed in one- and two-family dwellings.

Stat. Auth.: ORS 479.730, 183.335

Stats. Implemented: ORS 479.730, 183.335

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0800; BCD 9-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-320-0010; BCD 18-1999, f. 12-30-99, cert. ef. 1-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 26-2002, f. & cert. ef. 10-1-02; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0185

Limited Elevator Journeyman License

(1) A limited elevator journeyman:

ADMINISTRATIVE RULES

(a) Shall be employed by an appropriately licensed electrical contractor under ORS chapter 479;

(b) Is limited to electrical and mechanical work on elevators. This work is limited to the wiring from the load side of the main disconnecting means for the elevator; and

(c) Shall not exceed the scope of work authorized by the employer's license.

(2) License Requirements. Applicants shall:

(a) Have a minimum of 8,000 aggregate hours of lawfully obtained on-the-job training in the elevator industry installing, repairing, altering and maintaining elevator mechanical and electrical equipment; and

(b) Complete a Board approved limited elevator journeyman apprenticeship program.

(3) Applicants are required to provide documentation of work categories and minimum hours in:

(a) Basic construction and maintenance safety and tools — 250 hours;

(b) Blue print reading — 250 hours;

(c) Material handling — hoisting and rigging — 500 hours;

(d) Guide rail systems installation and maintenance — 400 hours;

(e) Drive machines and systems; overhead equipment including beams and sheaves — 800 hours;

(f) Hydraulic systems and control valves — 800 hours;

(g) Car frames, platforms and enclosures — 500 hours;

(h) Doors, entrances and operators — 500 hours;

(i) Construction wiring and practices — 800 hours; and

(j) Adjusting elevator systems — 200 hours;

(k) Maintenance, circuit tracing, trouble-shooting, test equipment, periodic testing requirements — 1,000 hours;

(l) Alteration of existing equipment 1,000 hours;

(m) Structure and operation of escalators and moving walks — 500 hours; and

(n) Related industry equipment 500 hours.

(4) Additionally applicants shall submit transcripts with passing grade of 70-percent or better in graded classes and a "pass" in non-graded classes in the following related training classes;

(a) Basic construction and maintenance safety;

(b) Blueprint reading;

(c) Code-related requirements;

(d) Equipment testing procedures;

(e) Guide rail systems installation and maintenance;

(f) Pit equipment and maintenance;

(g) Car frames, platforms and enclosures;

(h) Hoisting and rigging;

(i) Overhead equipment including beams and sheaves;

(j) Hoist ropes and roping procedures;

(k) Structure and operation of escalators and moving walks;

(l) Drive machines and components;

(m) Hydraulic systems and control valves;

(n) Traction machines and components;

(o) Basic electrical theory;

(p) Circuit tracing;

(q) Basic electronics and solid state theory;

(r) Construction wiring and practices; and

(s) Electrical code and safety training.

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.630

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0205

Limited Renewable Energy Technician

(1) In addition to the requirements of ORS 479.630(17), a limited renewable energy technician shall be employed by a limited renewable energy contractor or electrical contractor.

(2) Persons seeking to be licensed under this rule shall provide proof of completion of a board-approved apprenticeship program that includes:

(a) A minimum of 4,000 hours of on-the-job training in the following work areas:

(A) 1,500 hours total with a minimum of 1,000 hours in photovoltaics and a minimum of 500 hours in other renewable electrical energy system installations, including, but not limited to:

(i) Wire pulling and splices;

(ii) Conduit, flex, tray and duct;

(iii) Control panels and controls;

(iv) Wiring devices; and

(v) Removal and finish work of renewable electrical energy systems including wind, solar, micro-hydroelectricity, photovoltaic, fuel cells and engine generators for off-grid systems;

(B) 1,500 hours minimum in balance of system including, but not limited to, installation, removal and finish of inverters, batteries, regulation, metering, conditioning equipment and systems; and

(C) 1,000 hours in other related on-the-job training including, but not limited to:

(i) **National Electrical Code** requirements for design of system;

(ii) Troubleshooting;

(iii) Maintenance; and

(iv) Plan/blueprint reading; and

(b) A minimum of 288 hours of classroom or related training covering:

(A) Electrical mathematics;

(B) Safety and accident prevention;

(C) Care and use of hand and power tools;

(D) Blueprint reading and electrical symbols;

(E) Introduction to the **National Electrical Code**;

(F) Electrical fundamentals and basic theory, including alternating and direct current;

(G) Electrical measuring devices;

(H) Wiring methods;

(I) Related electrical statutes and rules;

(J) Fundamentals of electronics;

(K) Renewable electrical energy systems including, but not limited to, systems and devices as set forth in ORS 479.630(17)(b)(A);

(L) Class 2 and 3 circuits; and

(M) Basic mechanics — applied physics and theory.

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

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.630

Hist.: BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0355

Licensing Requirements for Class "A" Limited Energy Technician

(1) License and Equivalent Requirements. Applicant shall have a minimum of 8,000 hours of lawfully obtained experience. Experience must be verified as established in OAR division 30. This experience shall be obtained as follows

(a) By successful completion of a board-approved Class "A" limited energy apprenticeship program; or

(b) Through limited energy electrical experience equivalent to a Class "A" board-approved limited energy apprenticeship program.

(2) Persons utilizing lawful experience may meet equivalent experience requirements by providing verification as required by OAR 918-030-0030 through 918-030-0050.

(3) Applicants for approval under equivalent requirements must show proof of the following work categories and minimum hours of on the job training or experience:

(a) Stock room and materials, 200 hours:

(A) Shop;

(B) Service;

(b) Limited energy wiring, 3,200 hours:

(A) Installation;

(B) Wire pulling;

(C) Splices;

(D) Conduit;

(E) Flex;

(F) Tray and duct;

(G) Control panels and controls;

(H) Wiring devices;

(I) Removal and finish work;

(c) Trouble shooting and maintenance, 500 hours;

(d) Outdoor installation, overhead and underground, 100 hours;

(e) Trade-specific installations, including life safety, 4,000 hours:

(A) Fire alarms;

(B) Protective signaling;

(C) Nurse call;

(D) Medical;

(E) Data and telecommunications;

(F) CCTV, paging and sound;

(G) Instrumentation and HVAC;

(H) Security.

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(4) Total Hours Required. Total electrical work experience shall be at least 8,000 hours. No more than 300 percent credit shall be allowed in work categories (a) through (d) in Section (3) of this rule.

(5) Related Training Classes. Additionally, applicants shall have a minimum of 576 hours of related classroom training as outlined in the following:

- (a) Electrical mathematics;
- (b) Safety and accident prevention;
- (c) Care and use of hand and power tools;
- (d) Blueprint reading and electrical symbols;
- (e) Introduction to the National Electrical Code;
- (f) Electrical fundamentals and basic theory, including AC and DC;
- (g) Electrical measuring devices;
- (h) Wiring methods;
- (i) Related electrical statutes and rules;
- (j) Fundamentals of electronics;
- (k) Transformers;
- (l) Lighting circuits;
- (m) Basic mechanics — applied physics and theory.

Stat. Auth.: ORS 479.730, 183.335

Stats. Implemented: ORS 479.905, 479.910, 479.915 & 183.335

Hist.: BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-282-0365

Licensing Requirements for Class “B” Limited Energy Technician

(1) License and Equivalent Requirements. Applicant shall have a minimum of 4,000 hours of lawfully obtained experience. Experience must be verified as established in OAR division 30. This experience shall be obtained as follows:

(a) As an apprentice in a board-approved limited energy electrical activity apprenticeship program; or

(b) Through limited energy activity equivalent to an apprenticeship program, and the completion of a board-approved 32 hour training program.

(2) Persons utilizing lawful experience may meet equivalent experience requirements by providing verification as required by OAR 918-030-0030 through 918-030-0050.

(3) Applicants for approval under equivalent requirements must show proof of the following work categories and minimum hours of on the job training or experience:

- (a) Stock room and materials, including shop and service: 100 hours;
- (b) Limited energy installations, including cables and supports, wire pulling and splices, conduit, flex, tray and duct, control panels and controls, wiring devices, removal and finish work: 1,650 hours;
- (c) Trouble shooting and maintenance: 250 hours; and
- (d) Occupation specific applications including 2,000 hours in any of the following:

(A) Communications systems, including data telecommunications, intercom, paging;

(B) Specialized control systems, including HVAC, medical, boiler, clock, instrumentation, or other limited energy systems; and

(C) Limited energy electrical activity defined in ORS 479.905(4).

(4) Total Hours Required. Total electrical work experience shall be at least 4,000 hours. No more than 300 percent credit shall be allowed in work categories (a) through (d) in Section (3) of this rule.

(5) Applicants shall also have a minimum of 288 hours of class or related training covering:

- (a) Electrical mathematics;
- (b) Safety and accident prevention;
- (c) Care and use of hand and power tools;
- (d) Blueprint reading and electrical symbols;
- (e) Introduction to the National Electrical Code;
- (f) Electrical fundamentals and basic theory, including alternating and direct current;

(g) Electrical measuring devices;

(h) Wiring methods;

(i) Related electrical statutes and rules;

(j) Fundamentals of electronics;

(k) Transformers;

(l) Lighting circuits; and

(m) Basic mechanics — Applied physics and theory.

Stat. Auth.: ORS 479.730 & 183.335

Stats. Implemented: ORS 479.905, 479.910, 479.915 & 183.335

Hist.: BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 12-2005(Temp), f. & cert. ef. 6-10-05 thru 12-6-05; Administrative correction 12-20-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-400-0380

Limited Elevator Mechanic License

(1) Pursuant to ORS 460.057, any person installing, altering, repairing or maintaining elevator mechanical equipment prior to October 23, 1999, and who does not otherwise qualify for licensure herein, shall be issued a limited elevator mechanic’s license commensurate with their prior, verifiable work experience if they apply in the manner established by the division in OAR chapter 918 division 30.

(2) The following shall not be used to determine prior experience;

(a) Work on equipment not regulated by the Elevator Safety Law unless such prior experience is considered to be transferable experience gained prior to October 23, 1999;

(b) The installation, alteration, repair or maintenance of equipment installed in Oregon that was not lawfully permitted as required by the Elevator Safety Law;

(c) Work in Oregon while employed by a company not lawfully licensed as an elevator contractor in Oregon, or not lawfully registered with the Construction Contractors Board; or

(d) Experience gained in violation of any other state law.

(3) Experience gained shall be considered based on the following. Applicants must have been regularly engaged in the installation, alteration, repair or maintenance on the type, or types, of equipment commensurate with the license being sought based on:

(a) Minimum of 4,000 hours “substantial experience” lawfully obtained on equipment covered by a limited elevator mechanic’s license;

(b) “Substantial experience” for purposes of this rule, must be verified evidence in the form of two separate notarized affidavits. One from an Oregon business attesting the person has been involved in 40 or more elevator projects and one from a CPA attesting that the business had at least \$75,000 of gross business prior to October 23, 1999. Nothing in this rule prevents an applicant from faxing or scanning and e-mailing documents.

(4) A license under this rule shall be limited to the scope of work for which the person has provided work experience acceptable to the division.

Stat. Auth.: ORS 460.057 & 460.085, 183.335

Stats. Implemented: ORS 460.005 - 460.175, 183.335

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-695-0040

Journeyman Examination

Examination requirements. An applicant for certification as a journeyman plumber shall pass an approved examination. The written examination shall cover, but not be limited to:

(1) Understanding of engineering and architectural drawings and plans sufficient to prepare a bill of materials and lay out a plumbing system;

(2) Ability to compute areas of regular plane figures, volumes of regular solids, slopes, offsets, clearances, and weights of piping;

(3) Selection and use of tools, materials and techniques commonly used in the plumbing trade;

(4) The **Plumbing Specialty Code**, administrative rules relating to plumbing and plumbers and general scientific principles covering hydraulics;

(5) A general knowledge of construction job safety and occupational safety standards; and

(6) A basic understanding of disabled access provisions of the **Oregon Structural Specialty Code** related to plumbing.

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

Stat. Auth.: ORS 693.100, 183.335

Stats. Implemented: ORS 693.050, 183.335

Hist.: BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-695-0120

Limited Specialty Plumber Classification for Limited Maintenance Electrical Contractors

(1) Authorization and Scope. This rule creates a limited specialty plumbing license to install and replace residential water heaters.

(2) Persons Eligible for Licensing. A registered plumbing contractor also licensed under ORS 479.630 as an electrical limited maintenance specialty contractor can apply for this license. This allows licensing of:

(a) An individual holding a Limited Maintenance Specialty Contractor License;

(b) Officers or employees designated by a corporate Limited Specialty Contractor; or

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(c) Any partner where a partnership is the Limited Specialty Contractor.

(3) Employees of a sole proprietor or of a partnership identified in subsections (3)(a) and (c) of this rule cannot be licensed under this rule.

(4) Procedure for Licensing. An applicant for licensing shall:

(a) Pay applicable fees;

(b) Have the application signed by the plumbing-electrical contractor;

(c) Attend an approved eight-hour training class for limited specialty residential water heater plumbing installation; and

(d) Pass a division-approved examination.

(5) Training Class and Examination Requirements.

(a) A limited specialty residential water heater plumbing class shall cover the requirements for installation of residential water heaters and the related administrative and enforcement provisions in statutes, rules and codes to obtain Chief Plumbing Inspector approval.

(b) The examination shall test applicant's knowledge of the items covered in subsection (a) of this section.

(6) Scope of Plumbing Authorized. As used in ORS 693.103(2):

(a) "Installation and replacement of one- or two-family dwelling residential water heaters" includes open (non-covered and not intended to be covered) plumbing work in a one- or two-family dwelling related to:

(A) Replacement or fuel conversion of an existing water heater;

(B) Installation of up to two nipples with no nipple exceeding six inches and flex piping not exceeding 24 inches for each of the cold and hot water connections; and

(C) Installation of piping and related appurtenances applicable to the temperature pressure relief valve.

(b) "Existing plumbing" means the exposed pre-installed approved cold water supply piping used or designed to connect to the water heater extending to the exposed cold water shut-off supply valve. If there is no cold water shut-off supply valve, "existing plumbing" extends to and includes the connected water heater and does not allow a replacement by a limited specialty plumbing licensee under these rules.

(c) "Alteration of existing plumbing" means any changes to existing plumbing and includes installation or replacement of a cold water shut-off supply valve regardless of whether one was initially installed. Alterations are not authorized under these rules and the limited specialty plumbing license.

Stat. Auth.: ORS 693.103

Stats. Implemented: ORS 693.103

Hist.: BCD 16-1994, f. 7-21-94, cert. ef. 9-1-94; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-690-0075; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

918-695-0125

Limited Specialty Plumber Certificate of Competency for Solar Heating and Cooling System Installers

(1) Authorization and Scope. This rule creates a limited specialty plumbing certificate of competency to install and replace solar heating and cooling systems.

(2) Persons eligible for licensing. The experience and training requirements for licensure are:

(a) A minimum of 2,000 hours on-the-job verifiable experience installing solar heating or cooling systems prior to July 1, 2002 if the application is received between July 1, 2002 and July 1, 2004; or

(b) Satisfactory completion of a division-approved training program for Limited Specialty Plumber Solar Heating and Cooling Installers that includes the following:

(A) A minimum of 288 hours of classroom training; and

(B) A minimum of 2,000 hours of supervised on-the-job training; or

(C) Equivalent lawfully obtained experience and training covering:

(A) General items — 500 hours of experience and training in:

(i) Materials, tools and equipment;

(ii) Mathematics and science;

(iii) Soldering and brazing;

(iv) Safety and Basic first aid;

(v) Blueprints and solar codes;

(vi) Water piping systems;

(vii) Basic electricity;

(viii) Administrative rules.

(B) Specific training or work experience in:

(i) Plumbing of solar thermal systems — 500 hours;

(ii) Installation of balance of system equipment — 500 hours;

(iii) Roof mounting and equipment installation — 500 hours;

(iv) Total Minimum — 2,000 hours.

(3) Procedure for Licensing. An applicant for licensing shall:

(a) Complete and sign the division application;

(b) Provide verification of the required training or equivalent experience; and

(c) Pay applicable fees;

(4) Examination. All applicants must take and pass a division-approved written examination testing the requirements for installation of solar heating and cooling systems, and the related administrative and enforcement provisions.

(5) Scope of Plumbing Authorized. The holder of a limited specialty plumber certificate of competency solar heating and cooling systems may:

(a) Install and replace solar heating and cooling systems, including collectors, heat transfer systems, heat storage and associated piping related to:

(A) Replacement or solar conversion of an existing water heating or cooling system;

(B) Installation of collectors, heat transfer systems, storage tanks, pumps, valves and associated piping; and

(C) Installation of piping and related appurtenances applicable to the temperature pressure relief valve.

(b) May not connect a solar heating or cooling system to a potable water source. The connection of a solar heating or cooling system to a potable water source shall be made only by a licensed journeyman plumber.

(6) Nothing in these rules shall prohibit a licensed journeyman plumber from installing, replacing or repairing solar heating and cooling systems.

Stat. Auth.: ORS 693.111

Stats. Implemented: ORS 693.111

Hist.: BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Insurance Division Rules Generally; Editorial Corrections and Updating of Obsolete References and Material.

Adm. Order No.: ID 19-2006

Filed with Sec. of State: 9-26-2006

Certified to be Effective: 9-26-06

Notice Publication Date: 8-1-06

Rules Amended: 836-005-0105, 836-005-0400, 836-006-0010, 836-013-0120, 836-014-0015, 836-014-0025, 836-014-0030, 836-014-0035, 836-014-0040, 836-014-0042, 836-027-0030, 836-028-0010, 836-028-0035, 836-031-0610, 836-042-0001, 836-042-0400, 836-051-0005, 836-051-0010, 836-051-0015, 836-051-0020, 836-052-0860, 836-054-0000, 836-058-0010, 836-074-0005, 836-075-0000, 836-080-0022, 836-080-0235, 836-080-0501, 836-081-0005, 836-081-0010, 836-081-0020, 836-081-0030

Rules Repealed: 836-005-0500, 836-005-0510, 836-005-0520, 836-005-0530, 836-005-0540, 836-005-0550, 836-005-0560, 836-006-0001, 836-011-0010, 836-011-0400, 836-011-0550, 836-012-0330, 836-042-0010, 836-050-0120, 836-051-0025, 836-052-0200, 836-052-0205, 836-058-0005, 836-085-0101, 836-085-0115, 836-085-0120, 836-086-0005

Subject: This rulemaking corrects and updates erroneous or superseeded statutory, rule and other references in OAR chapter 836, containing rules of the Insurance Division; to eliminate and replace obsolete material; and to make other editorial and nonsubstantive changes.

Rules Coordinator: Sue Munson—(503) 947-7272

836-005-0105

Notice to Interested Persons of Rulemaking

Except when acting in an emergency to adopt a temporary rule in accordance with ORS 183.335(5), the Director of the Department of Consumer and Business Services will give prior notice of the proposed adoption, amendment, or repeal of an administrative rule by the Insurance Division:

(1) By causing notice of the proposed action to be published once, in the Secretary of State's Bulletin referred to in ORS 183.360, at least 21 days prior to the effective date of the rule.

(2) By mailing copies of the notice to persons on the Director's mailing list established by the Insurance Division pursuant to ORS 183.335(7), at least 28 days prior to the effective date of the rule.

(3) By mailing or delivering copies of the notice to the Associated Press, the Daily Journal of Commerce and the Business Journal.

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(4) By mailing copies of the notice to organizations and publications that may provide notice to persons who may have an interest, such as the following, depending on the subject matter of the proposal:

- (a) Authorized insurers;
- (b) Independent Insurance Agents of Oregon;
- (c) Oregon Association of Insurance and Financial Advisors;
- (d) National Association of Independent Insurers;
- (e) American Insurance Association;
- (f) Alliance of American Insurers;
- (g) American Council of Life Insurers;
- (h) America's Health Insurance Plans;
- (i) Professional Insurance Agents of Oregon/Idaho;
- (j) Oregon Association of Health Underwriters;
- (k) Reinsurance Association of America;
- (L) Insurance Information Institute;
- (m) National Council on Compensation Insurance; and
- (n) Insurance Services Office.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: IC 63, f. & ef. 12-5-75; IC 5-1982, f. 1-29-82, ef. 2-1-82; ID 4-1996, f. 2-28-96, ef. 3-1-96; ID 19-2006, f. & cert. ef. 9-26-06

836-005-0400

Annual Complaint Report

The Director shall publish an annual statistical report on complaints against insurers as required under ORS 731.264, according to the method established in this rule. Each report shall contain the number, percentage, type and disposition of complaints against each insurer that were closed by the Department of Consumer and Business Services during the reporting period. The report shall be based on the records of the Department of Consumer and Business Services. The report shall be structured as a cross tabulation of complaints closed during the reporting period, by complaint type and disposition, against each insurer with respect to whom one or more complaints were closed during the period for which the report is made.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 731.264(3)

Hist.: ID 3-1989(Temp), f. & cert. ef. 2-28-89; ID 11-1989, f. & cert. ef. 11-20-89; ID 19-2006, f. & cert. ef. 9-26-06

836-006-0010

Payment of Transition and Retaliatory Taxes

(1) An insurer shall pay to the Director on April 1 of each year the amount of retaliatory tax due and payable under ORS 731.854, on the basis of the corporate excise tax obligation of the insurer that is owed or is estimated to be owed by the insurer for the preceding year ending December 31.

(2) If a foreign insurer is unable to determine the full amount of the tax that is due and payable under ORS 731.854 for the preceding year ending December 31 when the tax is due on April 1, the insurer shall pay to the Director on April 1 the amount it estimates to be due and payable under ORS 731.854. A foreign insurer shall pay the amount owing or estimated to be owing regardless of whether its domiciliary state has granted an extension or delay for filing or paying the taxes owing in the domiciliary state.

(3) When a foreign insurer files with its domiciliary state a final return that determines the amount of taxes owing to that state for a particular year, the insurer shall also file with the Director an amended return showing the amount of taxes owing to the State of Oregon or due as a credit to the insurer. The foreign insurer shall pay any additional tax shown to be due on the final return together with interest as required by the Insurance Code on the taxes owing to the State of Oregon.

(4) If a foreign insurer amends its return filed with its domiciliary state or files an amended Oregon excise tax return so as to change the amount of the tax due and payable under ORS 731.854, the insurer shall pay any additional tax owing to this state or shall be credited with any excess previously paid.

(5) An insurer shall pay taxes and other amounts due under this rule in accordance with forms prescribed by the Director.

(6) For purposes of this rule, "foreign insurer" also includes any alien insurer, and "state" includes a country other than the United States.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 731.854 & Ch. 786(2), OL 1995

Hist.: ID 13-1997, f. & cert. ef. 10-14-97; ID 19-2006, f. & cert. ef. 9-26-06

836-013-0120

Director's Authority

(1) For the purposes of making a determination of the financial condition of an insurer under OAR 836-013-0100 to 836-013-0120, the Director may do one or more of the following:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

(2) An order of the Director under ORS 731.385 regarding a foreign insurer may be limited to the extent provided by statute.

Stat. Auth.: ORS 731.385

Stats. Implemented: ORS 731.385

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0015

Annual Financial Statement

A legal expense organization shall file with the Director an annual financial statement, using the form prescribed by the Director, not later than March 1 following the calendar year to which the statement applies. The statement shall be:

(1) Provided on a statutory accounting basis pursuant to the provisions of ORS chapter 733 applicable to organizations under ORS 750.705.

(2) Verified as to the financial condition of the legal expense organization as of the end of the preceding calendar year:

(a) If the organization is a corporation, by two executive officers;

(b) If the organization is a partnership, by two partners;

(c) If the organization is a sole proprietorship, by the individual proprietor;

(d) If the organization is an association, by two executive officers;

(e) If the organization is an entity other than one to which subsection

(a), (b), (c) or (d) of this section applies, by two executive officers.

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

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.645(1)(a)

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0025

Bond

A legal expense organization posting a bond under ORS 750.685 shall use the form prescribed by the Director.

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.685(2) - 750.685(3)

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0030

Sales Representatives

Every legal expense organization shall submit to the Director, on the form prescribed by the Director, the names and addresses of its sales and marketing representatives transacting business in this state. The notification must be submitted not later than January 1 and July 1 of each year.

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.645(2)

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0035

Registration of Legal Expense Organization

A legal expense organization may not transact business in this state unless the organization holds a valid certificate of registration. An organization may apply for registration with the Director by submitting to the Director the following documents:

(1) A completed registration application. The registration application must be on the form prescribed by the Director.

(2) A statement designating a registered agent and a registered office. The statement must be on the form prescribed by the Director. The requirement under this section is in addition to the filing requirements of other law regarding designation of a registered office and registered agent in the State of Oregon for service of process, notice and demand.

(3) A list of its sales and marketing representatives. The names of the sales and marketing representatives must be submitted on the form prescribed by the Director in OAR 836-014-0030.

(4) A Financial Statement. The statement must follow the form prescribed by the Director in OAR 836-014-0015 and comply with 836-014-0015, except for the filing date.

(5) Copies of the following forms and related schedules used or to be used by the organization:

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- (a) The provider agreement forms used or to be used in this state;
- (b) The membership agreement forms delivered or issued or to be delivered or issued in this state;
- (c) The legal expense plan forms delivered or issued or to be delivered or issued in this state;

(d) The schedule of rates charged or to be charged members in this state for each type of agreement or plan.

(6) A marketing plan for conducting legal expense plan business in this state. The plan must include the following:

(a) The geographical area in which business is intended to be done in the first five years;

(b) The types of plans intended to be written in the first five years, including specification whether and to what extent indemnity rather than service benefits are to be provided;

(c) The proposed marketing methods;

(d) Data affirmatively demonstrating the anticipated income and expenses of the organization in the first five years, including, without limitation, the projected expenditures for legal services and the projected source of funds to make up any anticipated deficits. Except as provided in this subsection, the data must be documented and verified by an actuary or a person who has the background for the practice of actuarial science. If, however, the applicant legal expense organization provides or will provide service rather than indemnity benefits, the documentation and verification may be made instead by an executive employee of the applicant who has at least four years of experience in the design, pricing and administration of legal expense or similar plans. The executive employee must also document and certify in the application that the applicant has provider agreements in force, subject to issuance of a certificate of registration, adequate to provide the covered legal services throughout the geographic area in which business is intended to be done. The Director may require the applicant to furnish, in support of its application, publicly available data regarding the costs and benefits of comparable plans in this state and elsewhere.

(7) Evidence of the deposit or surety bond required by ORS 750.685 and in accordance with OAR 836-014-0020 or 836-014-0025.

(8) A statement of the incorporators, directors and officers, which provides the names of all incorporators and proposed directors and officers of the legal service organization, and all of their addresses and occupations for the preceding five years.

(9) A certified copy of the articles and by-laws, partnership agreement, or the association agreement and association by-laws.

(10) A copy of all contracts with principals including a copy of all agreements relating to the legal service organization to which any incorporator or proposed director or officer is a party.

(11) A statement of the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons.

(12) A statement of compensation of all principals and all corporate officers and directors, or partners, or other principal as it relates to the applicant's operation as a legal service organization.

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.515, 750.535 & 750.545

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0040

Amendments to Registration

(1) A legal service organization shall amend its registration in this state when any of the following events occur:

(a) The organization changes its principal place of business;

(b) The insurance or surety bond required for compliance with ORS 750.685 is cancelled or replaced;

(c) The organization experiences a material change in ownership under events defined in ORS 732.505 and 732.510.

(2) When a legal expense organization changes its principal place of business, the organization shall include the following in the amended registration:

(a) The street address, including city and state;

(b) The mailing address, if different;

(c) The telephone number.

(3) If an organization changes its registered office or agent, the organization must file a statement of the change with the Director on the form prescribed by the Director.

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.535 & 750.575

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-014-0042

Renewal of Legal Expense Organization Registration

In order for an organization to renew its certificate of registration, the organization must apply for renewal by submitting a completed renewal application. The renewal application must be on the form prescribed by the Director. If mailed, the renewal application must be postmarked by the United States Postal Service not later than the expiration date of the registration.

Stat. Auth.: ORS 731 & 750

Stats. Implemented: ORS 750.515 & 750.565(2)

Hist.: ID 4-1990, f. & cert. ef. 1-24-90; ID 19-2006, f. & cert. ef. 9-26-06

836-027-0030

Forms; General Requirements

(1) Forms A, B, C and D are intended to be guides in the preparation of the statements required by ORS 732.517 to 732.592, including but not limited to the registration provisions thereof. The forms are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers to the items are prepared so as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, an appropriate statement to that effect shall be made.

(2) One complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Director of the Department of Consumer and Business Services by personal delivery or mail. A copy of Form C shall be filed in each state in which an insurer is authorized to do business if the Commissioner of that state has notified the insurer of its request in writing. An insurer who has been so notified shall file the form not later than the 30th day after the date of receipt of the notice. At least one of the copies shall be manually signed and certified in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) Statements must be prepared on paper 8-1/2" X 11" or 8-1/2" X 13" in size and bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements or exhibits shall be clear, easily readable, and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

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

Stat. Auth.: ORS 732.572

Stats. Implemented: ORS 732.517 - 732.592

Hist.: IC 68, f. & ef. 6-22-76; ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 19-2006, f. & cert. ef. 9-26-06

836-028-0010

Registration of Purchasing Groups; Forms

Before doing business in this state, a purchasing group shall notify and register with the Director by completing and submitting to the Director the following documents:

(1) A registration. The registration must be made on the form prescribed by the Director.

(2) An appointment of the Director as the agent for service of legal documents for the purchasing group. The appointment must be made on the form prescribed by the Director.

Stat. Auth.: ORS 731, 735 & 746

Stats. Implemented: ORS 735.330

Hist.: IC 7-1988, f. & cert. ef. 4-14-88; ID 19-1988, f. & cert. ef. 12-6-88; ID 19-2006, f. & cert. ef. 9-26-06

836-028-0035

Registration of Foreign Risk Retention Groups; Forms

Before doing business in this state, a risk retention group chartered in a state other than this state shall submit to the Director the following documents:

(1) A registration. The registration must be made on the form prescribed by the Director.

(2) A plan of operation or feasibility study, certified by the state of domicile or incorporation.

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(3) A copy of the most recent financial statement of the risk retention group, certified by the state of domicile or incorporation, with evidence that the financial statement was certified by an independent certified public accountant.

(4) A statement of opinion on loss and loss adjustment expense reserves, certified by a member of the American Academy of Actuaries or by a loss reserve specialist qualified under criteria established by the National Association of Insurance Commissioners as of the effective date of this rule.

(5) A copy of the most recent examination report conducted by the Insurance Department of the state of domicile or incorporation.

(6) An appointment of the Director as the agent for services of legal documents for the risk retention group. The appointment must be made on the form prescribed by the Director.

Stat. Auth.: ORS 731, 735 & 746
Stats. Implemented: ORS 735.315
Hist.: IC 7-1988, f. & cert. ef. 4-14-88; ID 19-2006, f. & cert. ef. 9-26-06

836-031-0610

Authority

OR 836-031-0600 to 836-031-0690 are adopted pursuant to ORS 733.300 to 733.322 generally and ORS 733.304 specifically.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 733.304
Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 1-1993(Temp), f. & cert. ef. 2-4-93; ID 4-1993, f. 7-27-93, cert. ef. 7-30-93; ID 19-2006, f. & cert. ef. 9-26-06

836-042-0001

Statutory Authority; Purpose and Effective Date

(1) OR 836-042-0001 to 836-042-0035 are adopted pursuant to the general rulemaking authority of the Director in ORS 731.244.

(2) The purpose and applicability of OR 836-042-0001 to 836-042-0035 is to effectuate orderly administration of the 1981 amendments to ORS 737.205, 737.225, 737.265 and 737.320 requiring insurers to file their own workers' compensation insurance rates, rating plans, and rating systems and prohibiting rating organizations from filing workers' compensation insurance rating provisions for expenses, taxes, or profit.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 737.205(1) - (2), 737.225(1), 737.265, 737.310(1) & 737.320(3)
Hist.: IC 4-1982, f. 1-27-82, ef. 7-1-82; ID 19-2006, f. & cert. ef. 9-26-06

836-042-0400

Statutory Authority; Purpose; Applicability; Effective Date

(1) OR 836-042-0400 to 836-042-0430 are adopted under the authority of ORS 737.346.

(2) OR 836-042-0430 is adopted to enable the Department to:

(a) Regulate the sale of casualty insurance in this state on commercial risks under group policies as authorized under ORS 737.346(3)(f); and

(b) Regulate the sale of all forms of insurance subject to ORS 737.035 to day care facilities under group policies as authorized under ORS 737.346(3)(g).

(3) OR 836-042-0400 to 836-042-0430 become effective on adoption.

Stat. Auth.: ORS 731 & 737
Stats. Implemented: ORS 737.346
Hist.: ID 7-1987, f. & ef. 12-11-87; ID 19-2006, f. & cert. ef. 9-26-06

836-051-0005

Statutory Authority; Purpose; Applicability

(1) OR 836-051-0005 to 836-051-0020 are adopted by the Director pursuant to general rulemaking authority in ORS 731.244, and specific authority in ORS 742.009 to issue rules requiring disclosures to prospective insurance purchasers.

(2) The purpose of OR 836-051-0005 to 836-051-0020 is to require insurers that are not electing to illustrate life insurance policies under OR 836-051-0500 to 836-051-0600 to deliver to prospective buyers of life insurance guaranteed policy information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy that has been purchased or that is under consideration and improve the buyer's ability to evaluate the relative costs of similar plans of life insurance. OR 836-051-0005 to 836-051-0020 do not prohibit the use of additional material that is not in violation of these or other rules of the Director or provisions of the Insurance Code.

(3) OR 836-051-0005 to 836-051-0020 apply to all transactions of life insurance in this state except with respect to:

- (a) Annuities;
- (b) Credit life insurance;
- (c) Group life insurance;

(d) Life insurance policies issued in connection with employee benefit plans as defined by Section 3(3) of the federal Employee Retirement Income Security Act of 1974 (ERISA) as amended from time to time; and
(e) Life insurance policies that comply with OR 836-051-0500 to 836-051-0600.

Stat. Auth.: ORS 731.244 & 742.009
Stats. Implemented: ORS 742.009
Hist.: IC 3-1978, f. & ef. 6-9-78; ID 15-1996, f. & cert. ef. 11-12-96; ID 5-1997, f. 5-27-97, cert. ef. 7-1-97; ID 19-2006, f. & cert. ef. 9-26-06

836-051-0010

Definitions

As used in OR 836-051-0005 to 836-051-0020:

(1) "Buyer's Guide" means a document that contains, and is limited to, the wording contained in Exhibit 1 or other wording approved by the Director.

(2) "Cash Dividend" means the currently illustrated dividend that can be applied toward payment of the gross premium.

(3) "Equivalent Level Annual Dividend" means the amount calculated by the following steps:

(a) Accumulate the annual cash dividends at five percent interest, compounded annually, to the ends of the 10th and 20th policy years;

(b) Divide each accumulation of step (a) by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (a) over the respective period. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;

(c) Divide the results of step (b) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Equivalent Level Annual Dividend for each of the respective periods.

(4) "Equivalent Level Death Benefit" of a policy or term life insurance rider means the amount calculated by the following steps:

(a) Accumulate the guaranteed amount, that does not depend on the cause of death, payable upon death at the beginning of each policy year for 10 and 20 years at five percent interest, compounded annually, to the ends of the 10th and 20th policy years respectively;

(b) Divide each accumulation of step (a) by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (a) over the respective period. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

(5) "Generic Name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(6) "Life Insurance Net Payment Cost Index" means the amount calculated in the same manner as the Life Insurance Surrender Cost Index except that the cash surrender value and any terminal dividend are set at zero.

(7) "Life Insurance Surrender Cost Index" means the amount calculated by the following steps:

(a) Determine the guaranteed cash surrender value, if any, available at the ends of the 10th and 20th policy years;

(b) For participating policies, add to the respective amount determined in step (a) the accumulation of the annual Cash Dividends at five percent interest, compounded annually, to the end of the period selected, and the respective terminal dividend, if any, payable upon surrender;

(c) Divide the result of step (b), or step (a) for guaranteed cost policies, by an interest factor that converts it into the equivalent level annual amount that, if paid at the beginning of each year, would accumulate to the value in step (b), or step (a) for guaranteed cost policies, over the period selected. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;

(d) Determine the equivalent level annual premium for each of the respective periods in step (a) by accumulating each annual premium payable for the basic policy or rider at five percent interest, compounded annually, to the end of the respective period and dividing the result by the respective period factor stated in step (c). (For a level premium plan, the result of this step equals the annual premium.);

(e) Subtract the result of step (c) from the result of step (d);

(f) Divide the result of step (e) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.

(8) "Policy Summary" means a written statement describing the elements of the policy, including but not limited to items in subsections (a) to (k) of this section. The Policy Summary is a separate document. All information must be set out in such a manner as not to minimize or obscure any portion. Any amounts that remain level for two or more years of the policy

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may be represented by a single number if it is clearly indicated which amounts are applicable for each policy year. If more than one insured is covered under the policy or a rider, guaranteed death benefits shall be displayed separately for each insured, or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be expressed rather than being represented by a blank space:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

(b) The name and address of the insurance producer or, if no insurance producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;

(c) The full name and home office or administrative office address of the insurer in which the life insurance policy is to be or has been written;

(d) The Generic Name of the basic policy and each policy rider;

(e) The following amounts, where applicable, on a total basis rather than on a per thousand or a per unit basis, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which Life Insurance Net Payment or Surrender Cost Indexes are displayed and at least one age from 60 through 65 or policy maturity, whichever is earlier:

(A) Annual premium for the basic policy;

(B) Annual premium for each optional rider;

(C) Guaranteed amount payable upon death at the beginning of the policy year, without regard to the cause of death other than suicide and other specific exclusions, that is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;

(D) Total guaranteed cash surrender values at the end of the year, with values shown separately for the basic policy and each optional rider;

(E) Cash Dividends payable at the end of the year, with values shown separately for the basic policy and each optional rider. (Dividends need not be displayed beyond the 20th policy year.);

(F) Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values above.

(f) If the policy contains a loan provision, the effective policy loan interest rate and the annual percentage interest rate applied in advance or in arrears, whichever is specified. If the policy loan interest rate is variable, the Policy Summary shall include the maximum effective and annual percentage rates;

(g) Life Insurance Net Payment and Surrender Cost Indexes for 10 and 20 years but in no case beyond the premium-paying period. Separate Indexes shall be displayed for the basic policy and for each optional term life insurance rider. The Indexes need not be included for optional riders that are limited to such benefits as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits, nor for a basic policy or optional rider covering more than one life;

(h) The Equivalent Level Annual Dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations for which Life Insurance Net Payment and Surrender Cost Indexes are displayed;

(i) A statement, in the case of a Policy Summary that shows dividends, that dividends are based on the insurer's current dividend scale and are not guaranteed, and a statement in close proximity to the Equivalent Level Annual Dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide";

(j) A statement in close proximity to the Life Insurance Net Cost and Surrender Cost Indexes as follows: "An explanation of the intended use of these Indexes is provided in the Life Insurance Buyer's Guide";

(k) The date on which the Policy Summary is prepared.

Stat. Auth.: ORS 731 & 743

Stats. Implemented: ORS 742.009(2)

Hist.: IC 3-1978, f. & ef. 6-9-78; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-051-0015

Disclosure Requirements

(1) An insurer shall provide to each prospective buyer of life insurance a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit, except that if the policy for which application is made contains an unconditional refund provision effective for at least ten days or if the Policy Summary contains such an unconditional refund provision, the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(2) An insurer shall provide a Buyer's Guide and a Policy Summary to any prospective buyer upon request of the prospective buyer.

(3) In the case of policies for which the Equivalent Level Death Benefit does not exceed \$5,000, the Policy Summary need include only the information described in the items in OAR 836-051-0010(8)(b), (c), (d), (e)(A), (e)(B), (e)(C), (f), (g), (j), and (k).

Stat. Auth.: ORS 731 & 743

Stats. Implemented: ORS 742.009(2)

Hist.: IC 3-1978, f. & ef. 6-9-78; ID 19-2006, f. & cert. ef. 9-26-06

836-051-0020

General Requirements

(1) An insurer shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to OAR 836-051-0005 to 836-051-0020. Each such document shall be retained in the file for at least three years following the date of its last authorized use.

(2) An insurance producer shall inform a prospective buyer, prior to the beginning a life insurance sales presentation, that the insurance producer is acting as a life insurance producer, and shall inform the prospective buyer of the full name of the insurer that the insurance producer is representing to the buyer. In sales situations in which an insurance producer is not involved, the insurer shall identify its full name.

(3) Such terms as "financial planner," "investment advisor," "financial consultant," or "financial counseling" shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.

(4) Any reference to policy dividends must include a statement that dividends are not guaranteed.

(5) A presentation that does not recognize through the use of appropriate interest adjustments the time value of money shall not be used for comparing the cost of two or more life insurance policies. Such a presentation may be used for the purpose of demonstrating the cash-flow pattern of a policy if it is accompanied by a statement disclosing that the presentation does not recognize that a dollar in the future has less value than a dollar today because of interest.

(6) A presentation of benefits shall not display guaranteed and non-guaranteed benefits as a single sum unless they are also shown separately in close proximity to the single sum.

(7) A statement regarding the use of the Life Insurance Net Cost and Surrender Cost Indexes shall include an explanation to the effect that the Indexes are useful only for the comparison of the relative costs of two or more similar policies.

(8) A statement of a Life Insurance Net Cost or Surrender Cost Index that reflects dividends, and an Equivalent Level Annual Dividend, shall be accompanied by a statement that it is based on the insurer's current dividend scale and is not guaranteed.

(9) For the purposes of OAR 836-051-0005 to 836-051-0020, the annual premium for a basic policy or optional rider for which the insurer reserves the right to change the premium shall be the maximum annual premium.

Stat. Auth.: ORS 731 & 743

Stats. Implemented: ORS 742.009(2)

Hist.: IC 3-1978, f. & ef. 6-9-78; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-052-0860

Form of Notice to Group Policyholder

(1) The form of the notice required by ORS 743.560 shall be as established in this rule. The form shall be printed in 12 point type, one point leaded, and shall provide at least the following:

(a) The date of the notice;

(b) A statement to the effect that the group coverage provided through the group policyholder by the insurer has terminated or will terminate, and the effective date of termination. If termination will occur because of non-payment of premium, the statement must also provide that the premium was not received, that the policy will be terminated as of the premium due date if the premium is not received by the end of the grace period applicable to the policy and that the insurer will furnish no further notice as to termination, and must include the date of termination. The effective date of a termination for a reason other than nonpayment of premium shall be the date preceding the first day that a group policyholder is effectively without coverage under the group health insurance policy;

(c) The number of the group health insurance policy;

(d) The name of the employer;

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(e) An explanation of the rights of the certificate holders under federal law and state law regarding the continuation of coverage.

(2) In the notice to a group policyholder under this rule, the insurer need include only the information that applies to the group policyholder and certificate holder,

(3) An insurer may satisfy the notice requirements of ORS 743.560(2) and (3) in a single notice that is given at least 10 days prior to the end of the grace period under the policy. The notice must also satisfy the requirements of ORS 743.565.

(4) Notice of the availability of portability coverage is satisfied by compliance with the notice requirements of OAR 836-053-0750, relating to portability coverage.

(5) An insurer may give the notice required by ORS 743.560 electronically if each of the parties to the insurance policy has agreed to accept electronic notice pursuant to ORS 84.013 and the notice and procedures followed by the parties otherwise satisfy the provisions of the Uniform Electronic Transactions Act at ORS 84.001 to 84.070.

Stat. Auth.: ORS 731.244, 743.526, 743.560 & 743.562

Stats. Implemented: ORS 743.560

Hist.: ID 9-1992, f. 5-26-92, cert. ef. 7-1-92; ID 5-2002, f. & cert. ef. 2-6-02; ID 19-2006, f. & cert. ef. 9-26-06

836-054-0000

Election of Lower Limits for Uninsured Motorist Coverage

(1) This rule is adopted under the authority of ORS 731.244 for the purpose of implementing ORS 742.502.

(2) This rule establishes in Exhibit 1 an example of the form of statement electing lower limits for uninsured motorist coverage in a motor vehicle liability insurance policy that may be used to comply with the requirement in ORS 742.502 for a statement of election. A form used by an insurer or insurance producer that is in substantial compliance with this rule is considered to be approved by the Department. A form is in substantial compliance if the form contains all of the following elements in any order:

(a) An acknowledgement by the named insured that the named insured was offered uninsured motorist coverage with the limits equal to those for bodily injury liability;

(b) A brief summary, which is not part of the insurance contract, of uninsured and underinsured motorist coverages;

(c) A statement of the price for coverage per insured vehicle with limits equal to the named insured's bodily injury liability limits and the price for coverage per insured vehicle with the lower limits requested by the named insured;

(d) A statement to the effect that the statement shall remain in force until rescinded in writing by a named insured or until such time as motor vehicle bodily injury liability limits are changed; and

(e) Provision for signature of a named insured, to be made within 60 days of the time the named insured makes the election, and for the date of signature.

(3) Regarding the summary required in subsection (2)(b) of this rule, if an insurer issuing a policy that refers only to uninsured motorist coverage because uninsured motorist coverage under the policy includes underinsured motorist coverage meeting statutory requirements, the insurer need not use the term "underinsured motorist coverage."

(4) The statement required under subsection (2)(c) of this rule may state the term of coverage to which the prices relate.

(5) The form may include one or both of the following statements in addition to the items required under section (2) of this rule:

(a) A statement to the effect that the form is required by Oregon law or specifically by ORS 742.502; and

(b) A statement to the effect that limits for uninsured motorist coverage cannot be less than the amounts required to comply with financial responsibility requirements under ORS 806.070.

Stat. Auth.: ORS 731.244 & 742.502

Stats. Implemented: ORS 742.502(2)

Hist.: ID 5-1994, f. & cert. ef. 5-9-94; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-058-0010

Permitted Reasons to Exclude Named Person

An insurer may exclude by name a person other than the named insured from the coverage required by ORS 742.450(2)(a) to be provided in a motor vehicle liability insurance policy issued for delivery in this state, for any of the following reasons:

(1) The excluded person is higher rated than the named insured and the difference between the annualized premium that the named insured would pay on the liability coverage under the policy including the higher rated person and the annualized premium that the named insured would pay

on the policy excluding the higher rated person would cause financial hardship as described in this section to the named insured. For the purpose of this section:

(a) A financial hardship is caused only if the difference exceeds \$1,000;

(b) Premium owing to rating for a high performance vehicle or a sports car shall be excluded for the purpose of determining whether financial hardship is caused.

(2) The excluded person's Oregon driver's license is suspended pursuant to ORS 809.409(5).

(3) The excluded person's Oregon driver's license is suspended pursuant to ORS 809.419(3).

Stat. Auth.: ORS 731.244 & 742.450

Stats. Implemented: ORS 742.450(6)(b)

Hist.: ID 6-1993, f. & cert. ef. 8-25-93; ID 19-2006, f. & cert. ef. 9-26-06

836-074-0005

Statutory Authority; Effective Date

OAR 836-074-0005 to 836-074-0050 are adopted under the general rulemaking authority of the Director of the Department of Consumer and Business Services under ORS 731.244 for the purpose of carrying out ORS 744.083.

Stat. Auth.: ORS 731

Stats. Implemented: ORS 744.225

Hist.: ID 9-1987, f. 12-22-87, cert. ef. 1-1-88; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-075-0000

Third Party Administrators; License Application; Required Information

An applicant for a third party administrator license shall provide the following:

(1) On the application form provided by the Director, information relating to the organizational form of the applicant as follows:

(a) The name under which the applicant will transact business as a third party administrator;

(b) The principal place of business at which the applicant will transact business as a third party administrator, including the street and mailing addresses and telephone number;

(c) The organizational form of the applicant (corporation, partnership, sole proprietorship);

(d) All assumed business names and other names under which the applicant will transact business as a third party administrator;

(e) Whether the applicant has ever had a judgment entered against the applicant for fraud, and whether any insurer, insurance producer or other person claims the applicant to be indebted to it, together with the details of any such indebtedness;

(f) Whether any license of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state, and whether the applicant has otherwise ever been the subject of a complaint to a professional licensing board or agency. If the applicant's answer is affirmative in any respect, the applicant must also provide the name and address of the licensing board or agency, the date of the complaint or the action taken against the license, a description of the nature of the complaint or the reason for the action taken against the license, and, with regard to a complaint, a description of the licensing board or agency's disposition of the complaint;

(g) Whether the applicant has ever filed for bankruptcy or been adjudged a bankrupt;

(h) All states and provinces of Canada in which the applicant currently holds a license or certificate of authority to transact business as a third party administrator, or has held such a license or certificate within ten years prior to the date of the application;

(i) The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the administrator, including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership or association; shareholders holding directly or indirectly ten percent or more of the voting securities of the administrator; and any other person who exercises control or influence over the affairs of the administrator;

(j) The name and telephone number of a contact person who is knowledgeable about preparation of the annual financial statements or reports required under section (4) of this rule.

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(2) An appointment of the Director, on the application, as agent for service of process, if the third party administrator will be a nonresident licensee.

(3) Biographical information for each owner, partner, director and officer of the applicant, on the Biographical Affidavit form designed by the National Association of Insurance Commissioners.

(4) The following documents, which must accompany the application under section (1) of this rule:

(a) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, share-holder agreement and other applicable documents and all amendments to such documents;

(b) The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

(c) Annual financial statements or reports for the two most recent years, which prove that the applicant is solvent, and such information as the Director may require in order to review the current financial condition of the applicant, except as provided in subsection (d) of this section;

(d) If the applicant is a corporation that is newly formed for the purpose of transacting business as a third party administrator, the financial statements or reports of each incorporator, shareholder and officer for the two most recent years, a current balance sheet for the corporation and such information as the Director may require in order to review the current financial condition of the applicant;

(e) A statement describing the business plan, including information on staffing levels and activities proposed in this state and nationwide. The plan must provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, recordkeeping and underwriting;

(f) Evidence that the applicant has a fiduciary account established in a federally or state-insured financial institution. An applicant that is an insurance producer licensed under ORS chapter 744 need not comply with this subsection if the applicant is in compliance with ORS 744.225 with respect to the premiums, charges and return premiums referred to in ORS 744.730;

(g) Evidence of insurance coverage required by ORS 744.726;

(h) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an insurance producer licensed by the Director for solicitation and taking of applications. Any applicant that intends directly to solicit insurance contracts or to otherwise act as an insurance producer must provide proof that it has a license as an insurance producer in this state.

Stat. Auth.: ORS 731.244, 744.303, 744.635, 744.704, 744.706, 744.712, 744.726

Stats. Implemented: ORS 744.706

Hist.: ID 1-1992, f. & cert. ef. 1-27-92; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-080-0022

Duties of Insurers that Use Agents Insurance Producers

Each insurer that uses an insurance producer shall:

(1) Maintain a system of supervision and control to insure compliance with the requirements of OAR 836-080-0001 to 836-080-0043. The system shall do at least the following:

(a) Inform its insurance producers of the requirements of OAR 836-080-0001 to 836-080-0043 and incorporate the requirements of OAR 836-080-0001 to 836-080-0043 into all relevant insurance producer training manuals prepared by the insurer;

(b) Provide to each insurance producer a written statement of the insurer's position with respect to the acceptability of replacements, providing guidance to its insurance producer as to the appropriateness of these transactions;

(c) Include a system for reviewing the appropriateness of each replacement transaction that the insurance producer does not indicate is in accord with subsection (b) of this section;

(d) Include procedures that confirm the requirements of OAR 836-080-0001 to 836-080-0043 have been met; and

(e) Include procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or insurance producer. Compliance with OAR 836-080-0001 to 836-080-0043 may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring;

(2) Have the capacity to monitor each insurance producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, such records for and make such records available to,

the Director. The capacity to monitor shall include the ability to produce records for the following with respect to each insurance producer:

(a) Life replacements, including financed purchases, as a percentage of the insurance producer's total annual sales for life insurance;

(b) Number of lapses of policies by the insurance producer as a percentage of the agent's total annual sales for life insurance;

(c) Annuity contract replacements as a percentage of the insurance producer's total annual annuity contract sales;

(d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by subsection (1)(e) of this section; and

(e) Replacements, indexed by replacing insurance producer and existing insurer;

(3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the insurance producer as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in **Appendix A** to this rule, unless the notice is not required under OAR 836-080-0014(1) and (2);

(5) When the applicant has existing policies or contracts, be able to produce copies of any sales material required by OAR 836-080-0014(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the insurance producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by OAR 836-080-0014(5) meet the requirements of OAR 836-080-0001 to 836-080-0043 and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of OAR 836-080-0001 to 836-080-0043, notify the insurance producer and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

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

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 746.085 & 746.240

Hist.: IC 8-1984, f. 10-26-84, ef. 12-1-84; ID 5-2001, f. 4-16-01, cert. ef. 11-1-01; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06

836-080-0235

Standards for Prompt and Fair Settlements — Generally

(1) An insurer shall, not later than the 30th day after its receipt of properly executed proofs of loss from a first party claimant, advise the claimant of the acceptance or denial of the claim. An insurer shall not deny a claim on the grounds of a specific policy provision, condition or exclusion unless the denial includes reference to the provision, condition or exclusion. A claim denial must be in writing, with either a copy or the capability of reproducing its text included in the insurer's claim file.

(2) If a claim is made on a health insurance policy and the claim involves a coordination of benefits issue to which OAR 836-020-0700 to 836-020-0765 apply, the time allowed in OAR 836-020-0740 to an insurer for applying a coordination of benefit provision shall be added to the time period provided in section (1) of this rule.

(3) If a claim is denied for reasons other than those described in section (1) of this rule and is made by any other means than in writing, an appropriate notation shall be made in the insurer's claim file.

(4) If an insurer needs more time to determine whether the claim of a first party claimant should be accepted or denied, it shall so notify the claimant not later than the 30th day after receipt of the proofs of loss, giving the reason more time is needed. Forty-five days from the date of such initial notification and every 45 days thereafter while the investigation remains incomplete, the insurer shall notify the claimant in writing of the reason additional time is needed for investigation.

(5) An insurer shall not fail to settle claims of first party claimants on the grounds that responsibility for payment should be assumed by others, except as may be provided otherwise by the provisions of the insurance policy issued by the insurer.

(6) If an insurer continues negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or policy time limit, the insurer shall give the claimant written notice that the time limit may be expiring and may affect the claimant's rights. The notice shall be given to first party claimants not less than 30 days before,

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and to third party claimants not less than 60 days before, the date on which the insurer believes the time limit may expire.

(7) An insurer shall not make a statement that indicates that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time, unless the statement is given for the purpose of notifying the third party claimant of the provision of a relevant statute of limitations.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 746.230(1) & 746.240
Hist.: IC 2-1980, f. 5-8-80, ef. 6-1-80; ID 3-1998, f. & cert. ef. 2-10-98; ID 19-2006, f. & cert. ef. 9-26-06

836-080-0501

Authority; Rule of Construction; Applicability

(1) OAR 836-080-0501 to 836-080-0551 are adopted under the authority of ORS 731.244 and 746.620 for the purpose of implementing ORS 746.600, 746.620, 746.630 and 746.665.

(2) The examples in OAR 836-080-0501 to 836-080-0551 are not exclusive. Compliance with an example in OAR 836-080-0501 to 836-080-0551 constitutes compliance with the statute to which the example applies.

(3) OAR 836-080-0501 to 836-080-0551 have the same scope of applicability as ORS 746.600, 746.620, 746.630 and 746.665, applying to insurance activities of a licensee and not to noninsurance activities.

(4) The applicability of the exemptions in ORS 746.665(1)(b) and (c) includes but is not limited to a licensee's transactions described in ORS 746.665(1)(b) and (c) with a reinsurer or with an insurer with respect to stop loss or excess loss insurance.

Stat. Auth.: ORS 731.244, 746.600 & 746.620
Stat. Implemented: ORS 746.600, 746.620, 746.630 & 746.665
Hist.: ID 8-2002, f. & cert. ef. 2-15-02; ID 11-2006, f. & cert. ef. 6-26-06; ID 19-2006, f. & cert. ef. 9-26-06

836-081-0005

Statutory Authority; Purpose; Definitions

(1) OAR 836-081-0005 and 836-081-0010 are adopted by the Director of the Department of Consumer and Business Services pursuant to the general rulemaking authority in ORS 731.244.

(2) OAR 836-081-0005 and 836-081-0010 identify particular practices that make an unfair discrimination in the availability of insurance, in violation of ORS 746.015. OAR 836-081-0005 and 836-081-0010 do not limit the Director's authority to determine that other practices relating to insurance availability are unfairly discriminatory.

(3) OAR 836-081-0005 and 836-081-0010 do not concern the making and use of insurance rates. Under ORS 737.310, which applies to most lines of property and casualty insurance, the making and use of rates that are unfairly discriminatory is prohibited. Under ORS 746.015, unfair discrimination in the application of rates is prohibited.

(4) OAR 836-081-0005 and 836-081-0010 do not prohibit the use of other risk selection criteria that reasonably can be related to the rates and policy forms used by the insurer.

(5) For the purpose of OAR 836-081-0005 and 836-081-0010:

(a) "Availability of insurance" includes all terms, conditions, and types of coverage under insurance policies;

(b) "Insurer", when used in connection with several insurers in a group under common ownership or control, refers to the group of insurers collectively rather than individually.

Stat. Auth.: ORS 731 & 746
Stats. Implemented: ORS 746.015(1)
Hist.: IC 2-1978, f. 5-22-78, ef. 6-1-78; ID 19-2006, f. & cert. ef. 9-26-06

836-081-0010

Unfair Discrimination — Insurance Other than Life or Health Insurance

(1) An insurer decision on the availability of insurance for an individual, other than life or health insurance, that is based on any of the following characteristics is considered to be unfair discrimination:

- (a) Age of individuals;
- (b) Sex;
- (c) Marital status (i.e., single, married, separated, divorced);
- (d) Race or color;
- (e) Creed;
- (f) National origin;
- (g) Ancestry;

(h) Occupation, if lawful, unless the occupation significantly increase the degree of hazard. This paragraph does not apply in the case of an insurer that limits its market to one occupation or several related occupations;

(i) Change of occupation, unless the frequency of change is significant;

(j) Change of domicile, unless the frequency of change is significant or the change significantly increases the degree of hazard or the expense of administering policy benefits;

(k) Previous rejection, cancellation or nonrenewal of insurance by another insurer;

(l) Change of insurer;

(m) Lack of previous insurance, unless the lack is in violation of law.

(2) An insurer may use a combination of the characteristics described in paragraphs (h) to (j) of section (1) of this rule as a basis for a decision under section (1) of this rule only if the combination significantly increases the degree of hazard.

Stat. Auth.: ORS 731 & 746
Stats. Implemented: ORS 746.015(1)
Hist.: IC 2-1978, f. 5-22-78, ef. 6-1-78; ID 19-2006, f. & cert. ef. 9-26-06

836-081-0020

Statutory Authority; Purpose; Applicability

(1) OAR 836-081-0020 and 836-081-0030 are adopted pursuant to the general rulemaking authority of the Director of the Department of Consumer and Business Services in ORS 731.244 as an aid in effectuation of ORS 746.015(2).

(2) The purpose of OAR 836-081-0020 to 836-081-0030 is to protect blind or partially blind members of the insurance-buying public from unfair discrimination by insurers by identifying specific acts or practices that are prohibited by ORS 746.015(2) when an insurer engages in one or more of them solely on the basis of blindness or partial blindness.

(3) OAR 836-081-0020 to 836-081-0030 shall apply to all insurance transactions.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 746.015(2)
Hist.: IC 1-1985, f. & ef. 2-1-85; ID 19-2006, f. & cert. ef. 9-26-06

836-081-0030

Unfair Discrimination Acts or Practices

(1) The following acts and practices constitute unfair discrimination between individuals of the same class when an insurer engages in one or more of them solely because of blindness or partial blindness of an individual:

(a) Refusing to insure, or refusing to continue to insure, the individual; or

(b) Limiting the amount, extent or kind of coverage available to the individual or

(c) Charging the individual a different rate for the same coverage.

(2) For purposes of section (1) of this rule:

(a) With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

(b) Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses eyesight.

(c) An insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued.

Stat. Auth.: ORS 731
Stats. Implemented: ORS 746.015(2)
Hist.: IC 1-1985, f. & ef. 2-1-85; ID 19-2006, f. & cert. ef. 9-26-06

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

Rule Caption: Adoption of changes throughout Division 4, Agriculture.

Adm. Order No.: OSHA 9-2006

Filed with Sec. of State: 9-22-2006

Certified to be Effective: 9-22-06

Notice Publication Date: 5-1-06

Rules Adopted: 437-004-9010

Rules Amended: 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, 437-004-1700, 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

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Subject: OR-OSHA adopts changes to 16 subdivisions in Division 4, Agriculture, including: 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) if referenced, added requirement 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 fumigated areas.

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

Please visit OR-OSHA's web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-004-0002

Scope

Standard Industrial Classifications – division 004, Agriculture, applies only to employers with the following Standard Industrial Classifications (SIC) or North American Industrial Classification system (NAICS) codes.

Note: If you don't know your code, contact your Workers' Compensation Insurance carrier.

(1) All of major groups 01 (NAICS 111), and 02 (NAICS 112). The following sub-groups of major groups 07 and 08 (NAICS 111). SIC NAICS

- (a) 0711 115112 Soil Preparation Services
- (b) 0721 115112 Crop Planting, Cultivating, and Protection
- (c) 0722 115113 Crop Harvesting, Primarily by Machine
- (d) 0723 115114 Crop Preparation Services for Market: Except Cotton Ginning

- (e) 0761 115115 Farm Labor Contractors and Crew Leaders
- (f) 0762 115116 Farm Management Services
- (g) 0811 111421 Christmas Tree Growing and Harvest
- (2) Reserved.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0099

General Standards

(1) Miscellaneous.

(a) Conspicuously post warning signs, danger signs, warning flags, warning lights, or similar devices where hazards not otherwise adequately guarded warrant their use.

(b) Maintain and use in an operable condition any safeguard or device required by any rule in this division to fulfill its intended purpose.

(c) Erect protective barriers or suitable guards when covers over openings are removed or excavations made in places accessible to workers or vehicles.

(d) Do not allow the use of intoxicating liquor or drugs on the job. Do not allow anyone to work with impaired ability to work safely.

(e) Do not allow horseplay, scuffling, practical jokes or any other similar activity.

(2) Supervision and competency.

(a) Require employees to demonstrate their ability to work safely.

(b) Provide enough supervision over employees to ensure and enforce compliance with safe operating procedures and practices.

NOTE: It is not the meaning of this rule to require a supervisor on every part of any operation, nor to prohibit workers from working alone.

(c) Take all reasonable means to require employees:

- (A) To work and act in a safe and healthful manner;
- (B) To work in compliance with all applicable safety and health rules;
- (C) To use all means and methods, including but not limited to, ladders, scaffolds, guardrails, machine guards, safety belts and lifelines, necessary to work safely where employees are exposed to a hazard;

(D) Not to remove, displace, damage, destroy or carry off any safety device, guard, notice or warning provided for use in any employment or place of employment where safety and health rules require such use.

(d) Use a procedure, appropriate for the work, to check on the well-being of workers whose duties require them to work alone or in isolation. Instruct all workers about the procedure.

NOTE: A two-way system of signals, thoroughly understood by both parties or other form of two-way communication is acceptable. Motor noise is not acceptable as contact or as an indication of well-being.

(e) Employers must provide all health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions and must maintain those control measures in good working order and assure their use.

(f) Employers must inform their employees about the known health hazards to which they are exposed, the measures taken for the prevention and control of those hazards, and the proper methods for using the control measures.

(3) Inspections. A competent person or persons must inspect every place of employment at least quarterly. OAR 437-004-0250(6)(e) has other requirements related to these inspections.

(4) Investigations.

(a) The employer must investigate every work-related lost time injury. The object of the investigation is to determine how to prevent recurrence. OAR 437-004-0250(6)(e) has other requirements related to these investigations.

NOTE: As mentioned above, "lost time injury" is the same as the ORS 656.005(7)(c) definition of "disabling compensable injury." That is: an injury that entitles the worker to compensation for disability or death. To fall into this category the employee must miss three consecutive calendar days beginning with the day the worker first loses time or wages from work as a result of the compensable injury. This includes weekends and holidays when they might normally be off.

(b) At the request of authorized OR-OSHA representatives, you or your superintendents, supervisors and employees must furnish all evidence and names of known witnesses to an accident.

(c) Employees in charge of work are agents of the employer in the discharge of their authorized duties, and are always responsible for:

- (A) The safe performance of the work under their supervision; and
- (B) The safe conduct of the crew under their supervision; and
- (C) The safety of all workers under their supervision.

(5) Extraordinary hazards. When conditions arise that cause unusual or extraordinary hazards to workers, take additional means and precautions to protect workers or to control the hazardous exposure. If you cannot make the operation reasonably safe, stop work while the abnormal conditions exist or until the work is safe.

(6) Signals and signal systems.

(a) Give control signals by only one person at a time.

(A) When given, make signals clear and distinct.

(B) The person receiving the signals must understand their meaning before taking action.

(b) Act immediately on emergency stop signals from whatever source.

(c) Do not throw any type of material that can produce injury, such as rocks, wooden or metal objects, etc., as a signal.

(d) Do not give signals for the movement of materials or equipment until all persons who might be in danger by the movement are in the clear.

Employment of Minors

NOTE: Information on current regulations about the employment of minors is available from the local office of the Oregon Bureau of Labor and Industries, or by writing to: Wage and Hour Division, Oregon Bureau of Labor, 3865 Wolverine NE Rm E-1, Salem, Oregon 97310.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0240

Safety Orientation for Seasonal Workers

Seasonal Worker — a person employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year.

(1) This applies to agricultural employers with 10 or fewer non-seasonal workers. (See the notice at the end of this page.)

(2) All seasonal workers must receive at least the following information in their orientation meeting before beginning work for the first time or when work conditions or locations change in a way that reasonably could affect their safety or health:

(a) Reserved.

NOTE: OAR 437-004-9800(7)(d), Hazard Communication requires you to give OR-OSHA publication 1951, "Safe Practices – Working With Hazardous Agricultural Chemicals" to every employee.

NOTE: This paragraph satisfies the training requirements under 437-004-9800, Hazard Communication for workers doing field and hand labor. It also satisfies the requirements for training under the Worker Protection Standard, 437-004-40 CFR 170.130(c). See Subdivision W.

(b) Employer's safety and health rules for the work they will do.

(c) The employer's procedures for workers to contact supervisors or managers in case of accident, illness or any problem related to safety or health.

(d) The employer's procedures for treatment of injured or sick workers and the summoning of emergency assistance.

(e) The location of posted safety and health information.

NOTE: These are only minimum requirements and are not all inclusive. Other parts of the Agriculture standard require specific or general training for certain types of work. Those requirements are in addition to these general orientation requirements.

ADMINISTRATIVE RULES

NOTICE: If you employ more than 10 non-seasonal workers, read and comply with OAR 437-004-0250 which follows this standard. If you employ 10 or fewer non-seasonal workers but have had one or more accepted disabling claims in any 12-month period, read and comply with OAR 437-004-0250 which follows this standard.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 4-1999, f. & cert. ef. 4-30-99; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0250

Safety Committees

(1) Application.

(a) Agricultural employers with more than 10 non-seasonal workers must have an effective safety committee.

(b) Agricultural employers with 10 or fewer non-seasonal workers do not need a safety committee unless they had one or more lost workday cases during a 12-month period.

Note: Under (b) above, you must have your first safety committee meeting the month after your first lost workday case during any 12-month period. You can stop the meetings after you complete a 12-month period without a lost workday case.

(c) Labor contractors must have a committee based on the number of workers over which they exercise direction and control.

(2) Purpose. The purpose of a safety committee is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. A safety committee assists the employer and makes recommendations for change.

(3) Effective committee. An effective committee must produce at least the following results:

(a) Workers must be aware of the committee, who is on it, how it functions, when it meets and how information passes from workers to management and from management to workers.

(b) Workers must be aware of their right to have matters placed on the committee's agenda and into the meeting minutes.

(c) Workers must know the employer's method or system for the reporting of safety and health concerns, incidents and accidents.

(d) Workers must know the committee's responsibility to review all incident and accident reports.

(4) Definitions.

(a) Management — includes all supervisors and persons who regularly exercise direction and control over workers.

(b) Seasonal Worker — a person employed in a job tied to a certain time of year by an event or pattern and employed for not more than 10 months in a calendar year.

(c) Workers — for the purposes of determining the need for a safety committee, include both full and part-time employees.

(5) General requirements.

(a) Employers who also hire seasonal workers must hold safety orientation meetings for those crews. See paragraphs OAR 437-004-0250(8).

(b) If you have more than one geographic employment location, use a combined committee only if:

(A) The locations are close enough to assure that a joint committee meets the requirements in OAR 437-004-0250(3); or

(B) The locations employ some of the same workers; and

(C) The joint committee represents safety and health concerns of all workers at all locations.

(c) The safety committee of employers with 20 or fewer non-seasonal workers must have at least one manager and one worker. Employers with more than 20 non-seasonal workers must have at least two managers and two workers on the committee.

(A) Do not coerce workers to serve on the committee. Give all workers the opportunity to volunteer to serve on the committee. If there are no volunteers, the employer may appoint the member(s).

Note: Do not count seasonal workers when calculating the number of members needed on the committee.

(B) Reserved.

(d) Employers must pay workers their regular hourly rate for attending safety committee meetings or instruction or training required as part of their safety committee duties.

(6) Duties and functions.

(a) Regular safety committee meetings must be held monthly except in months when there are inspections under OAR 437-004-0099(3). Committees for employers with 10 or fewer workers, under (1)(b), must meet quarterly in addition to their inspection months.

Note: It is acceptable to combine required safety committee meetings with seasonal worker orientation sessions if you fulfill all requirements for the committee meetings.

(b) Keep a record of all safety committee meetings and make the records available to workers. Keep the record for 3 years for inspection by OR-OSHA.

(c) All reports, inspections, evaluations, recommendations and items brought before the committee must be part of the record.

(d) The employer must respond to safety committee recommendations in a reasonable time.

(e) The committee must:

(A) Establish procedures for the committee to do the safety inspections in OAR 437-004-0099(3).

(B) Review all reports of the quarterly inspections required in OAR 437-004-0099(3).

(C) Establish procedures for investigating all safety incidents, accidents, illnesses and deaths.

(D) Evaluate accident and illness prevention programs.

(E) Set guidelines for the training of safety committee members.

(7) Training.

(a) Discuss OAR 437-004-0250 (these rules) and the purpose and operation of the committee with safety committee members.

(b) Committee members must have timely access, through the employer, to all OR-OSHA standards that apply to their work.

(c) Committee members must receive training in hazard identification.

(8) Safety orientations for seasonal workers. All seasonal workers doing hand labor and field work must receive at least the following information in their safety orientation meeting before beginning work for the first time or when work conditions or locations change in a way that reasonably could affect their safety or health:

(a) Reserved.

NOTE: OAR 437-004-9800(7)(d), Hazard Communication requires you to give OR-OSHA publication 1951, "Safe Practices – Working With Hazardous Agricultural Chemicals" to every employee.

NOTE: This paragraph satisfies the training requirements under 437-004-9800, Hazard Communication for workers doing field and hand labor. It also satisfies the requirements for training under the Worker Protection Standard, 437-004-40 CFR 170.130(c). See Subdivision W.

(b) Employer's safety and health rules for the work they will do.

(c) The employer's procedures for workers to contact supervisors or managers in case of accident, illness or any problem related to safety or health.

(d) The employer's procedures for treatment of injured or sick workers and the summoning of emergency assistance.

(e) The location of posted safety and health information.

NOTE: These are only minimum requirements and are not all inclusive. Other parts of the Agriculture standard require specific or general training for certain types of work. Those requirements are in addition to these general orientation requirements.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 4-1999, f. & cert. ef. 4-30-99; OSHA 7-2000, f. & cert. ef. 7-26-00; OSHA 1-2002, f. & cert. ef. 2-15-02; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0340

Portable Ladders

(1) Definitions. Portable ladder terms mean:

(a) Check. A lengthwise separation of the wood, most of which occurs across the rings of annual growth.

(b) Compression failure. A deformation (buckling) of the fibers due to excessive compression along the grain.

(c) Decay. Disintegration of wood substance due to action of wood-destroying fungi. It is also known as rot.

(d) Extension ladder. A nonself-supporting portable ladder of adjustable length. It has two or more sections that adjust to varied lengths.

(e) Extension trestle ladder. An adjustable, self-supporting portable ladder made of a trestle ladder base and a vertical extension section.

(f) Ladder. A device with steps, rungs or cleats between rails, for people to climb up or down.

(g) Low density wood. Exceptionally light in weight and usually deficient in strength for the species.

(h) Platform ladder. A fixed length, self-supporting portable ladder with a platform at the highest permissible standing level.

(i) Platform. A landing surface for working or standing.

(j) Reinforced plastic. A plastic made stronger than its base by the addition of high strength fillers, usually fibers, fabrics or mats.

(k) Section.

(A) Bottom or base section. The lowest section of a nonself-supporting portable ladder.

(B) Middle or intermediate section. The section(s) between the top (fly) and bottom (base) sections of a nonself-supporting portable ladder.

(C) Top or fly section. The uppermost section of a nonself-supporting portable ladder.

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(l) Sectional ladder. A nonself-supporting, fixed length, portable ladder, with two or more sections of ladder that may combine to work as a single ladder. Its size is the length of the assembled sections.

(m) Shake. A separation along the grain, most of which occurs between the rings of annual growth.

(n) Single section ladder. A fixed length, nonself-supporting portable ladder made of one section.

(o) Stepladder. A fixed length, self-supporting portable ladder with a hinged back.

(p) Top cap. The very top part of a stepladder.

(q) Top step. The first step below the top cap of a stepladder. If the ladder has no top cap, the top step is the first one below the top of the rails.

(r) Trestle ladder. A fixed length, self-supporting portable ladder made of two sections and hinged at the top. It can be climbed by two people at once, one per side.

(s) Wane. Bark, or the lack of wood from any cause, on the corner of a piece.

(t) Wood irregularities. Natural characteristics in or on wood that may lower its durability, strength, or utility.

(u) Working Load Rating. The maximum load authorized by the manufacturer for the ladder.

(2) Application. This standard covers the selection, use and care of portable ladders used in agriculture. It does not cover orchard ladders, special ladders, combination step and extension ladders, aisle way stepladders, and shelf ladders.

(3) Ladder selection. Portable reinforced plastic (fiberglass) ladders must comply with American National Standard A14.5-1992. Wood ladders must comply with American National Standard A14.1-1994. Metal ladders must comply with American National Standard A14.2-1990.

NOTE: Unaltered and properly maintained ladders that meet the ANSI standard in effect at the time of their manufacture comply with this standard as do ladders that comply with newer versions of the particular ANSI standard.

(4) Condition of wood ladders. There must be no sharp edges or splinters on wood parts. Visual inspection must show no check, shake, wane, compression failures, decay, or other wood irregularities. Ladders may not be made of low density wood.

(5) General requirements — all ladders.

(a) Step spacing must be uniform and not more than 12 inches. Steps must be parallel and level when the ladder is in the normal use position.

(b) All joints, attachments and working parts of ladders must be tight and not worn to a point that causes a hazard. Do not use ladders with damaged or bent parts.

(c) Replace frayed or badly worn rope.

(d) Safety feet and other auxiliary equipment must be in good condition.

(e) Inspect ladders and remove from use any with defects. Ladders awaiting repair must be tagged, "Dangerous, Do Not Use."

(f) There can be no dents, breaks or bends in the side rails or rungs;

(g) Do not make ladders by fastening cleats across a single rail.

(h) Portable ladders must have nonslip bases.

(6) General requirements — portable stepladders.

(a) The minimum width between side rails at the top, inside to inside, must be not less than 11 1/2 inches. From top to bottom, the side rails must spread at least 1-inch for each foot of length of the stepladder.

(b) The bottoms of the four rails must have insulating nonslip material.

(c) There must be a metal spreader or locking device strong enough to hold the ladder open. The spreader must have no sharp points or edges. For Type III ladders, the pail shelf and spreader can be one unit (a shelf-lock ladder).

(7) Use — all ladders. Use ladders only for purposes approved or recommended by the manufacturer.

(a) Do not load ladders beyond their working load rating. Do not allow more than one person at a time on ladders not intended by the manufacturer to hold more than one person.

(b) Do not use ladders in front of doors that open toward the ladder without blocking, locking or guarding the door.

(c) Do not use ladders placed on boxes, barrels, or other unstable bases to obtain additional height.

(d) Do not use ladders with broken or missing steps, rungs, or cleats, broken side rails, or other faulty parts.

(e) Do not splice sections of short ladders together to make a long one.

(f) When used, metal reinforcers must be on the underside of rails of portable rung ladders.

(g) A ladder for access to a roof must extend at least 3 feet above the top support point, at the eave, gutter, or roof line.

(h) Secure ladders as necessary when used on surfaces that may allow slipping or movement. Use one of the following methods:

(A) non-slip bases on the ladder feet; or,

(B) steel points or safety shoes on the ladder feet, designed for the type of surface the ladder is on; or

(C) nail the ladder to the floor, or set it against secured blocks or chocks.

NOTE: Non-slip bases are not a substitute for care in safely placing, lashing, or holding a ladder on oily, metal, concrete, or slippery surfaces.

(i) Use portable ladders only on a surface that gives stable, level footing.

(j) The climber must face the ladder and have free use of both hands when climbing up or down.

(k) Do not step or jump between erected ladders.

(l) There must be only one person at a time on a ladder unless its labeling specifically allows use by more than one person.

(m) Do not use ladders as planks or bridges between walking surfaces or in other horizontal applications.

(n) Do not use ladders to gain additional height from elevated surfaces like scaffolds, truck beds, vehicle bodies, tractor scoops or boom truck buckets.

(o) Do not use metal ladders or wood ladders with vertical metal parts for electrical work or where they may contact electric conductors. This type ladder must have markings reading "WARNING — do not use around energized electrical equipment" or words of equal meaning.

(8) Use of specific types of ladders.

(a) Portable stepladders. Do not use stepladders more than 20 feet long.

(A) Do not climb on the back section of the ladder unless it has steps meant for climbing. Do not stand on the top step or top cap of stepladders.

(B) There must be only one person at a time on the ladder.

(C) Do not use stepladders in freestanding positions when not fully opened. Do not use them as supports for working platforms or scaffolding planks.

(b) Portable rung ladders.

(A) Single ladder.

(i) Do not use single ladders more than 30 feet long.

(ii) Place these ladders at an angle shown in Figure 1.

(iii) The tops must be tied down or secured if there is a possibility of sliding or movement.

(iv) Single ladders are acceptable as fixed ladders only when they comply with 437-004-0360.

(B) Two-section ladder.

(i) Do not use two-section extension ladders more than 60 feet long.

All ladders of this type must have two sections, one to fit within the side rails of the other, and arranged so that the upper section will raise and lower.

(ii) Set up and use extension ladders so that the top section or fly is resting on the bottom section or base. Rung locks must be in the proper position.

(iii) Place these ladders at an angle shown in **Figure 1**.

(iv) The tops must be tied down or secured if there is a possibility of sliding or movement.

(v) On two-section extension ladders the minimum overlap for the two sections in use must be as follows: [Figure not included. See ED. NOTE.]

(C) Sectional ladder.

(i) Do not use assembled combinations of sectional ladders longer than lengths allowed in this subdivision.

(ii) Place these ladders at an angle shown in **Figure 1**.

(iii) The tops must be tied down or secured if there is a possibility of sliding or movement.

(iv) Do not use three section extension ladders longer than 72 feet.

(D) Trestle and extension trestle ladder. Do not use trestle ladders, or extension sections or base sections of extension trestle ladders more than 20 feet long.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0405

Exits and Emergency Action Plan

(1) Application. This does not apply to agricultural labor housing, agricultural buildings or mobile workplaces, such as vehicles or vessels.

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This applies to non-agricultural type buildings like offices and warehouses where employees spend most of their work time.

(2) Definitions.

(a) Exit. The part of the exit route, separate from other areas, that is a protected way out of a work area.

(b) Exit route. A continuous, unobstructed path from anywhere in a work area to a safe outside place. Exit routes are three dimensional.

(3) General.

(a) There must be permanent, unobstructed exit routes to get out of work areas safely during emergencies.

(b) There must be two or more exit routes depending on the size and layout of the work area and the number of people involved. A single exit route is acceptable only if all workers can get out through it safely during an emergency. Locate multiple exit routes apart from each other.

(4) Design.

(a) There must be a clear and unobstructed access and exit to any location more than 4 feet above or below the floor. Access may be by a ladder, stairs or ramp that complies with these standards.

(b) There must be unobstructed access to exit routes.

(A) Exit routes must not pass through or into lockable rooms or dead ends.

(B) Exit routes must be mostly level or have stairs or ramps.

(c) Exits must open from the inside without keys, tools or special knowledge. Devices that lock only from the outside are acceptable. There must be nothing on an exit door that could hinder its use during an emergency.

(d) An exit route must be able to handle the maximum number of persons allowed in the area it serves. Exit capacity must not decrease if the direction of travel changes.

(e) Exit routes must be at least 6 feet 8 inches high at all points.

(f) Exit routes must be at least 28 inches wide between handrails and wider if needed to handle the expected occupant load.

(g) Nothing can project into an exit route that reduces its minimum height or width.

(h) Exit routes must minimize danger to workers during emergencies.

(i) Exit routes must have adequate lighting.

(5) Marking.

(a) There must be exit signs at all emergency exits, except those that are obviously and clearly identifiable. Install additional directional signs to exits where necessary.

(b) If workers could mistake a nonexit for an exit, mark it, "Not an Exit" or mark it to indicate its real use.

(6) Special situations.

(a) Exit doors serving hazardous areas must swing in the direction of exit and open in a way that does not obstruct exit passageways. Do not allow anything to obstruct or prevent the use of an exit. During fire or panic, it must be easy to open all escape exit doors and windows from the inside.

(b) Rooms subject to extremes in temperature or with toxic atmospheres must have at least one door that opens from the inside. If this door is lockable from the outside, lighting and a set of instructions for opening the door must be inside the room or near the door. It must be easy to find equipment needed to open the door from the inside. Also, inside the room there must be a way to communicate or a control that operates an alarm outside the building, or if other employees are on duty 24 hours a day, outside the room.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0630

Noise Exposure

(1) You must have a noise monitoring program (see (3) below) when an employee's exposure equals or is more than an 8-hour time-weighted average (TWA) of 85 decibels (dB).

NOTE: Most large or older farm machines and tractors, especially those without cabs, have the potential to produce more than 85 decibels of noise. Audiologists often say that if you have to shout or significantly raise your voice to talk with somebody 2 feet away, the noise is probably at the action level of 85 decibels.

(2) Noise classified as impulse or impact noise cannot be more than 140 dB peak sound pressure level.

NOTE: These noises are sudden and sharp and include such things as the firing of a weapon and sudden release of pressurized air.

(3) Noise Monitoring Employers must use a noise sampling strategy that determines which employees need to be part of a hearing conservation program. This sampling will also determine their need for hearing protection or when to consider engineering controls.

(a) Use a sound level meter or a dosimeter to do noise level surveys over an 8-hour period to get a time-weighted average. When the employees are mobile or there are significant changes in the sound level or impulse noise components, you must use representative personal sampling unless area samples produce equal results.

(b) Repeat the noise surveys when there is a change in production, process, equipment or controls that increases noise levels or exposures to or above the action level. Also repeat the surveys if the increase in noise may require additional noise reduction from hearing protectors already in use.

(c) Notify each monitored employee of the noise monitoring results if the exposure was at or above the 85 decibel TWA.

(d) The employer must give affected employees or their representatives the opportunity to observe the noise survey process.

WARNING: Employer responsibilities in this standard require special knowledge and equipment to be done successfully. In most cases it is advisable and in some cases mandatory to have these tests done by a professional. See OAR 437-004-0630(5)(c).

(4) Engineering Controls If the noise survey results are more than in **Table 1** below, use administrative or engineering controls to reduce the noise, if feasible. If not feasible or if the engineering or administrative controls fail to reduce the noise to levels within **Table 1** limits, provide appropriate training and enforce the use of hearing protection to reduce the noise to levels within the **Table 1**. [Table not included. See ED. NOTE.]

(a) You must provide all hearing protection equipment and devices without cost to the employee. Employees may voluntarily elect to use their own equipment but the employer is responsible to assure that it provides adequate protection.

(b) All hearing protection equipment and devices must be kept serviceable and clean according to the manufacturer's recommendations or accepted audiological practices. **Table 1** [Table not included. See ED. NOTE.]

(5) Hearing Conservation Program Establish and maintain an effective hearing conservation program for employees whose noise exposure equals or is more than an 8-hour TWA of 85 decibels, or an equivalent dose, before attenuation by hearing protectors. The program must include an audiometric (hearing) testing program, employee training and personal hearing protection.

(a) All parts of the hearing conservation program must be without charge to employees.

(b) You must tell the employees to avoid high levels of non-occupational noise exposure during the 14-hour period before any hearing test. Also, you must assure that the employee uses hearing protection or avoids noise exposure on the job for 14 hours before getting a baseline hearing test.

(c) Only a technician certified by the Council of Accreditation in Occupational Hearing Conservation, a licensed or certified audiologist, otolaryngologist or other physician may do a hearing test. Certified technicians must be responsible to an audiologist, otolaryngologist or physician.

NOTE: Audiograms must meet the requirements of OAR 437-002-1910.95, Appendix C, Audiometric Measuring Instruments. The background noise in the test room must comply with OAR 437-002-1910.95, Appendix D, Audiometric Test Rooms. The audiometers used for the test and the methods must comply with the American National Standard Specifications for Audiometers, S3.6-1969. Oregon OSHA strongly suggests that employers hire a professional to provide services required by this standard.

(6) There are two types of hearing tests required by this standard.

(a) A baseline hearing test must be done within 6 months of the employees first exposure to noise at or above the action level. This test is the comparison base for future tests.

(b) After the baseline audiogram is done, each employee still exposed at or above the 8-hour TWA must have annual hearing tests. Compare the annual tests to the baseline tests to determine if there has been a standard threshold shift.

(c) The audiologist, otolaryngologist or physician evaluation of the audiogram may revise the baseline when the standard threshold shift in hearing revealed by the test is persistent or the hearing threshold shows an improvement over the baseline audiogram.

(7) For purposes of this standard a standard threshold shift of hearing compared to the baseline hearing test is called a standard threshold shift and is an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear. In Oregon there is no allowance from age correction charts for this calculation.

(8) Follow-Up The qualified person doing the hearing test will compare the results of the annual hearing test to the baseline audiogram to see if it is valid and if there has been a standard threshold shift change in hearing as in (7) above.

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(a) The employer may retest to assure validity within 30 days and use that as the annual test.

(b) An audiologist, otolaryngologist or physician must review all problem audiograms to determine the need for more evaluation. This may include follow up as described below.

(c) The employer is responsible to pay for this evaluation.

(d) The employer must assure that the reviewing audiologist, otolaryngologist or physician has the following information:

(A) A copy of the requirements for hearing conservation in this section.

(B) The employees baseline and most recent audiogram.

(C) Measurements of the noise levels in the audiometric test room.

(D) Records of audiometer calibrations as required by this section.

(9) If an employee's hearing test reveals a standard threshold shift, the employer must do (a) through (d) below unless the physician determines that the shift is not work-related or aggravated by work-related noise exposure.

(a) Fit employees with hearing protection, train them in its use and care. Require them to use it.

(b) Refit and retrain employees already using hearing protectors. Give them hearing protectors that offer more noise reduction.

(c) Refer the employee for a clinical audiological evaluation or an otological examination, as appropriate, if additional testing is necessary. Also refer the employee to the physician if the wearing of hearing protectors causes or aggravates a medical problem of the ear.

(d) Inform the employee of the need for an otological examination if a medical pathology of the ear could be unrelated to the use of hearing protectors.

(10) If future hearing tests show that the standard threshold shift of hearing is not persistent and the noise exposure is less than a 8-hour TWA of 90 decibels the employer must tell the employee of the new results and may end the required use of hearing protectors.

(11) Training All employees exposed at or above the 8-hour TWA of 85 decibels must receive initial and annual training. Update the training program if there are changes in the hearing protection or work processes. The training program must include:

(a) The effects of noise on hearing.

(b) The purpose of hearing protectors, the advantages, disadvantages and attenuation of various types and instructions on selection, fitting, use and care.

(c) The purpose of the hearing test and an explanation of the test procedures.

(12) Hearing Protection Hearing protection must be available at no cost to all employees exposed to an 8-hour TWA of 85 dB. Wearing of hearing protection that offers adequate noise reduction is mandatory for employees exposed at 90 dB TWA. In addition, if an employee has had a standard threshold shift, they must wear hearing protection at 85 decibels or more.

(a) The employer must ensure proper initial fitting of the hearing protectors, supervise the correct use of them, and provide training in the use and care of the hearing protectors.

(b) The employees must have the chance to select the hearing protectors from a variety of appropriate hearing protectors and the hearing protectors must reduce the noise to at least an 8-hour TWA of 90 decibels.

(c) When noise exposure increases enough that the hearing protectors may no longer give proper protection, reevaluate the adequacy of the protectors noise reduction. Provide more effective hearing protection where necessary.

(13) Recordkeeping The employer must keep employees noise exposure records according to the Access to Employee Exposure and Medical Records standard OAR 437-004-0005. The records must be available to employees, former employees, representatives designated by the employee and Oregon OSHA. The test record must include:

(a) Name and job classification of the employee.

(b) Date of the audiogram.

(c) The examiner's name.

(d) Date of the last acoustic or exhaustive calibration of the audiometer.

(e) Employees most recent noise exposure assessment.

(14) If you sell your business, give the buyer all records required by this section.

NOTE: The professional who does your audiometric work will supply most of the records required by this section.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-0800

Storage and Handling of Anhydrous Ammonia

(1) Scope.

(a) This standard applies to the operation of anhydrous ammonia systems including refrigerated ammonia storage systems.

(b) This standard does not apply to applications that use ammonia solely as a refrigerant.

(2) Definitions.

(a) Appurtenances — All devices such as pumps, compressors, safety relief devices, liquid-level gaging devices, valves and pressure gages.

(b) Capacity — Total volume of the container in standard U.S. gallons.

(c) Certified — See universal definitions in Subdivision 4/B, OAR 437-004-0100.

(d) Code — The Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels of the American Society of Mechanical Engineers (ASME) — 1968.

(e) Container — Includes all vessels, tanks, cylinders, or spheres used for transportation, storage, or application of anhydrous ammonia.

(f) Cylinder — A container of 1,000 pounds of water capacity or less built according to Department of Transportation specifications.

(g) Design pressure — is identical to the term "Maximum Allowable Working Pressure" used in the Code.

(h) DOT — U.S. Department of Transportation.

(i) DOT specifications — Regulations of the Department of Transportation in 49 CFR Chapter I.

(j) Farm vehicle (implement of husbandry) — A vehicle for use on a farm with a container of not more than 1,200 gallons water capacity on it.

(k) Labeled — See universal definitions in Subdivision 4/B, OAR 437-004-0100.

(l) Listed — See universal definitions in Subdivision 4/B, OAR 437-004-0100.

(3) Basic rules.

(a) Approval of equipment and systems. All systems, equipment and appurtenances must comply with one of the following three paragraphs.

(A) If installed before February 8, 1973, it must comply with American National Standard for the Storage and Handling of Anhydrous Ammonia, K61.1-1999 or CGA G-2.1-1999.

(B) It must be listed and labeled by a nationally recognized testing laboratory as defined in 29 CFR 1910.7.

(C) A registered engineer may test and certify custom designed and custom built systems as meeting the criteria in OAR 437-004-0800(3)(a)(A). This certification must be on file with the employer for agency review. The certification must detail the test criteria, data and results along with the qualifications of the person doing the test.

(b) Requirements for construction, original test and recertification of non-refrigerated containers.

(A) Only competent persons and/or companies may design, install and maintain non-refrigerated containers.

(B) Containers used with systems in OAR 437-004-0800(4), (7), (8) and (9) must comply with the Code (Boiler and Pressure Vessel Code, Sec VIII, Unfired Pressure Vessels of the American Society of Mechanical Engineers (ASME) — 1968). Construction under Table UW 12 at a basic joint efficiency of less than 80 percent is not authorized.

(C) Containers more than 36 inches in diameter or 250 gallons water capacity must comply with one or more of the following:

(i) Containers must be stress relieved after fabrication according to the Code; or

(ii) Cold-form heads must be stress relieved; or

(iii) Use only hot-formed heads.

(D) Paragraph (B) above does not prohibit the continued use or reinstallation of containers constructed and maintained according to the 1949, 1950, 1952, 1956, 1959, and 1962 editions of the Code or any revisions in effect at the time of fabrication.

(E) Welding to the shell, head or any other part of the container subject to internal pressure must comply with the Code. Other welding is permitted only on saddle plates, lugs or brackets attached to the container by the container manufacturer.

(F) Containers used with systems in OAR 437-004-0800(5) must comply with DOT specifications.

(c) Marking of containers. Keep the original markings on refrigerated and non-refrigerated containers as they were at the time of installation.

(d) Location of containers.

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(A) When selecting the location for the storage container consider the physiological effects as well as adjacent fire hazards. Locate containers outside buildings unless the building was built for this purpose.

(B) Locate permanent storage containers 50 feet from a dug well or other sources of potable water supply, unless the container is a part of a water-treatment installation.

(C) Keep storage areas free of readily ignitable materials such as waste, weeds and long dry grass.

(e) Container appurtenances.

(A) Design appurtenances to stand the maximum working pressure of that part of the system on which they are installed. Make appurtenances from material proved suitable for anhydrous ammonia service.

(B) All connections to containers except safety relief devices, gaging devices, or those fitted with a .0550-inch orifice must have shutoff valves as close to the container as practicable.

(C) Excess flow valves where required by these standards must close automatically at the rated flows of vapor or liquid specified by the manufacturer. The connections and line including valves and fittings protected by an excess flow valve must have a larger capacity than the rated flow of the excess flow valve so that the valve will close in case of failure of the line or fittings.

(D) Liquid-level gaging devices that require bleeding of the product to the atmosphere and are built so that outward flow will not be more than that passed by a .0550-inch opening do not need excess flow valves.

(E) Openings from the container or through fittings attached directly on the container to which pressure gage connections are made need do not need excess flow valves if they are not larger than .0550-inch.

(F) Excess flow and back pressure check valves where required by this section must be inside the container or if outside as close as practicable to where the line enters the container. In the latter case installation must prevent strain beyond the excess flow or back pressure check valve from causing a break between the container and the valve.

(G) Excess flow valves must have a bypass not to exceed a .0400-inch opening to allow equalization of pressures.

(H) All excess flow valves must have plain and permanent markings with the name or trademark of the manufacturer, the catalog number, and the rated capacity.

(f) Piping, tubing and fittings.

(A) All piping, tubing and fittings must be made of material suitable for anhydrous ammonia service.

(B) All piping, tubing and fittings must be designed for a pressure not less than the maximum pressure under which they might operate.

(C) All refrigerated piping must conform to the Refrigeration Piping Code, American National Standard, B31.5-1966 with addenda B31.5a-1968 as it applies to ammonia.

(D) Piping on non-refrigerated systems must be at least American Society for Testing and Materials (ASTM) A-53-69 Grade B Electric Resistance Welded and Electric Flash Welded Pipe or equal. For welded or welded and flanged joints the pipe must be at least schedule 40. For threaded joints the pipe must be at least schedule 80. Do not back-weld threaded connections. Do not use brass, copper or galvanized steel pipe.

(E) Do not use tubing made of brass, copper, or other material subject to attach by ammonia.

(F) Do not use cast iron fittings but this does not prohibit the use of fittings made specifically for ammonia service or malleable, nodular, or high strength gray iron meeting American Society for Testing and Materials (ASTM) A47-68, ASTM 395-68 or ASTM A126-66 Class B or C.

(G) Use joint compounds that are resistant to ammonia.

(g) Hose specifications.

(A) Hose used in ammonia service must conform to the joint Agricultural Ammonia Institute — Rubber Manufacturers Association Specifications for Anhydrous Ammonia Hose.

(B) Hose subject to container pressure must be designed for a minimum working pressure of 350 p.s.i.g. and a minimum burst pressure of 1,750 p.s.i.g. Hose assemblies, when made up, must be capable of withstanding a test pressure of 500 p.s.i.g.

(C) Hose and hose connections on the low-pressure side of flow control or pressure-bleeding valves must have a bursting pressure rating of not less than five times the pressure setting of the safety relief devices protecting that part of the system but not less than 125 p.s.i.g. All connections must not leak when connected.

(D) Where using hose to transfer liquid from one container to another, "wet" hose is recommended. Such hose must have approved shutoff valves at the discharge end. Prevent excessive pressure in the hose.

(E) On all hose 1/2-inch outside diameter and larger, used for the transfer of anhydrous ammonia liquid or vapor, there must be etched, cast, or impressed at 5-foot intervals the following information.

NOTE: "Anhydrous Ammonia" xxx p.s.i.g. (maximum working pressure), manufacturer's name or trademark, year of manufacture.

NOTE: In place of this requirement the same information may be on a nameplate permanently attached to the hose. Table 1 Footnotes

(h) Safety relief devices.

(A) Every container in systems covered by OAR 437-004-0800(4), (7), (8) and (9) must have one or more safety relief valves of the spring-loaded or equivalent type. The discharge from safety-relief valves must vent away from the container, upward and unobstructed to the atmosphere. All relief-valve discharge openings must have suitable rain caps that allow free discharge of the vapor and prevent entrance of water. Accumulated condensation must drain away. The rate of the discharge must comply with **Table 1**.

(B) Container safety-relief valves must be set to start-to-discharge as follows, with relation to the design pressure of the container: [Table not included. See ED. NOTE.]

(C) Safety relief devices in systems covered by OAR 437-004-0800(4), (7), (8) and (9) must discharge at not less than the rates in (3)(h)(A) above before the pressure is in excess of 120 percent (not including the 10 percent tolerance in (3)(h)(B) above) of the maximum permitted start-to-discharge pressure setting of the device.

(D) Arrange safety relief valves to minimize the possibility of tampering. If the pressure setting adjustment is external, the relief valves must have a means of sealing the adjustment.

(E) Shutoff valves must not be between the safety relief valves and the container; except, that a shutoff valve may be where the arrangement of this valve is such as to always afford full required capacity flow through the relief valves.

(F) Safety relief valves must have direct communication with the vapor space of the container.

(G) Each container safety relief valve used with systems covered by OAR 437-004-0800(4), (7), (8) and (9) must have plain and permanent markings with the symbol "NH3" or "AA"; with the pressure in pounds-per-square-inch at which the valve is set to start-to-discharge; with the actual rate of discharge of the valve at its full open position in cubic feet per minute of air at 60 degrees F. and atmospheric pressure; and the manufacturer's name and catalog number.

Example: "NH3 250-4050 Air" indicates that the valve is suitable for use on an anhydrous ammonia container, is set to start-to-discharge at a pressure of 250 p.s.i.g., and that its rate of discharge at full open position is 4,050 cubic feet per minute of air.

(H) There must be no connection on either the upstream or downstream side that restricts the flow capacity of the relief valve.

(I) A hydrostatic relief valve must be between each pair of valves in the liquid ammonia piping or hose to relieve into the atmosphere at a safe location.

(i) General.

(A) All stationary storage installations must have at least two readily accessible suitable gas masks. Full face masks with ammonia canisters, not cartridges, approved by the National Institute of Occupational Safety and Health (NIOSH), are suitable for emergency action for most leaks, particularly those that are outdoors. For protection in concentrated ammonia atmospheres the use of self-contained breathing air apparatus is mandatory. Refer to OAR 437-004-1041 Respiratory Protection, Division 4/I for additional requirements for personal protective equipment.

(B) Stationary storage installations must have an easily accessible shower or a 50-gallon drum of water.

(C) Each vehicle transporting ammonia in bulk except farm applicator vehicles must carry a container of at least 5 gallons of water and a full face mask.

(j) Charging of containers.

(A) The filling densities for unrefrigerated containers must not be more than the following:

(B) Aboveground uninsulated containers may be charged 87.5 percent by volume if the temperature of the anhydrous ammonia being charged is not lower than 30 degrees F. or if the charging of the container stops at the first indication of frost or ice formation on its outside surface and does not resume until the frost or ice is gone.

(k) Transfer of liquids.

(A) Anhydrous ammonia must always be at a temperature suitable for the material of construction and the design of the receiving container.

(B) The employer must require the continuous presence of an attendant in the vicinity of the operation during ammonia transfer.

(C) Charge and use containers only with authorization of the owner.

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(D) Gage and charge containers only in the open atmosphere or in buildings or areas for that purpose.

(E) Pumps used for transferring ammonia must be made for that purpose.

(i) Pumps must be designed for at least 250 p.s.i.g. working pressure.

(ii) Positive displacement pumps must have, installed off the discharge port, a constant differential relief valve discharging into the suction port of the pump through a line of sufficient size to carry the full capacity of the pump at relief valve setting, which setting and installation must be according to the pump manufacturer's recommendations.

(iii) On the discharge side of the pump, before the relief valve line, there must be a pressure gage graduated from 0 to 400 p.s.i.

(iv) Plant piping must have shutoff valves as close as practical to pump connections.

(F) Compressors for transferring or refrigerating ammonia must be recommended for ammonia service by the manufacturer.

(i) Compressors must be designed for at least 250 p.s.i.g. working pressure.

(ii) Plant piping must have shutoff valves located as close as practical to compressor connections.

(iii) A relief valve large enough to discharge the full capacity of the compressor must be connected to the discharge before the shutoff valve.

(iv) Compressors must have pressure gages at suction and discharge graduated to at least 1 1/2 times the maximum pressure.

(v) Adequate means, such as a drainable liquid trap, must be on the compressor suction to minimize the entry of liquid into the compressor.

(G) In case the hose breaks, loading and unloading systems must have suitable devices to prevent emptying of the storage or supply container. Backflow check valves or properly sized excess flow valves must be where necessary to provide this protection. If such valves are not practical, remotely operated shutoff valves may be acceptable.

(l) Tank car unloading points and operations.

(A) Unloading of tank cars must conform to the applicable recommendations in DOT regulations.

(B) The employer must insure that unloading operations are done by reliable persons properly instructed and with the authority to monitor careful compliance with all applicable procedures.

(C) Caution signs must be on the track or car to give warning to people approaching the car from the open end or ends of the siding. They must be left up until after the car is empty and disconnected from discharge connections. Signs must be metal or other suitable material, at least 12 inches by 15 inches and bear the words "STOP — Tank Car Connected" or "STOP — Men at Work" the word, "STOP," being in letters at least 4 inches high and the other words in letters at least 2 inches high.

(D) The track of a tank car siding must be substantially level.

(E) Set the brakes and block the wheels on cars during unloading.

(m) Liquid-level gaging device.

(A) Each container except those filled by weight must have an approved liquid-level gaging device. A thermometer well must be in containers without a fixed liquid-level gaging device.

(B) All gaging devices must be arranged so that the maximum liquid level to which the container is filled is readily determined.

(C) Gaging devices that require bleeding of the product to the atmosphere such as the rotary tube, fixed tube, and slip tube devices must have a maximum opening of the bleed valve not larger than .0550-inch unless they have an excess flow valve. (This requirement does not apply to farm vehicles used for the application of ammonia as in OAR 437-004-0800(9).)

(D) Gaging devices must have a design pressure equal to or greater than the design pressure of their host container.

(E) Fixed tube liquid-level gages must indicate the container's 85 percent fill level of its water capacity.

(F) Use columnar gage glasses only on stationary storage installations. They must have shutoff valves with metallic handwheels, excess-flow valves and extra heavy glass adequately protected with a metal housing applied by the gage manufacturer. They must be shielded from the direct rays of the sun.

(n) Electrical equipment and wiring.

(A) Electrical equipment and wiring for use in ammonia installations must be general purpose or weather resistant as appropriate.

(B) Electrical systems must comply with 4/S.

(4) Systems using stationary, non-refrigerated storage containers.

(a) Applies to all storage containers except portable DOT containers.

(A) The minimum design pressure and construction for non-refrigerated containers is 250 p.s.i.g.

(B) Each filling connection must have a combination back-pressure check valve and excess-flow valve; one double or two single back-pressure check valves; or a positive shutoff valve in conjunction with either an internal back-pressure check valve or an internal excess flow valve.

(C) All liquid and vapor connections to containers except filling pipes, safety relief connections, and liquid-level gaging and pressure gage connections with orifices not larger than .0550-inch required in OAR 437-004-0800(3)(e)(D) and (E) must have excess-flow valves.

(D) Each storage container must have a pressure gage graduated from 0 to 400 p.s.i. Gages must be designated for use in ammonia service.

(E) All containers must have vapor return valves.

(b) Safety-relief devices.

(A) Every container must have one or more safety-relief valves of the spring-loaded or equivalent type according to OAR 437-004-0800(b)(9).

(B) The rate of discharge of spring-loaded safety relief valves on underground containers may be a minimum of 30 percent of the rate of discharge in Table 1. After installation, do not uncover containers with this protection until empty of liquid ammonia. Consider containers that may contain liquid ammonia before being installed underground and before being completely covered with earth to be aboveground containers when determining the rate of discharge requirements of the safety-relief valves.

(C) On underground installations where there is a probability of the manhole or housing becoming flooded, the discharge from vent lines must be above the high water level. All manholes or housings must have ventilated louvers or their equivalent, the area which equal or exceed the combined discharge areas of safety-relief valves and vent lines that discharge their content into the manhole housing.

(D) Do not restrict vent pipes. They may not be a smaller diameter than the relief-valve outlet connection.

(E) Vent pipes from two or more safety-relief devices on the same unit, or similar lines from two or more different units may run into a common discharge header, if the capacity of the header is at least equal to the sum of the capacities of the individual discharge lines.

(c) Reinstallation of containers.

(A) Containers that were installed underground must not be reinstalled above-ground or underground, unless they withstand hydrostatic pressure retests at their original rating required by the code under which they were made. They must show no serious corrosion.

(B) Containers reinstalled aboveground, must have safety devices or gaging devices that comply with OAR 437-004-0800(i) and this paragraph respectively for above-ground containers.

(d) Installation of storage containers.

(A) Aboveground containers, except as in (4)(d)(E) below must have substantial concrete or masonry supports, or structural steel supports on firm concrete or masonry foundations. All foundations must extend below the frost line.

(B) Horizontal aboveground containers must be on foundations that permit expansion and contraction. Containers must have supports that prevent the concentration of excessive loads on the supporting portion of the shell. That part of the container in contact with foundations or saddles must have corrosion protection.

(C) The top of underground containers must be below the frost line and at least 2 feet below the surface. If ground conditions make compliance with these requirements impracticable, installation methods must prevent physical damage. It is not necessary to cover the part of the container where there are manhole and other connections. Anchor or weight containers when necessary to prevent floating.

(D) Underground containers must be on a firm foundation (firm earth is OK) and surrounded with compacted earth or sand. The container must have a corrosion resisting protective coating. This coating must remain undamaged when placing the container into the ground.

(E) Containers with foundations (portable or semi-portable tank containers with suitable steel "runners" or "skids" and commonly known in the industry as "skid tanks") must comply with OAR 437-004-0800(4)(a)(A).

(F) There must be secure anchorage or adequate pier height to prevent container flotation where high flood water might occur.

(G) The distance between underground containers of over 2,000 gallons capacity must be at least 5 feet.

(e) Protection of appurtenances.

(A) Protect valves, regulators, gages and other appurtenances against tampering and physical damage. This also applies during transit of containers.

(B) All connections to underground containers must be within a dome, housing, or manhole and with access by means of a substantial cover.

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(f) Damage from vehicles. Protect ammonia systems from vehicle damage.

(4) Refrigerated storage systems.

(a) Container design.

(A) The design temperature must be the minimum temperature to which the container will be refrigerated.

(B) Containers with a design pressure more than 15 p.s.i.g. must comply with OAR 437-004-0800(3)(b), and the materials must be from those in **API Standard 620, Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks, Fourth Edition, 1970, Tables 2.02, R2.2, R2.2(A), R2.2.1, or R2.3.**

(C) Containers with a design pressure of 15 p.s.i.g. and less must comply with the applicable requirements of API Standard 620 including its **Appendix R.**

(D) Use the Code as a guide to select austenitic steels or non-ferrous materials to build containers for use at the design temperature.

(E) The filling density for refrigerated storage containers must be such that the container will not be liquid full at a liquid temperature corresponding to the vapor pressure at the start-to-discharge pressure setting of the safety-relief valve.

(b) Installation.

(A) Containers must be on suitable non-combustible foundations.

(B) There must be adequate protection against flotation or other water damage where high flood water might occur.

(C) Containers for product storage at less than 32 degrees F. must have protection from freezing and consequent frost heaving.

(c) Shutoff valves. When operating conditions make it advisable, there must be a check valve on the fill connection and a remotely operated shutoff valve on other connections below the maximum liquid level.

(d) Safety relief devices.

(A) Set safety relief valves to start-to-discharge at a pressure not more than the design pressure of the container. The valves must prevent a maximum pressure in the container of more than 120 percent of the design pressure. Relief valves for refrigerated storage containers must be self-contained spring-loaded, weight-loaded, or self-contained pilot-operated type.

(B) The total relieving capacity must be the larger of:

(i) Possible refrigeration system upset such as (1) cooling water failure, (2) power failure, (3) instrument air or instrument failure, (4) mechanical failure of any equipment, (5) excessive pumping rates.

(ii) Fire exposure determined by Compressed Gas Association (CGA) S-1, Part 3, Safety Relief Device Standards for Compressed Gas Storage Containers, 1959, except that "A" must be the total exposed surface area in square feet up to 25 feet above grade or to the equator of the storage container if it is a sphere, whichever is greater. If the relieving capacity required for fire exposure is greater than that required by OAR 437-004-0800(a), the additional capacity may be provided by weak roof to shell seams in containers operating at essentially atmospheric pressure and having an inherently weak roof-to-shell seam. The weak roof-to-shell seam is not to provide any of the capacity required in OAR 437-004-0800(a).

(C) If vent lines conduct the vapors from the relief valve, the back pressure under full relieving conditions must not be more than 50 percent of the start-to-discharge pressure for pressure balanced valves or 10 percent of the start-to-discharge pressure for conventional valves. The vent lines must prevent accumulation of liquid in the lines.

(D) The valve or valve installation must provide weather protection.

(E) Atmospheric storage must have vacuum breakers. Ammonia gas, nitrogen, methane, or other inert gases are acceptable to provide a pad.

(e) Protection of container appurtenances. Protect appurtenances against tampering and physical damage.

(f) Reinstallation of refrigerated storage containers. When reinstalling containers that require field fabrication, reconstruct and reinspect them according to their original construction requirements. Pressure retest the containers and if rerating is necessary, it must comply with applicable requirements.

(g) Damage from vehicles. Protect containers from damage by vehicles.

(h) Refrigeration load and equipment.

(A) Compute the total refrigeration load as the sum of the following:

(i) Load imposed by heat flow into the container caused by the temperature differential between design ambient temperature and storage temperature.

(ii) Load imposed by heat flow into the container caused by maximum sun radiation.

(iii) Maximum load imposed by filling the container with ammonia warmer than the design storage temperature.

(B) A single refrigeration system may serve more than one storage container.

(i) Compressors.

(A) There must be a minimum of two compressors either of which must be large enough to handle the loads. Where there are more than two compressors, there must be minimum standby equipment equal to the largest normally operating equipment. Filling compressors are acceptable as standby equipment for holding compressors.

(B) Compressors must be able to operate with a suction pressure at least 10 percent below the minimum setting of the safety valve(s) on the storage container and must withstand a suction pressure at least equal to 120 percent of the design pressure of the container.

(j) Compressor drives.

(A) Each compressor must have its individual driving unit.

(B) There must be an emergency power source that can handle the loads unless facilities are available to safely dispose of vented vapors while the refrigeration system is not operating.

(k) Automatic control equipment.

(A) The refrigeration system must have suitable controls to govern the compressor operation.

(B) There must be an emergency alarm system to function in case the container pressure rises to the maximum allowable operating pressure.

(C) An emergency alarm and shut-off must be in the condenser system to respond to excess discharge pressure caused by failure of the cooling medium.

(D) All automatic controls must be prevent operation of alternate compressors unless the controls will function with the alternate compressors.

(l) Separators for compressors. An entrainment separator of suitable size and design pressure must be in the compressor suction line of lubricated compression. The separator must have a drain and gaging device.

(m) Condensers. The condenser system may be air or water cooled or both. The condenser must have minimum design pressure of at least 250 p.s.i.g. There must be a way to purge noncondensibles either manually or automatically.

(n) Receiver and liquid drain. A receiver must have a liquid-level control to discharge the liquid ammonia to storage. The receiver must be able to operate at least 250 p.s.i.g. and have the necessary connections, safety valves, and gaging device.

(o) Insulation. Insulated refrigerated containers and pipelines must have covers of a material of suitable quality and thickness for the temperatures. Weatherproofing must be flame retardant.

(5) Systems using portable DOT containers.

(a) Cylinders must comply with DOT specifications and must comply with 49 CFR Chapter I and Marking Portable Compressed Gas Containers to Identify the Material Contained, ANSI Z48.1-1954 (R1970).

(b) Store cylinders in an area free from ignitable debris and in such manner as to prevent external corrosion. Storage may be indoors or outdoors.

(c) Cylinders filled according to DOT regulations will become liquid full at 145 degrees F. Protect cylinders from heat sources such as radiant flame and steam pipes. Do not apply heat directly to cylinders to raise the pressure.

(d) Store cylinders in a way that protects them from vehicles or external damage.

(e) Any cylinder designed to have a valve protection cap must have the cap securely in place when the cylinder is not in service.

(6) Tank motor vehicles for the transportation of ammonia.

(a) This paragraph applies to containers and equipment on tank motor vehicles including semitrailers and full trailers used to transport ammonia. This paragraph does not apply to farm vehicles. For requirements covering farm vehicles, refer to OAR 437-004-0800(8) and (9). Paragraph (b) below applies to this paragraph unless otherwise noted. Containers and pertinent equipment for tank motor vehicles for the transportation of anhydrous ammonia, must also comply with DOT requirements.

(b) Design pressure and construction of containers.

(A) The minimum design pressure for containers must comply with DOT regulations.

(B) The shell or head thickness of containers must be at least 3/16-inch.

(C) All container openings, except safety relief valves, liquid-level gaging devices, and pressure gages, must have labels that designate whether they communicate with liquid or vapor space.

(c) Container appurtenances.

(A) Protect appurtenances from physical damage.

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(B) All connections to containers, except filling connections, safety relief devices, and liquid-level and pressure gage connections, must have suitable automatic excess flow valves, or may have quick-closing internal valves, that must remain closed except during delivery operations. The control mechanism for such valves may have a secondary control remote from the delivery connections and such control mechanism must have a fusible section (melting point 208 degrees F. to 220 degrees F.) that permits the internal valve to close automatically in case of fire.

(C) Filling connections must have automatic back-pressure check valves, excess-flow valves, or quick-closing internal valves, to prevent back-flow in case the filling connection breaks. You do not need an automatic valve where the filling and discharge connect to a common opening in the container shell and that opening has a quick-closing internal valve as in OAR 437-004-0800(f)(3)(ii).

(D) All containers must be capable of spray loading (filling in the vapor space) or with an approved vapor return valve of adequate capacity.

(d) Piping and fittings.

(A) Securely mount all piping, tubing, and fittings and protect them from damage. Protect hoses while the vehicle is moving.

(B) Fittings must comply with OAR 437-004-0800(3)(e). Pipe must be Schedule 80.

(e) Safety relief devices.

(A) The discharge from safety relief valves must vent upward away from the container and to the open air in such a manner as to prevent any impingement of escaping gas. Use loose-fitting rain caps. Size of discharge lines from safety valves must not be smaller than the nominal size of the safety-relief valve outlet connection. Condensate that accumulates in the discharge pipe must drain off.

(B) Any part of liquid ammonia piping that may close at both ends must have a hydrostatic relief valve.

(f) Transfer of liquids.

(A) Determine the content of tank motor vehicle containers by weight, by a suitable liquid-level gaging device, or other approved methods. If using a liquid-level measurement, the container must have a thermometer well. This volume when converted to weight must not be more than the filling density specified by the DOT.

(B) Any pump, except a constant speed centrifugal pump, must have a suitable pressure actuated bypass valve permitting flow from discharge to suction when the discharge pressure rises above a pre-determined point. Pump discharge must also have a spring-loaded safety relief valve set at a pressure not more than 135 percent of the setting of the bypass valve or more than 400 p.s.i.g., whichever is larger.

(C) Compressors must have manually operated shutoff valves on both suction and discharge connections. Pressure gages of bourdon-tube type must be on the suction and discharge of the compressor before the shutoff valves. The compressor must not operate if either pressure gage is removed or is inoperative. A spring-loaded, safety-relief valve capable of discharging to atmosphere the full flow of gas from the compressor at a pressure not more than 300 p.s.i.g. must be between the compressor discharge and the discharge shutoff valve.

(D) Valve functions have clear and legible identification by metal tags or nameplates permanently affixed to each valve.

(g) Full trailers and semitrailers.

(A) Securely attach full trailers to the vehicle drawing them with suitable drawbars and a safety chain (or chains) or safety cables.

(B) Every full trailer or semitrailer must have reliable brakes that operate from the driver's seat.

(C) Every full trailer must have self-energizing brakes.

(D) Full trailers must follow substantially in the path of their towing vehicle and will not whip or swerve dangerously from side to side.

(E) Where using a fifth wheel, securely fasten it to both units, and use a positive locking mechanism that prevents separation of the two units except by manual release.

(h) Protection against collision. Each tank motor vehicle must have properly attached bumpers or chassis extension that protects the tank, piping, valves, and fittings from physical damage.

(i) Chock blocks. There must be at least two chock blocks. Use these blocks to prevent rolling during loading and unloading.

(j) Portable tank containers (skid tanks). Where these tanks are for farm storage they must comply with OAR 437-004-0800(4)(a)(A). When portable tank containers substitute for cargo tanks and are permanently on tank motor vehicles for the transportation of ammonia, they must comply with the requirements of this paragraph.

(7) Systems on farm vehicles other than for the application of ammonia.

(a) Application. This paragraph applies to containers of 1,200 gallons capacity or less and equipment on farm vehicles (implements of husbandry) not used to apply ammonia to the soil. OAR 437-004-0800(4) applies unless otherwise noted.

(b) Design pressure and classification of containers.

(A) The minimum design pressure for containers is 250 p.s.i.g.

(B) Container shell or head thickness must be at least 3/16-inch.

(c) Mounting containers.

(A) A suitable "stop" or "stops" must be on the vehicle or on the container so that the container does not become loose from its mounting.

(B) At one or more places on each side of the container, a "hold down" device must anchor the container to the vehicle.

(C) When containers are on four-wheel trailers, the weight must be even over both axles.

(d) Container appurtenances.

(A) All containers must have a fixed liquid-level gage.

(B) All containers with a capacity more than 250 gallons must have a pressure gage with a dial graduated from 0-400 p.s.i.

(C) The filling connection must have a combination back-pressure check valve and excess-flow valve; one double or two single back-pressure check valves; or a positive shutoff valve in conjunction with either an internal back-pressure check valve or an internal excess flow valve.

(D) All containers with a capacity more than 250 gallons must be equipped for spray loading or have an approved vapor return valve.

(E) All vapor and liquid connections except safety-relief valves and those specifically exempted in ANSI K61.1-1966, must have approved excess-flow valves or quick-closing internal valves that, except during operating periods, must be closed.

(F) Fittings must have protection from damage by a metal box or cylinder with an open top fastened to the container or by rigid guards welded to the container on both sides of the fittings or by a metal dome. If there is a metal dome, the relief valve must vent through the dome.

(G) If there is a liquid withdrawal line in the bottom of a container, its connections, including hose, must not be lower than the lowest horizontal edge of the vehicle axle.

(H) Secure both ends of the hose while in transit.

(e) Marking the container. The words, "Caution - Ammonia" must be on each side and the rear end of the container in letters at least 4 inches high or its markings must comply with DOT regulations.

(f) Farm vehicles. All vehicles must carry a container of at least 5 gallons of water for washing ammonia from the skin.

(8) Systems on farm vehicles for the application of ammonia.

(a) This applies to systems using containers of 250 gallons capacity or less on farm vehicles (implements of husbandry) used to apply ammonia to the soil. OAR 437-004-0800(4) applies unless otherwise noted. Larger containers must comply with ANSI K61.1-1966.

(b) Design pressure and classification of containers.

(A) The minimum design pressure for containers is 250 p.s.i.g.

(B) The shell or head thickness of a container is less than 3/16-inch.

(c) Mounting of containers. All containers and flow-control devices must have secure mountings.

(d) Container valves and accessories.

(A) Each container must have a fixed liquid-level gage.

(B) The filling connection must have a combination back-pressure check valve and an excess-flow valve; one double or two single back-pressure check valves; or a positive shut-off valve in conjunction with an internal back-pressure check valve or an internal excess-flow valve.

(C) You can fill the applicator tank by venting to open air if the bleed-off valve orifice is not more than 7/16-inch in diameter.

(D) Regulation equipment may connect directly to the tank coupling or flange only with a flexible connection between the regulating equipment and the rest of the liquid withdrawal system. Otherwise, connect the regulating equipment flexibly to the container shutoff valve.

(E) There need be no excess flow valve in the liquid withdrawal line if the controlling orifice between the contents of the container and the outlet of the shutoff valve is not more than 7/16-inch in diameter.

[ED. NOTE: Tables & Appendices referenced are available from the agency.]

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-1030

Work Clothing

General requirements.

(1) Wear clothing that provides adequate protection for the hazards of the work.

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(2) Do not wear loose sleeves or other loose clothing when near enough to be caught in moving parts of machinery.

(3) Do not wear clothing soaked with enough flammable liquids to be hazardous.

NOTE: See OAR 437-004-2230 for requirements for PPE while using chain saws.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-1305

Medical Services and First Aid

(1) Definitions.

(a) Emergency medical service is care by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.

(b) Qualified first aid person has evidence to show valid first aid and CPR training within the last 2 years.

(2) First aid supplies.

(a) You must provide first aid supplies based on the types of injuries that could occur at the place of employment. The first aid supplies must be available to all workers on all shifts immediately when needed. Do not lock up or otherwise restrict access to first aid supplies.

(b) Protect first aid supplies from damage, deterioration or contamination. Clearly mark containers. First aid containers may be sealed to protect the contents from contamination.

NOTE: Supplies such as gloves and a mouth barrier device are personal protective equipment covered by Subdivision I, Personal Protective Equipment.

(3) Medical treatment and services. Emergency medical services for injured or sick employees must be available and summoned in time to give appropriate treatment for the circumstances.

NOTE: These services can be by outside sources such as the local 911 response system or by employees who are qualified first aid persons.

(4) Emergency medical plan.

(a) To determine the appropriate type of medical service for each place of employment, you must do a survey and develop an emergency medical plan. You must evaluate these areas:

(A) Determine the types of injuries and/or illnesses that could occur at the work site.

(B) Contact the local emergency response system and get information about their ability to handle these types of emergencies and in what time frame they can respond. Consider such things as nearness of the responding teams, traffic, equipment, average response times and whether the system is staffed by volunteers or full time people.

(C) Based on this information, decide whether the local response system can handle your situation or whether you need your own qualified first aid persons.

(b) If the local response system is adequate then the minimum emergency medical plan must contain your instruction to employees for action in case of an injury or illness and the emergency phone number they are to use. Post this emergency medical plan where employees gather or are most likely to read it.

(c) If the response system is not able to handle your potential injuries and/or illnesses then your plan must also contain clear and specific instructions for employees' actions in case of injury or illness. The plan of action must have:

(A) The names, locations and phone numbers of people trained and authorized to give first aid and other treatment.

(B) Any special instructions about communications like two-way radios, telephones or other provisions for emergency communication to contact the emergency medical services.

(C) Availability of transportation to a point where an ambulance can be met or to the nearest suitable medical facility.

(D) Train all employees to know the information in the medical plan and their responsibilities during an emergency.

(5) Emergency eyewash and shower facilities. This does not apply to early entry work 170.112(c)(8) or agriculture field work covered under 170.150 which requires provision of an "emergency eyeflush" container as per the pesticide label. Where the pesticide label specifies an "emergency eyewash" be provided when handling the pesticide concentrate, as in mixing and loading activities, these rules apply.

(a) When there are substances that could injure workers by getting into their eyes or onto their bodies, provide them with a system to decontaminate themselves.

(b) Where plumbed water is available at fixed work sites, you must provide a plumbed eyewash station that meets the following:

(A) Locate it so that exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot

require the opening of doors or passage through obstacles unless other employees are always present to help the exposed worker.

(B) Install the equipment according to the manufacturer's instructions.

(C) The system must have valves that stay open without the use of the hands.

(D) Water temperature must be appropriate for the anticipated types of exposures. Water pressure must be 15 to 25 psi with a flow of .4 gallons per minute for 15 minutes. If the system manufacturer's instructions require different criteria, follow them to assure proper operation of the system.

(c) Where plumbed water is available at fixed work sites you must provide a plumbed full body shower that meets the following:

(A) Locate it so that exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot require the opening of doors or passage through obstacles unless other employees are always present to help the exposed worker.

(B) Install the equipment according to the manufacturer's instructions.

(C) The system must have valves that stay open without the use of the hands.

(D) Water temperature must be appropriate for the anticipated types of exposures. Water flow must be at least 30 gallons per minute. If the system manufacturer's instructions require different criteria, follow them to assure proper operation of the system.

(d) For mobile work sites and sites without plumbed water, self-contained systems are acceptable. These systems must provide clean, fresh water at flow rates adequate to provide complete decontamination of the eyes or body. Follow the manufacturer's instructions for use and inspection.

(e) If the MSDS or other information about the expected contaminant gives treatment instructions different from those required in this section, follow them. If the manufacturer requires specific decontaminants or procedures, you must provide them in addition to the eyewash or shower. Certain substances like acids, chlorine and anhydrous ammonia require special treatment. The employer must assure this treatment is available.

(f) If fountains or showers can freeze, take protective measures to prevent freezing.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-1470

Training

If workers are expected or required to fight fires, their level of training and the fire fighting equipment they use must be adequate for the level of fire fighting involvement expected or required by the employer. The employer must provide all needed equipment and training at no cost to employees and be in compliance with division 2/L, OAR 437-002-0182 Oregon Rules for Fire Fighters, 1910.155 Fire Protection, and 1910.156 Fire Brigades.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-1700

Forklifts and Other Powered Industrial Trucks

(1) General requirements.

(a) This section has safety requirements for the maintenance and use of fork trucks, forklifts, platform lift trucks, motorized hand trucks, and other specialized industrial trucks used in agriculture. These are considered vehicles and additional standards are found in Division 4/U. This does not apply to compressed air or non-flammable compressed gas-operated industrial trucks, nor to agricultural vehicles defined elsewhere in this standard, nor to vehicles intended primarily for earth moving or over-the-road hauling.

(b) Modifications and additions that affect capacity and safe operation must have the manufacturer's prior written approval. Change the capacity, operation and maintenance instruction plates, tags or decals to reflect any changes to the vehicle.

(c) If the truck has front-end attachments not installed by the factory, the truck markings must identify the attachments and show the approximate weight of the truck and attachment combination at maximum elevation with the load laterally centered.

(d) Keep nameplates and markings in place and legible.

(2) Safety guards.

(a) Overhead guards.

ADMINISTRATIVE RULES

(A) If a lift truck operator could be struck by falling, or stacked objects, the truck must have an overhead guard. The guard must be strong enough to support impact load tests in **Table 1**:

(B) Guards that pass the test must have a metal tag permanently attached to the canopy where reading it from the ground is easy. This tag must show the impact test load, in foot-pounds to which similar guards have been tested.

Note: Guards required by (2)(a)(A) through (C), or by the following rules, do not have to withstand the impact of a capacity load falling from any height.

(C) Untested guards must be made of material in **Table 2** or material of equivalent strength or stronger.

(D) The construction of canopy guards built to comply with (C) above presumes four upright members. Guards with less than four upright members must be equally strong.

(i) Canopy type overhead guard frames must have structural rigidity.

(ii) All guard mountings or attaching brackets must provide adequate support to the upright members of the canopy type overhead guard.

(iii) Cantilever overhead guards must be of equivalent strength.

(E) Guards must not interfere with good visibility. Openings in the top must not be more than 6 inches in one of their two dimensions. Guards must be large enough to extend over the operator under all normal circumstances of operation, including forward tilt.

(i) If the mast-tilting mechanism fails, the overhead guard must not injure the operator.

(ii) There must be at least 39 inches of clear vertical space between the operator's seat when depressed and the underside of the guard. There must be at least 74 inches of clear vertical space between the platform for standing operators and the underside of the guard.

Note: Where overall height of truck with forks in lowered position is limited by head room conditions and there is insufficient space for vertical clearance or for the operator to assume a normal driving position, normal overhead guard heights may be reduced, or the overhead guard may be omitted. The height and stability of stacks of piled material, the weight of individual units handled, and the operating space available must provide reasonable safety for the operator if removing the overhead guard is necessary.

(b) Back rest. Lift trucks that handle small objects or loose units must have a vertical load back rest.

(A) It must be strong enough to prevent the load or any part of it from falling toward the operator.

(B) It must not interfere with good visibility.

(C) Size of openings must not be more than 6 inches in one dimension.

(c) Shear point guards. Shear points on forklift loaders and similar type vehicles must have guards.

(3) Fuel handling and storage.

(a) Store and handle liquid fuels according to 4/H, OAR 437-004-0720.

(b) Store and handle liquefied petroleum gas fuel according to 4/H, OAR 437-004-0780.

(4) Changing and charging storage batteries.

(a) Battery chargers must be in areas that are safe for that purpose.

(b) There must be facilities for flushing and neutralizing spilled electrolyte, for fire protection, for protecting charging apparatus from damage and for adequate ventilation.

(c) Use a conveyor, overhead hoist or equivalent material handling equipment to handle large batteries that power electric forklifts.

(d) Use only a carboy tilter or siphon to handle electrolyte.

(e) Pour acid into water not water into acid when servicing batteries.

(f) Set truck brakes before changing or charging batteries.

(g) Vent caps must function and the battery compartment cover(s) must be open to dissipate heat.

(h) There must be no smoking in the charging area.

(i) Prevent open flames, sparks, or electric arcs in battery charging areas.

(j) Keep tools and other metallic objects away from the top of uncovered batteries.

(5) Lighting for operating areas. Where general lighting is too dim, the vehicle must have its own directional lighting.

(6) Dockboards (bridge plates). See 4/D, OAR 437-004-0390(1).

(7) Trucks.

(a) Set the brakes on trucks or chock the rear wheels to prevent them from rolling while they are boarded with powered industrial trucks.

(b) Use nose jacks when necessary to support a semitrailer and prevent a nose dive during the loading or unloading.

(8) Operator training.

(a) Develop and use a training program for operators of powered industrial trucks. The employer or an outside training entity may give the training. It must contain at least the following:

(A) A study and test portion covering at least the rules in this standard, the information provided by the manufacturer for operation of the equipment and any special information dictated by the operating environment.

(B) A behind-the-wheel driving portion, supervised by a person competent in the operation of the particular equipment and familiar with the area and circumstances of its use.

(C) Tailor both parts to the specific type of equipment, the material being handled and the location of its use.

(b) Only fully trained workers may operate powered industrial trucks, except those under direct supervision as part of the behind-the-wheel training program.

(c) Conduct refresher training for drivers annually or when their driving record indicates the need for additional training, whichever is more frequent.

(d) Employers may not consider a new worker trained and qualified based on experience from a previous employer unless the previous experience was on the same type of equipment under substantially the same operating circumstances and the worker had a safe operating record acceptable to the new employer.

(9) Truck operations.

(a) Do not drive a powered industrial truck up to anyone standing in front of a fixed object.

(b) Do not stand or pass under the elevated part of a powered industrial truck.

(c) Only the operator may ride on a powered industrial truck unless it has a second seat or area intended for another rider.

(d) Do not put any part of the body between or reach through the uprights of the mast or outside the running lines of the truck.

(A) Fully lower the forks or platform on an unattended powered industrial truck. Also, neutralize the controls, turn off the power, and set the brakes. Block the wheels if it is on an incline.

(B) Unattended is when the operator is 25 feet or more away but vehicle remains in view or anytime the vehicle is not in view.

(C) When the operator gets off the truck but is within 25 feet and can still see it, the forks or platform must be down, the controls in neutral and the brakes set, unless loading or unloading items to or from the forks or platform.

(f) Keep a safe distance from the edge of ramps or platforms while on an elevated dock, platform or freight car.

(g) Whenever a truck has vertical only, or vertical and horizontal controls that elevate with the lifting carriage or forks for lifting personnel, do the following:

(A) Use a safety platform secured to the lifting carriage and/or forks.

(B) Have a way for people on the platform to shut off power to the truck.

(C) Provide protection from falling objects as necessary by the operating conditions.

(h) When using a forklift to lift people, take the following precautions:

(A) Use a platform with standard guardrails secured to the lifting carriage or forks.

(B) The hydraulic system must not be able to drop faster than 135 feet per minute if any part of the system fails.

(C) Someone must be in the operator's station while workers are on the platform.

(D) Someone must be in the normal operating position while raising or lowering the platform.

(E) Other than very slow inching, do not move the truck from point-to-point with the platform raised more than 4 feet while workers are on it.

(F) There must be a guard on the area between the platform and the mast to prevent contact with chains or other shear points.

(10) Traveling.

(a) Climb or descend grades slowly.

(A) Drive loaded trucks with the load upgrade if the incline is steep enough to spill the load.

(B) Tilt the load back and raise the forks or platform only as far as necessary to clear the road surface.

(b) Drive only as fast as conditions permit, leaving enough time to stop.

(c) Slow down on wet and slippery surfaces.

(d) Do not run over loose objects.

(11) Loading.

ADMINISTRATIVE RULES

- (a) Do not handle loads heavier than the rated capacity of the truck.
- (b) Treat trucks with attachments as partially loaded trucks when not handling a load.
- (c) The forks or platform must be under the load as far as possible and the mast tilted backward to stabilize the load.
- (d) Do not tilt forward with forks or platform elevated except to pick up a load. Do not tilt an elevated load forward except when it is in a deposit position over a rack, chute or stack. When stacking or tiering, use only enough backward tilt to stabilize the load.
- (12) Maintenance of powered industrial trucks.
 - (a) If a powered industrial truck needs repair, take it out of service until repairs are done.
 - (b) Do not add fuel while the engine is running.
 - (c) Clean up spilled oil or fuel or allow it to completely evaporate before restarting the engine. Do not use the vehicle without the fuel filler cap in place.
 - (d) Do not use a flame to check the electrolyte level in batteries or the level in fuel tanks.
 - (e) Only authorized persons may repair powered industrial trucks.
 - (f) Disconnect the battery before working on the electrical system.
 - (g) Use only replacement parts that assure equivalent safety as the originals.
 - (h) Do not change the relative positions of parts from what they were when the vehicle was made. Do not remove parts except as in (l) below. Do not add counter weighting to fork trucks without approval by the manufacturer.
 - (i) Check powered industrial trucks daily before using them. Do not use them if any condition is found that adversely affects the vehicle's safety.
 - (j) Remove from service any vehicle that gives off hazardous sparks or flames.
 - (k) Keep powered industrial trucks clean, free of lint, excess oil, and grease. Clean the trucks with noncombustible cleaners. Do not use low flash point (below 100 degrees F.) solvents. Follow the directions on the cleaner's label.
 - (l) You may convert powered industrial trucks from gasoline to liquefied petroleum gas fuel if the converted truck complies with the specifications for LP or LPG trucks. Use only approved conversion equipment.
- (13) Control of gases and fumes. Take effective measures to keep the concentration levels of carbon monoxide gas created by powered industrial trucks below the levels in 4/Z, OAR 437-004-9000.
- (14) ROPS requirements. Rollover protective structures are covered in 4/U, OAR 437-004-3650.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-2000 Powered Saws

- (1) Scope — This applies to nonportable powered saws.
- (2) General.
 - (a) Machines must not vibrate when the tool is run at full speed.
 - (b) Arbors and mandrels must have firm and secure bearing and be free from play.
 - (c) Do not use any automatic cutoff saw that strokes continuously without operator control of each stroke.
 - (d) Saw frames and tables must have lugs cast on the frame or an equivalent way to limit the size of the saw blade to avoid overspeed.
 - (e) Circular saw fences must attach to the table or table assembly without changing their alignment with the saw. The fences for tilting tables or tilting arbors must remain parallel with the saw regardless of the angle of the saw with the table.
 - (f) Circular saw gages must slide in accurately machined grooves or tracks to insure exact alignment with the saw for all positions of the guide.
 - (g) Hinged saw tables must be lockable in any position and in alignment with the saw.
 - (h) Guard all belts, pulleys, gears, shafts, and moving parts to comply with OAR 437-004-1970, division 4/O.
 - (i) Electrically ground all equipment to comply with OAR 437-004-2810, division 4/S.
 - (j) A guard must cover the rear portion of the saw beneath or behind the table when exposed to contact. An exhaust hood may serve this purpose if appropriate.
 - (k) Do not mount any saw, cutter head or tool collar on a machine not made to work with them.

- (l) There must be combs (featherboards) or suitable jigs to use when a standard guard cannot be used, like for dadoing, grooving, jointing, moulding, and rabbeting.
- (3) Machine controls and equipment.
 - (a) There must be a mechanical or electrical power control switch so the operator does not have to leave the point of operation to shut off the machine.
 - (b) Use a locking-type belt shifter or other positive device on machines driven by belts and shafting.
 - (c) Provide a positive method to prevent a machine from automatically restarting after a power failure.
 - (d) Locate power and operating controls within reach of the operator. Do not allow the operator to reach over the cutter head to make adjustments. This does not apply to constant pressure controls used only for setup.
 - (e) Provide a positive means to make electric motor driven machine controls and devices inoperable during repairs or adjustments.
 - (f) Protect foot-operated controls from unexpected or accidental activation.
 - (g) Cover feed rolls, of feeder attachments, to protect the operator from contacting hazardous parts.
- (4) Band saws.
 - (a) Completely enclose band wheels. Construct guards of at least No. 14 U.S. gauge metal, nominal 2-inch wood material, or mesh or perforated metal of not less than U.S. gauge No. 20 with 3/8-inch or smaller openings.
 - (b) Enclose all portions of the band saw blade except the working side of the blade between the guide and the table.
- (5) Radial arm saws.
 - (a) Radial arm saws must have a hood that completely encloses the upper portion of the blade down to a point that includes the end of the saw arbor.
 - (b) The saw blade must not extend beyond the front edge of the table or roll case.
 - (c) A lower blade guard must guard the lower part of the blade and stay in contact with the material during the entire cut.
 - (d) When ripping, radial arm saws must have anti-kickback fingers on each side of the saw.
 - (e) Mark the direction of saw rotation on the hood.
 - (f) Attach a permanent warning sign prohibiting rip or plough cuts from the rear of the guard. Rip and plough only against the direction of blade rotation.
 - (g) Blades or cutting heads on radial arm saws must automatically return gently and stay at the back of the table.
- NOTE:** Use a counterweight or other effective means, a retractor device, or tilt the arm sufficiently to keep the saw at the back when released by the operator.
- (6) Table saws.
 - (a) Circular crosscut table saws must have a hood that covers the saw at least to the depth of the teeth.
 - (b) The hood must automatically adjust itself to the thickness of and remain in contact with, the material being cut. When the guard may mar the surfaces of material, it may be raised slightly to avoid contact.
 - (c) The hood must protect the operator from flying splinters and broken saw teeth.
 - (d) Fully guard rip table saws, and combination rip and crosscut table saws as required in OAR 437-004-2000(4)(a) and (b). They must have a spreader and anti-kickback fingers. The spreader is not necessary when rabbeting, ploughing, grooving or for cutting dados.
 - (e) Fully guard the part of the table saw beneath the table.
 - (f) Use push sticks to guide short stock and ends through table saws without self-feeding devices.
 - (7) Wobble saws. Do not insert wedges between a saw disk and its collar to form a "wobble saw" for rabbeting.
NOTE: This rule does not apply to properly designed and adjustable rabbeting blades.
 - (8) Cracks in blades. Do not use a circular saw blade with a crack greater in length than those in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-2230 Guarding and Operation of Portable Powered Tools

- (1) Portable powered tools.
 - (a) Portable circular saws.

ADMINISTRATIVE RULES

(A) All portable, power-driven circular saws with a blade diameter greater than 2 inches must have guards above and below the base plate or shoe. The upper guard must cover the saw to the depth of the teeth, except for the minimum arc to permit tilting the base for bevel cuts. The lower guard must cover the saw to the depth of the teeth, except for the minimum arc that allows proper retraction and contact with the work. When the tool is taken out of the work, the lower guard must automatically and quickly return to covering position. This does not apply to meat cutting saws.

(B) In addition to the provisions in (1)(a)(A) above, the lower guard must have a lug or lever, remote from the blade teeth, that allows the operator to safely lift the guard for starting unusual cuts.

(b) Switches and controls.

(A) All hand-held powered circular saws with a blade diameter more than 2 inches, electric, hydraulic or pneumatic chain saws and percussion tools without positive accessory holding means must have a constant pressure switch or control that will shut off the power when pressure is released.

(B) The following hand-held powered tools must have a constant pressure control switch. They may have a lock-on control if a single motion of the same finger or fingers that turns it on can turn it off. Tappers, drills, fastener drivers, horizontal, vertical and angle grinders with wheels more than 2 inches in diameter. Disc sanders with discs more than 2 inches in diameter. Belt sanders, reciprocating saws, saber, scroll and jig saws with blade shanks more than a nominal 1/4-inch and other similarly operating powered tools.

(C) All other hand-held powered tools may have either a positive "on-off" control, or other controls as in (1)(b)(A) and (B) above.

(i) Saber, scroll and jig saws with non-standard blade holders may use blades with shanks which are non-uniform in width, if the narrowest part of the shank is an integral part in mounting the blade.

(ii) Measure the blade shank width at the narrowest part of the blade when saber, scroll and jig saws have non-standard blade holders.

(iii) "Nominal" in this subparagraph means +0.05-inch.

(D) Exclusions. This subparagraph does not apply to concrete vibrators, concrete breakers, powered tampers, jack hammers, garden appliances, household and kitchen appliances, personal care appliances or to fixed machinery.

(c) Power chain saws.

(A) In addition to (1)(b)(A) above, all power chain saws must meet American National Standard B175.1-1991, Safety Code for Power Chain Saws.

(B) Inspect power chain saws daily when in use and always keep them in good repair. Do not use saws with cracked or loose handle bars or defective parts.

(C) Stop power chain saw engines before fueling.

(D) Power chain saws must have a working chain brake if originally equipped with one.

(E) Chain brakes and other safety features must always work correctly.

(F) All hand-held gasoline powered chain saws must have a constant pressure throttle control that will shut off power to the saw chain when the pressure is released.

(G) Employees using chain saws must wear flexible ballistic nylon pads, chaps or other equivalent protection in a manner that protects the legs from the thigh to the top of the boot. Employers must provide and pay for this equipment.

(H) Do not drop-start chain saws or other power saws.

NOTE: Drop-starting saws is permitted outside of the basket of an aerial lift only after ensuring that the area below the aerial lift is clear of people.

(I) The operator must have secure footing when starting the saw.

(J) Start and operate the saw only when all other workers are clear.

(K) Stop the engine when carrying the power saw but not between cuts during consecutive felling, bucking, limbing or cutting operations.

(i) The chain must not be turning and the operator's hand must be off the throttle lever while moving between work locations.

(ii) Carry small chain saws at your side with the bar of the saw pointed to the rear.

(L) Stop the engine for all cleaning, refueling, adjustments, and repairs to the motor.

(d) Portable belt sanders. Belt sanders must have guards at each nip point where the sanding belt runs onto a pulley. These guards must prevent the operator's hands or fingers from contacting the nip points. The unused run of the sanding belt must have guards against accidental contact.

(e) Cracked saws. Do not use cracked saws.

(f) Grounding. Portable electric powered tools must meet the requirements of Subdivision 4/S.

(2) Pneumatic tools and hose.

(a) Only use compressed air supply hose and hose connections rated for the pressure and service required by the tools they serve.

(b) There must be a shut-off valve at the manifold or permanent pipe outlet of the compressed air supply.

(c) Do not couple or uncouple hose without first shutting off the compressed air supply unless the couplers have check valves that automatically shut it off.

(d) Pneumatic fastener-driving tools and other power-driven fastener tools, except as allowed in (e) below, must have a safety device to prevent ejection of nails, staples or fasteners when the tool is not in firm contact with the work.

(e) You may use power-driven fastener-driving tools without the safety device only when using staples with a diameter of .0475-inch (18 gauge A.W.G.) or less and the operator and all workers within 15 feet are wearing suitable eye protection. This does not apply to office staplers.

(f) Do not use oxygen or combustible gases to drive pneumatic tools.

(g) Direct the exhaust from pneumatic power tools away from the operator.

(3) Portable abrasive wheels.

(a) Definitions.

(A) Mounted wheels. Mounted wheels of 2-inch diameter or smaller, of various shapes. They may be either organic or inorganic bonded abrasive wheels. They are secured to plain or threaded steel mandrels.

(B) Organic bonded wheels. Organic wheels are wheels bonded by an organic material such as resin, rubber, shellac or other similar bonding agent.

(C) Portable grinding. A grinding operation where the grinding machine is hand-held and may move easily from one location to another.

(D) Reinforced wheels. The term "reinforced" as applied to grinding wheels defines a class of organic wheels that contain strengthening fabric or filament. The term "reinforced" does not cover wheels using such mechanical additions as steel rings, steel cup backs or wire or tape winding.

(E) Safety guard. A safety guard is an enclosure to restrain the pieces of the grinding wheel if it breaks while in use.

(F) Tuck pointing. Removal, by grinding, of cement, mortar or other non-metallic jointing material.

(G) Tuck pointing wheels. Tuck pointing wheels, Type 1, reinforced organic bonded wheels have diameter, thickness and hole size dimension. They are subject to the same limitations of use and mounting as Type 1 wheels. Limitation: Wheels used for tuck pointing should be reinforced, organic bonded.

(H) Type 11 flaring cup wheels. Type 11 flaring cup wheels have double diameter dimensions D and J, and in addition have thickness, hole size, rim and back thickness dimensions. Grinding is always done on the rim face, W dimension. Type 11 wheels are subject to all limitations of use and mounting listed for Type 6 straight sided cup wheels. Side grinding wheel with a wall flared or tapered outward from the back. Wall thickness at the back is normally greater than at the grinding face (W). Limitation: Minimum back thickness, E dimension, should not be less than one-fourth T dimension. Also, when unthreaded hole wheels are specified the inside flat, K dimension, must be large enough to hold a suitable flange.

(I) Type 6 straight cup wheels. Type 6 cup wheels have diameter, thickness, hole size, rim thickness and back thickness dimensions. Grinding is always done on the rim face, W dimension. Type 6 Straight Cup Wheels Side grinding wheel with a diameter, thickness and hole with one side straight or flat and the opposite side recessed. This type, differs from Type 5 in that the grinding is on the wall of the abrasive created by the difference between the diameter of the recess and the outside diameter of the wheel. Therefore, the wall dimension "W" takes precedence over the diameter of the recess as an essential intermediate dimension to describe this shape type. Limitation: Minimum back thickness, E dimension, should not be less than one-fourth T dimension. In addition, when unthreaded hole wheels are specified, the inside flat, K dimension, must be large enough to hold a suitable flange.

(J) Type one straight wheels. Type 1 straight wheels have diameter, thickness and hole size dimensions and should be used only on the periphery. Mount type 1 wheels between flanges. Peripheral grinding wheel with a diameter, thickness and hole. Limitation: Hole dimension (H) should not be greater than two-thirds of wheel diameter dimension (D) for precision, cylindrical, centerless or surface grinding applications. Maximum hole size for all other applications should not exceed one-half wheel diameter.

(b) General requirements. Use abrasive wheels only on machines with safety guards as in OAR 437-004-2230(3)(a) through (d).

ADMINISTRATIVE RULES

(A) Exceptions. The requirements of paragraph OAR 437-004-2230(3)(a) do not apply to the following classes of wheels and conditions.

(i) Wheels for internal work while within the work being ground;

(ii) Mounted wheels, 2 inches and smaller in diameter, used in portable operations (see definition of Mounted Wheel); and

(iii) Types 16, 17, 18, 18R, and 19 cones and plugs and threaded hole pot balls where the work offers protection.

(B) Untitled.

(i) A safety guard must cover the spindle end, nut and flange projections. Mount the safety guard so as to maintain proper alignment with the wheel. The strength of the fastenings must exceed the strength of the guard.

(ii) Exception. If the work provides a suitable measure of protection to the operator, safety guards may allow exposure to the spindle end, nut and outer flange. Where the work entirely covers the side of the wheel, you may omit the side covers of the guard.

(iii) Exception. On portable machines designed for and used with, type 6, 11, 27, and 28 abrasive wheels, cutting off wheels and tuck pointing wheels, you may leave the spindle end, nut and outer flange exposed.

(c) Cup wheels. Protect cup wheels (Types 6 and 11) by:

(A) Using safety guards in OAR 437-004-2230(3)(a); or,

(B) Using special "revolving cup guards" that mount behind the wheel and turn with it. They must be steel or other material with adequate strength and must enclose the wheel sides upward from the back for one-third of the wheel thickness. The mounting features must conform with all regulations. (See OAR 437-004-2230 (3)(e).) Keep a maximum clearance of 1/16-inch between the wheel side and the guard; or,

(C) Using another form of guard that insures protection equal to that provided by the guards in OAR 437-004-2230(3)(a)(A) or (B).

(d) Vertical portable grinders. Safety guards on machines known as right angle head or vertical portable grinders must have a maximum exposure angle of 180 degrees. Place the guard between the operator and the wheel during use. Adjust the guard to deflect pieces of a broken wheel away from the operator. Figure 4

(e) Other portable grinders. The maximum angular exposure of the grinding wheel periphery and sides for safety guards used on other portable grinding machines must not exceed 180 degrees. Enclose the top half of the wheel. (See Figures 5 and 6.)

(f) Mounting and inspection of abrasive wheels.

(A) Immediately before mounting, inspect all wheels to make sure they are not damaged. Check the spindle speed of the machine before mounting the wheel to be sure it does not exceed the maximum operating speed marked on the wheel.

(B) Grinding wheels must fit freely on the spindle and remain free under all grinding conditions. Keep a controlled clearance between the wheel hole and the machine spindle (or wheel sleeves or adaptors) to avoid excessive pressure from mounting and spindle expansion.

(C) All contact surfaces of wheels, blotters and flanges must be flat and free of foreign matter.

(D) When using a bushing in the wheel hole it must not exceed the width of the wheel nor contact the flanges.

(E) Do not operate an abrasive wheel designed to be held by flanges unless it is properly mounted between suitable flanges. Flanges must be at least one-third the diameter of the wheel, except for those types requiring flanges of a special design.

(F) Install blotters (compressible washers) between flanges and abrasive wheel surfaces to insure uniform distribution of flange pressure.

(g) Excluded machinery. OAR 437-004-2230(3) does not cover natural sandstone wheels and metal, wooden, cloth or paper discs with a layer of abrasive on the surface.

(4) Tools driven by internal combustion engines.

(a) Tools driven by internal combustion engines must have a positive "On" and "Off" ignition switch that will remain in either position.

(b) Tools driven by internal combustion engines must have effective means to control power except those that operate at constant speed. Throttle controls must return the engine to idling speed when released.

(c) Tools driven by internal combustion engines must have a self-rewinding starting device or be equally safe.

(d) Exhaust ports on tools driven by internal combustion engines must have mufflers and deflect exhaust fumes away from the operator when the tool is in use in its normal operating position.

(e) Stop the engine before fueling tools driven by an internal combustion engine.

(f) You must be able to quickly remove sling-carried tools powered by attached portable internal combustion engines.

(g) Inspect the fuel system of sling-carried tools before each use. Fix any defect immediately.

(5) Explosive actuated fastening tools.

(a) Definitions.

(A) Angle control. A safety feature designed to prevent a tool from operating when tilted beyond a pre-determined angle.

(B) Cased Power Load. A power load with the propellant contained in a closed case.

(C) Caseless Power Load. A power load with the propellant in solid form not requiring containment.

(D) Direct-Acting Tool. A tool in which the expanding gas of the power load acts directly on the fastener to be driven.

(E) Explosive power load, also known as load. Any form of any substance that can produce a propellant force.

(F) Fixture. A special shield that gives equal protection where the standard shield is not usable.

(G) Hammer-operated piston tool — low-velocity type. A tool that uses a heavy mass hammer and a load to move a captive piston to drive a stud, pin or fastener into a work surface. It always starts the fastener at rest and in contact with the work surface. Its design must limit the mean velocity of the stud, pin or fastener to a maximum of 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(H) Head. That part of a fastener that extends above a work surface after being properly driven.

(I) High-velocity tool. A tool or machine that uses a load to propel or discharge a stud, pin or fastener, at velocities greater than 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(J) Indirect-Acting Tool. A tool in which the expanding gas of the powder load acts directly on a captive piston that in turn drives the fastener.

(K) Low-velocity piston tool. A tool that uses a load and captive piston to drive a stud, pin or fastener into a work surface. Its design must limit the mean velocity to a maximum of 300 feet per second when measured 6.5 feet from the muzzle end of the barrel.

(L) Misfire. A condition in which the powder load fails to ignite after an attempt to fire the tool.

(M) Powder-Actuated Fastening System. A method comprising the use of a powder-actuated tool, a power load and a fastener.

(N) Powder-Actuated Tool, also known as Tool. A tool that uses the expanding gases from a power load to drive a fastener.

(O) Protective shield or guard. A device or guard to confine flying particles, attached to the muzzle end of the tool.

(P) Stud, pin, or fastener. A fastening device specifically designed and manufactured for use in explosive-actuated fastening tools.

(Q) Test Velocity. A series of deliberately free-flighted fasteners whose velocities are measured 6 1/2 feet from the muzzle end of the tool using accepted ballistic test methods.

(R) To chamber. To fit properly without the use of excess force and without being loose in the chamber.

(S) Tool. Unless indicated otherwise, an explosive-actuated fastening tool and all its accessories.

(b) General requirements.

(A) Explosive-actuated fastening tools actuated by explosives or any similar means that propel a stud, pin, fastener or other object to affix it to another object must meet the design requirements in "American National Standard Safety Requirements for Explosive-Actuated Fastening Tools," ANSI A10.3-1995. This requirement does not apply to devices designed for attaching objects to soft construction materials, such as wood, plaster, tar, dry wallboard and the like or to stud welding equipment.

(B) Operators and assistants using tools must wear eye protection. If required by the working conditions, use head and face protection as required under Personal Protective Equipment (4/l).

(c) Inspection, maintenance, and tool handling.

(A) High-velocity tools. High velocity tools must have these characteristics:

(i) The muzzle end of the tool must have a protective shield or guard at least 3 1/2 inches in diameter, mounted perpendicular to and concentric with the barrel. It must confine any flying fragments or particles that might be a hazard when fired.

(ii) Where a standard shield or guard will not work or where it does not provide adequate protection, an alternate device is acceptable. It must be built by the manufacturer of the tool, and provide an equal degree of protection.

(iii) It must be impossible to fire the tool unless it has a standard protective shield or guard, or the special device in (ii) above.

ADMINISTRATIVE RULES

(iv) Untitled.

(I) The firing mechanism must prevent the tool from firing during loading or preparation to fire, or if dropped while loaded.

(II) Firing of the tool must require at least two separate and distinct actions of the operator. The final firing movement must be separate from the action of bringing the tool into the firing position.

(v) The tool must not work unless the operator is holding the tool against the work surface with a force at least 5 pounds more than the total weight of the tool.

(vi) The tool must not be operable with the standard guard indexed to the center position if any bearing surface of its guard tilts more than 8 degrees from contact with the work surface.

(vii) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(B) Tools of the low-velocity piston type must have the characteristics in (i) through (iv) below.

(i) The muzzle end of the tool must allow suitable protective devices, designed and built by the manufacturer of the tool, to be mounted perpendicular to the barrel. There must be a standard spall shield with each tool.

(ii) Untitled.

(I) In ordinary use the tool must not propel or discharge a stud, pin or fastener while loading or during preparation to fire or if dropped while loaded.

(II) Firing of the tool must depend on at least two separate and distinct actions of the operator. The final firing movement must be separate from the operation of bringing the tool into the firing position.

(iii) The tool must not be operable unless the operator is holding it against the work surface with a force at least 5 pounds greater than the total weight of the tool.

(iv) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(C) Hammer operated piston tools, low-velocity type, must have the characteristics in (i) through (iv) below.

(i) The muzzle end of the tool must allow suitable protective devices, designed and built by the manufacturer of the tool, to be mounted perpendicular to the barrel. There must be a standard spall shield with each tool.

(ii) In ordinary use the tool must not propel or discharge a stud, pin or fastener while loading or during preparation to fire or if dropped while loaded.

(iii) Firing of the tool must depend on at least two separate and distinct actions of the operator. The final firing movement must be separate from the operation of bringing the tool into the firing position.

(iv) The tool must have a positive way of varying the power or there must be some other way for the operator to select a power level adequate to perform the work without excessive force.

(d) Requirements for loads and fasteners.

(A) There must be a standard way to identify the power levels of loads.

(B) Do not use a load (cased or caseless) that will accurately chamber in any existing approved commercially available low-velocity piston tool or hammer operated piston tool, low-velocity type, if it will cause a fastener to have a mean velocity greater than 300 feet per second when measured 6.5 feet from the muzzle end of the barrel. No individual test firing of a series can exceed 300 feet per second by more than 8 percent.

(C) Only use fasteners specifically made for a given tool.

(e) Operating requirements.

(A) Before using a tool, inspect it to see that it is clean, all moving parts operate freely and that the barrel is free of obstruction.

(B) When a tool develops a defect during use, immediately stop using it.

(C) Do not load tools until just prior to the intended firing time. Do not point loaded or empty tools at anyone.

(D) Do not leave loaded tools unattended.

(E) If the tool misfires, hold it in the operating position for at least 30 seconds. Then try to operate the tool a second time. Wait another 30 seconds with the tool in the operating position. If it still does not fire remove the explosive load according to the manufacturer's instructions.

(F) Do not leave tools unattended where they are available to unauthorized persons.

(G) Do not drive fasteners into very hard or brittle materials like cast iron, glazed tile, surface-hardened steel, glass block, face brick or hollow tile.

(H) Do not drive fasteners into soft materials so that the projectile could exit the other side.

(I) Untitled.

(i) Do not drive fasteners directly into materials such as brick or concrete closer than 3 inches from the unsupported edge or corner or into steel surfaces closer than 1/2-inch from the unsupported edge or corner, unless the tool has a special guard. (Exception: Low-velocity tools may drive no closer than 2 inches from an edge in concrete or 1/4-inch in steel.)

(ii) When fastening other materials, such as a 2-inch by 4-inch wood section to a concrete surface, it is permissible to drive a fastener of no greater than 7/32-inch shank diameter not closer than 2 inches from the unsupported edge or corner of the work surface.

(J) Do not drive fasteners through existing holes unless you use a positive guide for accurate alignment.

(K) Do not drive a fastener into a spalled area caused by an unsatisfactory fastening.

(L) Do not use explosive actuated tools in an explosive or flammable atmosphere.

(M) Use all tools with the correct shield, guard or attachment recommended by the manufacturer.

(N) Take damaged or defective tools out of service. Inspect tools at regular intervals and repair them according to the manufacturer's specifications.

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

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-2260

Other Portable Tools and Equipment

(1) Jacks.

(a) Definitions.

(A) Jack. A jack is an appliance for lifting and lowering or moving horizontally a load by pushing.

(B) Rating. The maximum safe load throughout its course of travel.

(b) Loading and marking.

(A) Do not use a jack with a rating less than the weight of the intended load.

(B) Keep the rated load legibly and permanently marked on the jack.

(c) Operation and maintenance.

(A) If the jack is not on a firm foundation, block its base. If the cap might slip, place a block between it and the load.

(B) Watch the stop indicator and do not go past the limit of travel.

(C) Quickly crib, block or otherwise secure the load after raising it.

NOTE: This does not apply when changing wheels on 4-wheeled vehicles when only one wheel is raised and the employee does not place any part of their body under the vehicle.

(D) Hydraulic jacks exposed to freezing temperatures must contain an adequate antifreeze liquid.

(E) Inspect jacks often enough to assure safe operation but at least:

(i) Once every 6 months for constant or intermittent use; or

(ii) Immediately after an abnormal load or shock.

(F) Mark defective jacks and do not use them until repairs are made.

(2) Abrasive blast cleaning nozzles. Blast cleaning nozzles must have an operating valve that must be held open manually. Provide a support on which the nozzle may rest when it is not in use.

(3) Hand-powered equipment.

(a) Each hand-powered hoist must have an effective brake or equivalent and a ratchet and pawl strong enough to hold the maximum load in any position.

(b) Do not allow hand crank handles to work loose from the drive shaft.

(4) Wheelbarrows, hand trucks, dollies, pallet jacks.

(a) Wheelbarrows, hand trucks, dollies and pallet jacks must be appropriate for the specific work. Do not load them beyond safe capacity. Bodies and frames must be metal or strong wood and able to withstand severe handling and the intended loads.

(b) Keep wheelbarrows, hand trucks, dollies and pallet jacks in good repair.

(c) Do not leave wheelbarrows, hand trucks, dollies, and pallet jacks where they can tip, fall or roll.

(5) Varmint Killers (Explosive Gas and Oxygen) A device for injecting a mix of propane (LPG) and oxygen into ground holes and then igniting it to kill varmints.

Note: OAR 437-004-0710 Compressed Gases apply to all cylinders of gas.

ADMINISTRATIVE RULES

(a) Follow all manufacturer instructions for use and maintenance of this equipment or this standard, whichever is safest.

(b) When transporting these devices in vehicles (other than in the field of use), or when done using them for more than one hour, back out the regulator pressure control screws.

(c) Employees under 18 years old may not operate this equipment.

(d) Employers must train all employees to operate this equipment safely and according to the manufacturer's instructions and these rules.

(e) Operating procedures.

(A) Tanks, valves, couplings, regulators, hose, and apparatus must be free from oily or greasy substances. Do not handle oxygen tanks or apparatus with oily hands or gloves. Never allow a jet of oxygen to strike an oily surface, greasy clothes, or enter a fuel oil or other storage tank.

(B) Handling tanks.

(i) Unless tanks are secured on a special truck, remove regulators and install valve-protection caps, when provided, before moving tanks.

(ii) Close tank valves when work is done.

(iii) Close valves of empty tanks.

(iv) Do not use a hammer or wrench to open tank valves. If opening the valve by hand does not work, check with the supplier.

(v) Do not repair or tamper with tank valves. Notify the supplier if you have trouble with a tank and follow their instructions as to its disposition.

(vi) Do not remove the stem from a diaphragm-type tank.

(C) Attachments and use.

(i) Fuel-gas tanks must have the valve end up when they are in use. Store and ship liquefied gases with the valve end up.

(ii) Before removing a regulator from a tank valve, close the tank valve and release the gas from the regulator.

(iii) Do not use regulators with cracked, broken, or defective parts.

(iv) Before attaching the regulator to a tank, fully release the regulator pressure adjusting screw.

(v) Close the tank valve and release the gas from the regulator before removing it from the tank.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-2810

General Requirements

(1) Scope. This standard (4/S) covers electrical work and equipment in buildings and on premises. It applies to all work and equipment covered by other sections of Subdivision 4/S.

(2) Unless stated otherwise in OAR 437-004-2810 through 437-004-3075, all electrical work, equipment and systems must comply with standards under the jurisdiction of the Oregon Building Codes Division, Department of Consumer and Business Services.

(3) Do not allow employees to work near live power sources without protection from shock.

(4) Isolate exposed live electrical conductors from contact by persons or equipment.

NOTE: Paragraphs (3) and (4) above do not apply to electric fences or containment devices.

(5) Lights 7 feet or closer to the floor or work surface must have a guard, fixture or holder to protect the bulb or tube from breakage.

(6) Only qualified persons, authorized by the employer may make electrical repairs. (See Subdivision 4/B.)

(7) Install or remove fuses from live terminals only with special tools insulated for the voltage.

(8) When the exact location of underground electric power lines is unknown, workers using jackhammers, bars or other hand tools that may contact a line must use insulated protective gloves.

(9) Before beginning work near exposed lines or equipment, the employer must determine if they are live. If they are, you must advise the employees of the position of the lines, the hazards involved and the protective measures they must use.

(10) Before beginning work like digging, drilling or remodeling, that may lead to hidden power sources the employer must locate them and determine their voltage. Locate underground lines by calling 1-800-332-2344 or in the Portland Metropolitan area 246-6699. The employer must then:

(a) Post and maintain proper warning signs where such circuits exist; and

(b) Advise the employees of the position of the lines, the hazards involved and the protective measures they must use.

NOTE: If the work covered by (8) and (9) above might involve voltages over 750v, see OAR 437-004-3050.

(11) There must be sufficient space near electrical equipment to permit safe operation and maintenance.

(a) Near exposed parts, the minimum clearance from floor to ceiling must be at least 76 inches. There must be a clear radius of at least 36 inches in front of the panel.

(b) There must be enough clearance to permit at least a 90 degree opening of all doors or hinged panels.

(c) Do not store anything in front of electrical panels.

(12) There must be suitable barriers or other means to ensure that work space for electrical equipment is not used as a passageway when energized parts are exposed.

(13) Require workers to report all electric shocks to management or supervisors immediately.

(a) Check the equipment causing the shock and remove from service or repair it before further use.

(14) Electrical equipment must be free from recognized hazards that may cause death or serious physical harm. Use the criteria below to determine the safety of equipment.

(a) Electrical equipment must be listed or labeled, except custom-made components and utilization equipment. (See Division 4/B, OAR 437-004-0100, for definitions of listed and labeled.)

(b) Mechanical strength and durability, and for parts that enclose and protect other equipment, the adequacy of the protection.

(c) Classification by type, size, voltage, current capacity or specific use.

(d) Other factors that contribute to the practical safeguarding of employees using or likely to contact the equipment.

(15) Follow manufacturer's instructions or recommendations when installing listed or labeled equipment.

(16) In wet or damp locations, use only fixtures approved for that purpose. Install them so that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(17) All pull boxes, junction boxes and fittings must have approved covers. Metal covers must be grounded.

(18) All wall plugs and switches must have approved, unbroken covers or faceplates and no broken parts.

(19) Receptacles, plugs, fixtures, lamp-holders lamps and other holders and outlets must have no exposed live parts.

NOTE: Rosettes and cleat-type lamp-holders may have exposed parts if they are 8 feet or higher above the floor.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-3100

Excavation

(1) Definition. Excavation — A man-made cut, hole, pit, trench or depression in the earth.

NOTE: Before any digging you must comply with Oregon's "Call Before You Dig" law. Call 1-800-332-2344.

(2) Five feet or more. Employees must not enter any excavation 5 feet or deeper unless protective systems are in place to protect from cave-in or sloughing.

(3) Less than 5 feet. Employees must not enter any excavation less than 5 feet deep when the sides are losing their shape, are loose or show other signs of being unstable unless protective systems are in place to protect from cave-in or sloughing.

(4) Strength. Systems installed in the excavation must be strong enough and engineered to provide protection from hazards of the particular excavation.

(5) Design. Systems must be as follows:

(a) Designed by a registered professional engineer.

(b) Designed using the manufacturer's or other tabulated data.

(6) Follow instructions. When using manufactured systems, follow the instructions and do not exceed the limitations of the system.

(7) System size. Systems must extend from the bottom of the excavation to at least the top edge.

(8) Sloping. Sloping is an acceptable system to protect workers. Sloping must be at a ratio of at least 1 1/2 to 1. That means a horizontal setback of 1 1/2 feet for every 1-foot of trench depth.

(9) Access/Exit. There must be a safe way, such as a ladder or steps, to get into and out of excavations 4 or more feet deep. In trenches, these exits must be at least every 25 linear feet.

(10) Water. Workers will not enter excavations where there is accumulating water, either from ground seepage or surface run-off, unless there are adequate protections from hazards caused by the water.

ADMINISTRATIVE RULES

(11) Inspect daily. A person familiar with these rules and the work must inspect all excavations daily, before workers enter or reenter.

(12) Spoils and equipment. Keep soil and material removed from the excavation (spoils) at least two feet away from the edge of the excavation or restrained. Equipment that could roll or fall into the excavation must also be at least two feet back or restrained.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-3410

Agricultural, Commercial and Industrial Vehicles

(1) Scope. This applies to all motor vehicles used by employees.

(2) Definitions.

(a) Agricultural vehicle — A vehicle specifically designed or modified for use exclusively in agricultural operations, and not licensed for use on public roads under Oregon laws.

NOTE: Included in this definition is farm field equipment such as tractors, harvesters, planters or any combination thereof; unlicensed trucks and wagons or trailers such as feeder trucks or wagons and specialized crop handling vehicles; and mobile elevating and rotating work platforms such as orchard aerial lift devices.

(b) Commercial-type vehicles — Motor vehicles primarily for the transportation of persons or material on roads. Commercial type vehicles used to transport workers are:

(A) Class 'A' vehicle — A bus type vehicle or van that can carry 12 or more workers; or the "work crew" vehicle built or altered for carrying passengers.

(B) Class 'B' vehicle — A vehicle or van especially built for transporting work crews in compartments separate from the space used to transport supplies, tools and equipment.

(C) Class 'C' vehicle — A flatbed, pickup body or dump truck type vehicle, or vehicle of similar open body construction.

(D) Class 'D' vehicle — A passenger car or station wagon type.

NOTE: Typically a bus type vehicle has two axles and six tires or three or more axles. This does not include vans.

(c) Industrial-type vehicles — Vehicles designed for non-highway use, primarily for pulling trailers or other mobile loads, straddle trucks such as lumber carriers, power industrial trucks, and other types of vehicles especially designed for handling materials.

NOTE: When this rule uses "vehicle" by itself, it includes all the above definitions.

(3) General requirements.

(a) Operation of vehicles.

(A) Nobody may operate any unsafe vehicle. Fix unsafe conditions before using it.

(B) Only trained and authorized employees may operate any vehicle.

(C) Only the operator may ride on vehicles unless there are safe riding facilities for additional riders. Persons are never to ride on fenders, axles, hitches, tongues, buckets, forks, drawbars or any other area not intended to carry passengers.

(D) Do not drive a vehicle up to anyone who is in front of a stationary object.

(E) The operator must look in the direction of travel, and have a clear view of the path of travel, unless guided by a signal person with a clear view of the route.

(F) Except when using a towbar, keep manual control over vehicles under tow.

(G) Do not stand or walk under an elevated part of a vehicle whether loaded or empty unless it is blocked or cribbed according to OAR 437-004-3410(5)(d).

(H) Workers may not be under loads or units of materials during movement.

(I) Do not overload any vehicle. Keep loads stable and well balanced.

(J) Employees must not ride in a loaded or partially loaded cargo space while the vehicle is moving unless the load is adequately shored, braced, or otherwise secured.

(K) Do not drive a vehicle with an unstable or insecure load.

(L) Block the wheels and set the brakes when loading Agricultural Vehicles, Class C, Commercial -Type Vehicles and Industrial-Type Vehicles who's movement might cause a hazard. This does not apply when loading "on the go."

(M) The parking brake must be set on parked commercial and industrial vehicles. Block or turn to a curb the wheels of vehicles parked on an incline.

(N) Do not put arms or legs between working parts or outside the running lines of vehicles.

(O) Vehicles must have a safe way of access and exit.

(P) Do not jump on or off moving vehicles.

(Q) There must be no stunt driving or horseplay.

NOTE: Appendix A is a reprint of Oregon Revised Statutes that govern the use of some agricultural vehicles and equipment on public highways and roads. While Oregon OSHA has the legal authority to cite these sections, law enforcement officers are the usual source of enforcement. We offer these laws here as a courtesy to Oregon agricultural employers and in the interest of employee safety.

(b) Hauling of explosives. Only a driver and one other person may ride in a vehicle hauling explosives.

(c) Operating near power lines. For requirements when operating vehicles around high voltage power lines, see Subdivision 4/S.

(d) Parking. When the operator of a commercial or industrial vehicle is not at the controls, the brakes must be set or the wheels blocked to prevent movement. Also, fully lower or block elevated attachments or components against descent. Unattended vehicles must be shut off. If parked on a slope, the wheels of commercial and industrial vehicles must be blocked or chocked.

(e) When towing, there must be a pin or other positive method of keeping the hitch pin in the hitch.

NOTE: Unattended is when the operator cannot see the vehicle or when they are more than 25 feet from it.

(4) Vehicle components.

(a) General.

(A) The engine shut-off device must be within reach of the operator when in their normal operating position.

(B) There must be steps, ladders, handholds, or grab bars on vehicles for safe access. Steps must have slip-resistant surfaces.

(C) The operator's station and work platforms on all agricultural vehicles must have guardrails or other fall protection when any of the following conditions exist:

(i) The operator is standing or not protected from falling by the frame-work, body, or design of the equipment; or

(ii) The floor of the operator's station is more than 22 inches above the adjacent floor level; or

(iii) The operator's station, regardless of height, is located so that a worker could fall into the path of equipment or into moving parts.

NOTE: For guardrails or similar barricades, the top rail must be 36 inches to 44 inches above the deck; the railing must have a midrail except when it would impair the operator's view to crop gathering or other functions.

(D) All vehicles loaded by cranes, power shovels, loaders or similar equipment must have a cab shield or canopy adequate to protect the operator from shifting or falling materials.

(E) The backs of vehicle cabs exposed to shifting loads must have a substantial bulkhead or similar device.

(F) Loads must not prevent doors of vehicle cabs from opening.

(G) When transporting workers and materials simultaneously, there must be a barrier to protect the workers and driver from the hazards of the materials. Otherwise, anchor or restrain the load.

(H) Class "A" and "B" commercial vehicles and industrial vehicles must have seats and back rests firmly secured in place, and such sides and ends as necessary to prevent riders from falling off the vehicle.

(I) The operator's platform must have a slip-resistant floor.

(J) Operating levers controlling hoisting or dumping devices on haulage bodies must have a latch or other device that prevents accidental starting or tripping of the mechanism.

(K) Trip handles for tailgates of dump trucks must work without endangering the operator.

(L) Surfaces of foot pedals must be slip resistant or have slip resistant coverings.

(b) Passenger compartments.

(A) Floors and decks must have safe footing.

(B) Floors and interior of sides and ends and tops of compartments used for transporting workers must be free of protruding objects that might cause injury.

(c) Windshields — windows.

(A) Windshields and windows must be safety glass that meets the requirements for safety glazing material for use anywhere in a motor vehicle as defined in the American National Standard, Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, Z26.1-1990, or a material that will furnish equivalent safety.

(B) Replace defective or broken glass that impairs the vision of the operator. Remove and replace broken or shattered glass that could cause injury to occupants.

NOTE: There is no requirement to change non-safety glass installed as "original equipment" in agricultural vehicles acquired before March 31, 1975 if it is unbroken. However, when it is replaced, the replacement glass must be approved safety glass.

ADMINISTRATIVE RULES

(d) Brakes.

(A) All commercial and industrial vehicles must have brakes that can control them while fully loaded on any grade over which they might run.

(B) Parking brakes must be able to hold the loaded vehicle on any grade on which it may park, on any surface free of ice or snow.

(C) Brakes must be in safe working condition.

(e) Steering. Use steering or spinner knobs only if the steering mechanism is a type that prevents road reactions from causing the steering wheel to spin. The steering knob must be within the periphery of the wheel.

(f) Lights. Vehicles operated at night must have sufficient light at the operator's station.

(5) Inspection, testing, maintenance, and repair.

(a) Check vehicles as often as needed to assure that they are in safe operating condition and free of damage that could cause failure while in use.

(b) Before using it, fix defects that affect the safe operation of the vehicle.

(c) Do not continue to use a vehicle that becomes unsafe during use.

(d) Block or crib heavy machinery, equipment, elevated parts or parts supported by slings, hoists, jacks, or other devices, to prevent falling or shifting before employees work under or between them.

(A) Fully lower or block bulldozer and scraper blades, end-loader, end-loader buckets, dump bodies, and similar equipment when working on them or when they are not in use.

(B) All controls must be in neutral with motors off and brakes set, unless the work requires otherwise.

(e) Vehicles with dump bodies or other elevating parts must have positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body. This device must support a raised body during maintenance or inspection work.

(f) Disconnect the battery when repairing a vehicle electrical system if accidental closing of the circuit could cause injury.

(6) Transportation of workers.

(a) Do not transport workers in flatbed trucks, dump trucks and pickups unless:

NOTE: This does not apply to field work or loading or unloading moving vehicles.

(a) Tilting, sliding or otherwise movable decks or bodies are secured to prevent accidental movement. Secure dump truck bodies or lock the hoist lever.

(B) Flatbed vehicles without seats must have sides and end gates at least 24 inches high. Workers must sit on the floor.

(b) Close pickup and dump truck tailgates and make workers sit on the floor unless there are seats secured in place and sides at least 42 inches high. A chain or rope must be across the rear of such vehicles with seats.

(c) When workers sit on low boxes or similar equipment, there must be side rails that increase the height of pickup and dump truck bodies to at least 36 inches. Omit the side rails when there is heavy canvas secured as a top and sides.

(d) In Class "A" and "B" commercial vehicles with seats workers must not sit on the floor in the aisles while the vehicle is moving. Not more than one worker per row of seats may stand. No workers may stand or sit in the driver's area ahead of the front row of seats. Never place boards across an aisle to provide additional seating space. Do not put seats in an aisle. Standing workers must use handholds.

(e) When transporting workers in any vehicle, nobody may stand for more than 1-hour or for more than 45 miles of travel, whichever is less. After that, they must get a rest period of at least 15 minutes or be given a seat.

(7) Fueling.

(a) When fueling vehicles there may be no smoking within 35 feet.

(b) Stop vehicle engines, except diesels, while fueling.

(c) Do not fuel vehicles within 35 feet of any open fires, flame or other sources of ignition.

(d) Refilling of vehicle tanks that use liquefied petroleum gases must be done outside. Do not overfill the tanks.

(8) Hauling of gasoline and other flammables.

(a) Do not transport gasoline and other flammable liquids on commercial vehicles carrying workers except:

(A) In closed containers of not more than 5 gallons capacity, and

(B) The containers must be accepted, labeled or listed. (As per definitions in OAR 437-004-0100 Universal Definitions), and

(C) Do not carry containers inside the passenger compartment, and

(D) Secure the containers to prevent shifting and put them in well-ventilated compartments or racks.

(b) You can haul gasoline in containers of more than 5 gallons in Class "C" commercial vehicles if all workers ride in the cab of the vehicle or in a separate compartment.

NOTE: Appendix A is a reprint of Oregon Revised Statutes that govern the use of some agricultural vehicles and equipment on public highways and roads. While Oregon OSHA has the legal authority to cite these sections, law enforcement officers are the usual source of enforcement. We offer these laws here as a courtesy to Oregon agricultural employers and in the interest of employee safety.

(9) Warning devices.

(a) All commercial and industrial vehicles must have an audible warning (horn) device that can be clearly heard above the surrounding noise near the vehicle.

(b) Vehicles with obstructed view to the rear must have a backup alarm audible above the surrounding noise level, unless:

(A) The vehicle backs up only when an observer signals that doing so is safe; or

(B) The vehicle operator first verifies that no person is in the path of the reverse travel, or can enter it unobserved.

(c) When towing mobile farm equipment, if the driver cannot see the workers in or on the towed unit, there must be a way to communicate with them. Otherwise, there must be a way for the riders in the towed unit to stop it in case of an emergency.

(10) Control of exhaust gases.

(a) Exhaust pipes must direct the exhaust gases away from the operator and passengers.

(b) Insulate or isolate exhaust pipes exposed to contact.

(11) Safety equipment — vehicles operated on public roads.

(a) There must be a first aid kit on Class A and B commercial type vehicles that transport workers. First aid kits must be clean, stocked and readily available to the driver or crew.

(b) There must be a B/C fire extinguisher on Class A and B commercial type vehicles that transport workers.

(c) Vehicles designed to run less than 25 mph must display a "slow moving vehicle" emblem as in 4/J, OAR 437-004-1180, Accident Prevention Signs, Symbols, Tags of the Oregon Occupational Safety and Health Code and in ORS 483.457, "Slow Moving Vehicle Emblem."

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-3600

Roll-Over Protective Structures (ROPS) for Tractors in Agriculture

(1) Definitions.

(a) Agricultural tractor — A two- or four-wheel drive type vehicle, or track vehicle, of more than 20 engine horsepower, designed to furnish the power to pull, carry, propel, or drive implements designed for agriculture. Self-propelled implements are excluded.

(b) Low profile tractor — A wheeled tractor with these characteristics:

(A) The front wheel spacing equals the rear wheel spacing, measured from the centerline of each right wheel to the centerline of the opposite left wheel;

(B) The clearance from the bottom of the chassis to the ground is less than 18 inches;

(C) The highest point of the hood is 60 inches or less; and

(D) The tractor is designed so that a seated operator straddles the transmission.

(c) Tractor weight — Includes the protective frame or enclosure, all fuels, and other components required for normal use of the tractor. Add ballast as necessary to get a minimum total weight of 110 pounds (50.0 kilograms) per maximum power takeoff horsepower at the rated engine speed or the maximum gross vehicle weight specified by the manufacturer, whichever is the greatest. Front end weight must be at least 25 percent of the tractor test weight. If power takeoff horsepower is not available, use 95 percent of net engine flywheel horsepower.

(2) General requirements. Agricultural tractors manufactured after October 25, 1976 and before January 1, 2007, must meet these requirements:

(a) Roll-over protective structures (ROPS) for tractors used in agriculture. A roll-over protective structure must be on each tractor operated by an employee. Except as in OAR 437-004-3600(5), ROPS on wheel-type tractors must meet the test and performance requirements of one of these: The American Society of Agricultural Engineers Standard (ASAE) S306.3-1974, "Protective Frame for Agricultural Tractors — Test Procedures and Performance Requirements" and Society of Automotive Engineers (SAE) Standard J334-1970, "Protective Frame Test Procedures and Performance

ADMINISTRATIVE RULES

Requirements.” ASAE Standard S336.1-1974, “Protective Enclosures for Agricultural Tractors — Test Procedures and Performance Requirements” and SAE J1194-1994.

These ASAE and SAE standards are incorporated by reference. Get copies from:

American Society of Agricultural Engineers
2950 Niles Road, PO Box 229
St Joseph MI 49085

Society of Automotive Engineers
485 Lexington Avenue
New York NY 10017

Copies are available for review at the Oregon OSHA Resource Center, 350 Winter Street NE, Salem, Oregon 97301-3882.

(b) Agricultural tractors manufactured on or after January 1, 2007, must meet these requirements:

(A) Roll-over protective structures (ROPS) for tractors used in agriculture. A roll-over protective structure must be on each tractor operated by an employee. Except as in OAR 437-004-3600(5), ROPS on wheel-type tractors must meet the test and performance requirements of:

(i) 29 CFR 1928.52 Protective frames for wheel-type agricultural tractors — test procedures and performance requirements. Link: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=13076; and

(ii) 29 CFR 1928.53 Protective enclosures for wheel-type agricultural tractors — test procedures and performance requirements Link: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=13077 Copies of Federal OSHA rules are available at the Oregon OSHA Resource Center, 350 Winter Street NE, Salem, Oregon 97301-3882.

(3) Seat belts.

(a) When these rules require ROPS, the employer must:

(A) Have a seat belt that meets the requirement of this rule on each tractor;

(B) Ensure that workers use a seat belt while the tractor is moving; and

(C) Ensure that the worker tightens the seat belt enough to hold them in the protective area of the ROPS.

(b) Each seat belt must meet the requirements in Society of Automotive Engineers Standard J114-1994, J140-1995, J141-1995, J339-1994, and J800-1994, except;

(c) On suspended seats, fasten the seat belt to the movable part of the seat to accommodate the ride motion of the operator.

(d) The seat belt anchorage must be able to withstand a static tensile load of 1,000 pounds (453.6 kilograms) at 45 degrees to the horizontal equally divided between the anchorages. The seat mounting must be able to withstand this load plus a load equal to four times the weight of all applicable seat components applied at 45 degrees to the horizontal in a forward and upward direction. In addition, the seat mounting must be able to withstand a 500-pound (226.8 kilograms) belt load plus twice the weight of all applicable seat components both applied at 45 degrees to the horizontal in an upward and rearward direction. Floor and seat deformation is acceptable if there is no structure failure or release of the seat adjusted mechanism or other locking device.

(e) The seat belt webbing material must be resistant to acids, alkalis, mildew, aging, moisture, and sunlight.

(4) Protection from sharp surfaces. Sharp edges and corners at the operator's station must not contribute to operator injury in case of a tip over or roll-over.

(5) Exempted uses. OAR 437-004-3600(2) and (3) do not apply to the following uses:

(a) “Low profile” tractors used in orchards, vineyards or hop yards where the vertical clearance would interfere with normal use, and while their use is incidental to the work done in that location.

(b) “Low profile” tractors used inside a farm building or greenhouse where the vertical clearance does not allow a tractor with ROPS to operate, and while their use is incidental to the work done in that location.

(c) Tractors with mounted equipment that is incompatible with ROPS (e.g., corn pickers, cotton strippers, vegetable pickers and fruit harvesters);

(d) Track-type agricultural tractors whose overall width (as measured between the outside edges of the tracks) is at least three times the height of their rated center of gravity, and whose rated maximum speed in either forward or reverse is not greater than 7 mph, when used only for tillage or harvesting operations and while their use is incidental thereto, and that:

(A) Does not involve operating on slopes more than 40 percent from the horizontal; and

(B) Does not involve operating on piled crop products or residue, such as, silage in stacks or pits; and

(C) Does not involve operating near irrigation ditches, or other excavations more than 2 feet deep which contain slopes more than 40 percent from the horizontal; and

(D) Does not involve construction type work, such as bulldozing, grading or land clearing.

(6) Remounting. When ROPS is removed for any reason, remount it to meet the requirements of these rules.

(7) Labeling. Each ROPS must have a permanent label that gives the:

(a) Manufacturer's or fabricator's name and address;

(b) ROPS model number, if any;

(c) Tractor makes, models, or series numbers that it is designed to fit; and

(d) That the ROPS model was tested according to the requirements of these rules.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-6000

Adoption by Reference of Federal Standard

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal regulations printed as part of the **Code of Federal Regulations, 40 CFR 170**, in the Federal Register on 8/21/92, vol. 57, no. 163. **Subpart A — GENERAL PROVISIONS:**

(1) **40 CFR 170.1** Scope and purpose, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(2) **40 CFR 170.3** Definitions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(3) **40 CFR 170.5** Effective date and compliance dates, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(4) **40 CFR 170.7** General duties and prohibited actions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(5) **40 CFR 170.9** Violations of this part, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(6) Subpart B — STANDARD FOR WORKERS.

(7) **40 CFR 170.102** Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21952.

(8) **40 CFR 170.103** Exceptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

(9) **40 CFR 170.104** Exemptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

(10) **40 CFR 170.110** Restrictions associated with pesticide applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(11) **40 CFR 170.112** Entry restrictions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/10/94, FR vol. 59, p. 30264; 5/3/95, FR vol. 60, no. 85, p.21952; 9/1/04, FR vol. 69, no. 169, p.53341.

(12) **40 CFR 170.120** Notice of applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33207.

(13) **40 CFR 170.122** Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(14) **40 CFR 170.124** Notice of applications to handler employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(15) **40 CFR 170.130** Pesticide safety training, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21947 and 21952.

(16) **40 CFR 170.135** Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(17) **40 CFR 170.150** Decontamination, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33212.

(18) **40 CFR 170.160** Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(19) Subpart C — STANDARD FOR PESTICIDE HANDLERS.

(20) **40 CFR 170.202** Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(21) **40 CFR 170.203** Exceptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21952.

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(22) **40 CFR 170.204** Exemptions, published 8/21/92, Federal Register, vol. 57, p. 38151; 5/3/95, FR vol. 60, no. 85, p. 21953.

(23) **40 CFR 170.210** Restrictions during applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(24) **40 CFR 170.222** Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(25) **40 CFR 170.224** Notice of applications to agricultural employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(26) **40 CFR 170.230** Pesticide safety training, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 5/3/95, FR vol. 60, no. 85, p. 21953

(27) **40 CFR 170.232** Knowledge of labeling and site-specific information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(28) **40 CFR 170.234** Safe operation of equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(29) **40 CFR 170.235** Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(30) **40 CFR 170.240** Personal protective equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33213; 9/1/04, FR vol. 69, no. 169, p. 53341; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(31) **40 CFR 170.250** Decontamination, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176; 6/26/96, FR vol. 61, no. 124, p. 33213; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(32) **40 CFR 170.260** Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 7-2004, f. & cert. ef. 12-30-04; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-9010

Fumigated Areas.

(1) Scope: Covers pesticides which when applied, forms a gas to control pests.

(2) Definitions:

(a) Types of fumigants include aluminum phosphide, methyl bromide, chloropicrin, 1,3-D (Telone), dazomet, metam sodium and iodomethane.

(b) Types of fumigations include soil, space (warehouse), vertical storage, flat storage, tarpaulin, spot (includes grain handling equipment, empty tanks and empty silos), chamber, vehicle and rodent burrows.

(3) All work with fumigants must follow the instructions and precautions in the manufacturer's application manual and on the product label and MSDS.

(4) All entry points into fumigated interior areas must have signs that identify the area as fumigated and prohibit entry.

(5) Leave the signs posted according to the instructions of the manufacturer of the fumigating chemical or until the hazard resulting from the fumigation is gone, whichever is the longer time.

(6) After fumigation, there must be a way to aerate the fumigated area without contaminating other areas where there are employees.

(7) If the fumigation process requires the worker to be in the fumigated area, there must be at least one other person present to assist during an emergency. That person must have the same training and access to the same personal protective equipment as the first worker.

(8) Fumigation chambers or areas must not allow the toxic fumigants to escape or otherwise enter other areas where they can be hazardous to other workers.

(9) If the fumigant concentration can exceed 10 percent of the lower explosive limit (LEL), all electrical equipment, fittings, and connections must be vapor proof.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-9600

Lead

(1) Definition. Lead means any metallic lead, all inorganic lead compounds and organic lead soaps. All other organic lead compounds are not included.

(2) The employer is responsible to determine, before work begins, if any task or work assigned will expose employees to lead.

(3) Work that exposes employees to lead must comply with OAR 437-002-1910.1025.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

437-004-9720

Thiram

(1) Scope and application.

(a) These rules apply where worker exposure to thiram may occur during manufacture, storage, packaging, tree application, treated seedling handling, or use of thiram or thiram treated seedlings.

(b) These rules apply to the transportation of thiram or thiram treated trees except to the extent that the U. S. Department of Transportation may regulate the hazards covered by these rules.

(2) Definitions.

(a) Clean – The absence of dirt or materials that may be harmful to a worker's health.

(b) Large seedlings – Seedlings long enough or wide enough that during normal planting avoiding mouth of face contact with the thiram treated plant is difficult.

(3) General requirements.

(A) Permissible exposure limits.

(A) Do not expose workers to thiram at atmospheric concentrations more than 0.15 mg/m3 over any 8-hour period; and

(B) Do not expose workers to thiram at atmospheric concentrations more than 0.30 mg/m3 averaged over any period not longer than 15 minutes.

(C) Workers must not work more than 5 days in any 7-day period with or around thiram or thiram treated seedlings.

(D) Paragraph (3)(a)(C) above is not applicable if there is a specific thiram control program, beyond these rules and approved by the Administrator.

(b) Washing and worker hygiene.

(A) Workers must wash their hands before eating or smoking and when done working.

(B) At fixed work sites or planting units, provide warm (at least 85 degrees F, 29.4 degrees C) wash water and single use hand wiping materials for washing.

(C) Where warm water is not available within, or the means to access within, a 15 minutes travel time, provide clean water, soap and single-use towels.

(D) Advise every planter or nursery worker to bathe or shower daily.

(E) Wash or vacuum and wipe down the inside of crummies or other worker carrying vehicles at least weekly during thiram use.

(c) Personal protective measures.

(A) Workers must wear clothing that reduces skin contact with thiram on the legs, arms and torso.

(B) For those workers with thiram skin irritations, protect exposed areas with a suitable barrier cream.

(C) Workers may wear only impervious gloves.

(D) Workers' hands must be clean of thiram before placing them into gloves.

(E) Provide nursery applicators with approved respirators, disposable coveralls or rubber slickers or other impervious clothing, rubberized boots, head covers and rubberized gloves. They must use the respirators according to 4/I, OAR 437-004-1041, Respiratory Protection.

(F) Other than applicators, nursery workers who may suffer thiram exposure must have and use disposable coveralls or rubber slickers or other impervious clothing, impervious footwear and gloves, and head covers unless they use showers that comply with 4/J, OAR 437-004-1105, Sanitation.

(G) Provide eye protection that complies with 4/I, OAR 437-004-1035. Workers exposed to thiram such as during spraying, plug bundling, belt line grading and plugging or other operations must wear this eye protection.

(d) Respiratory protection.

(A) When worker exposure is more than the Permissible Exposure Limit (PEL), provide them with applicable, certified respiratory protection approved by NIOSH.

(B) Use and maintain respirators according to 4/I, OAR 437-004-1041, Respiratory Protection.

(C) Workers must wear respirators when planting large seedlings to avoid mouth and face contact with the thiram treated plant unless they use equally effective measures or planting practices.

(e) Food handling.

ADMINISTRATIVE RULES

(A) Do not store or consume food, snacks, beverages, smoking materials, or any similar items in the packing area of the nursery.

(B) Crummies or other worker carrying vehicles must have a clean area for carrying lunches.

(C) The clean area of the vehicle must be above from the floor and not used to carry other than food or other consumable items.

(D) Do not carry lunches, food or other consumable items in tree planting bags.

(E) Minimize or eliminate worker exposure to thiram spray, including downwind driftings.

(F) Workers must stand upwind when burning bags that contained thiram or thiram treated seedlings.

(f) Thiram use and handling.

(A) Nurseries must develop a quality control program approved by the Administrator to ensure that they apply only the minimum amount of thiram necessary to achieve the desired anti-browsing results to the tree seedlings.

(B) Thiram treated seedlings must set between the time of spraying and packing.

(C) Keep seedlings moist during packing and when possible during planting.

(D) Vacuum or wash floors daily where thiram is used, do not sweep them.

(E) Remove silica chips covering seedling plugs at the nursery.

(g) Labeling.

(A) Rules enforced by the Oregon Department of Agriculture, or the U.S. Environmental Protection Agency (EPA), about the labeling of thiram treated seedlings, apply.

(B) If the Oregon Department of Agriculture, or EPA, has no thiram labeling rules, each container, bundle or wrapping of thiram treated seedlings must have a clearly legible and visible tag or label, of waterproof material and printing, on which is the following in English and Spanish:

CAUTION

These seedlings are treated with an animal repellent containing Thiram (tetra-methyl thiram disulfide) that may flake off during handling. Consumption of alcoholic beverages or use of alcohol-base creams or lotions during a time span from 12 hours before to 7 days after exposure to Thiram may result in nausea, headache, vomiting, fatigue, or flushness. Exposure to Thiram may also cause irritation of the eyes, nose, throat, or skin.

Thiram may interfere with or render ineffective medications taken by epileptics or heart patients with blood-clotting difficulties. Animal studies at very high concentrations (more than 250 mg/kg) suggest that Thiram may cause birth defects.

SAFETY PRECAUTIONS

1. Keep treated seedlings moist.
2. Wear clothing to reduce skin contact with Thiram to the legs, arms and torso.
3. A fiber or cloth face mask (respirator) may be worn at the planter's discretion, except that when planting large seedlings, you must wear a respirator to avoid mouth and face contact with thiram treated plants, unless you use equally effective measures
4. Wash exposed skin areas thoroughly after handling treated seedlings and before smoking, drinking, eating or going to the bathroom.
5. If Thiram flakes contact eyes, immediately flush eyes freely with water.
6. Bathe daily and change work clothes at least every other day.

PRECAUCION

Estas plantas han sido tratadas con un repelente contra animales que tiene la substancia Thiram (tetramethyl thiram disulfide) que puede desaparecer en manoseo. La consumption de bebidas alcoholicas o el uso de cremas o lociones con base de alcohol dentro de 12 horas antes de ser expuesto o hasta 7 dias despues de ser expuesto a Thiram puede resultar en sintomas de nausea, dolor de cabeza, vomito, faiga o rubor. Contacto con Thiram puede causar irritacion de los ojos, nariz, garganta o piel.

Thiram puede interferir o desvalidar en completa las medicinas de los epilepticos o personas con condiciones de la corazon con dificultades de coagulacion de la sangre. Estudios con animals en concentraciones muy altas (mas que 250 mg/ kg) indican que Thiram puede causar deformaciones fetales. Sin que cuando se sembra plantas de semillas grandes macaras estaran requerido a evitar contacto con la boca y la cara con plantas tratado con Thiram excepto cuando otros metodos igualmente efecaz estarah usados.

MEDIAS DE PRECAUCION

1. Guardar mojados las platas siempre.
2. El trabajador necesita usar ropa para reducir el contacto de Thiram con las piernas, brazos, y el torso.
3. Una mascara de fibre o garra (mascara) se puede usar a la discrecion del plantador.
4. Lavese bien los parten expuestos cuando trate los semillos antes de fumar, tomar, comer e ir al bano.
5. Se acaso el Thiram cae en sus ojos, inmediatamente lavese los ojos libremente con agua.
6. Banese todos los dias y cambiese de ropa de trabajo por lo menos cada otro dia.

(C) Other containers or thiram handling areas must have signs and labels that comply with 4/J, OAR 437-004-1150 and 1180.

(h) Training.

(A) Where exposures to thiram may occur, train each worker about the hazards of thiram and precautions for its safe use and handling.

(B) The training must be approved by the Administrator.

(C) The training must include:

(i) The health hazard(s) of chronic exposure to thiram including the potential for birth defects, alcohol intolerance, and drug interaction.

(ii) The specific nature of work that could result in exposure to thiram and the necessary protective steps;

(iii) The purpose for, proper use, and limitations of protective devices including respirators and clothing;

(iv) The acute toxicity and skin irritation effects of thiram, and the necessary protective steps;

(v) The need for and requirements of excellent personal hygiene;

(vi) A review of the thiram rules at the worker's first training and indoctrination, and annually thereafter.

(D) Give each worker a copy of these thiram rules.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06

Department of Corrections

Chapter 291

Rule Caption: Controlling Access to Dept. of Corrections Correctional Facilities.

Adm. Order No.: DOC 10-2006

Filed with Sec. of State: 10-9-2006

Certified to be Effective: 10-9-06

Notice Publication Date: 2-1-06

Rules Amended: 291-016-0020, 291-016-0030, 291-016-0040, 291-016-0045, 291-016-0050, 291-016-0060, 291-016-0100

Subject: These rule amendments are necessary to update the policies and procedures that control access of persons, vehicles, tools and equipment to Department of Corrections correctional facilities. new provisions have been added for access by other agency liaison, particularly police officers and parole officers, who enter correctional facilities to conduct official business. Other provisions have been added to control access of electronic devices into correctional facilities.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-016-0020

Definitions

(1) Contractor: Any person under contractual arrangement to provide services to the Department of Corrections.

(2) Employee: Any person employed full time, part time or under temporary appointment by the department.

(3) Facility: The building and grounds area operated by a functional unit which physically houses inmates.

(4) Facility Access: The designated location in a facility which is the only authorized entrance (except as authorized by the functional unit manager or designee) and exit for persons desiring access into or out of the perimeter of the facility.

(5) Facility Visitor: Any person authorized access inside the secure perimeter of a facility who is not a department employee, contractor, volunteer, other agency liaison or who is not an inmate visitor at the facility.

(6) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of program services or coordination of program operations. In a correctional facility, the functional unit manager is the superintendent.

(7) Functional Unit Facility: A term used to declare any Department of Corrections facility in which a functional unit person performs his/her duties or services.

(8) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(9) Functional Unit Person: Any employee, contractor, approved carded volunteer, or other agency liaison assigned to work or provide services at a functional unit facility.

(10) Identification Card (ID Card): A picture identification card authorized by the Department of Corrections and issued to a department employee, contractor, volunteer, or other agency liaison.

(11) Inmate Visitor: A person approved by the functional unit manager or designee to visit an inmate who resides in a facility.

(12) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

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(13) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(14) Other Agency Liaison: Employees from other state and local agencies that have ongoing business need serving inmates and employees of the department. These employees include, but are not limited to, county parole and probation officers and state police detectives.

(15) Reception Center (Inmate): The designated location(s) in a facility which is designed for transport officials to deliver or pick up an inmate housed in a functional unit.

(16) Reception Center (Public): The designated location(s) in a facility designed to control access for persons to enter the general inmate population area(s).

(17) Secure Perimeter: A manufactured structure (usually a fence or wall) that encloses a portion of the grounds and buildings and is designed to control entry or exit within the enclosure. The manufactured structure may use electronic detection for intrusion, doors and/or gates for entry and exit, lighting for visibility, and other physical restrictions such as razor ribbon, no climb fencing, and buried concrete curbing.

(18) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities, and programs of the department. A carded volunteer has completed a volunteer application, volunteer training, facility orientation, and functional unit orientation, and has been approved by a functional unit manager or his/her designee.

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 24-1999(Temp), f. 7 cert ef. 12-22-99 thru 6-19-00; DOC 12-2000, f. & cert. ef. 6-19-00; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0030

General Guidelines

(1) Access to the facility and its grounds will be controlled to maintain security, sound order, or discipline.

(2) Access to the facility and its grounds will be granted to persons not assigned to the facility for official business, operational necessities, and other activities as approved by department directives or the functional unit manager or designee.

(3) Access to all facilities for persons will be through the facility access location as specified by the functional unit manager or designee.

(4) All persons entering the facility will be required to comply with department directives.

(5) No person will leave or carry onto the grounds of the facility explosive devices, firearms, ammunition, alcoholic beverages, narcotics, dangerous drugs, and objects or material of any kind which might be used to compromise the security, sound order, or discipline of the facility, except as provided in the section (6) below.

(6) Drug detection dog handlers are authorized to possess and use search and training aids (i.e., controlled substances including, but not limited to marijuana, heroin, cocaine, and methamphetamines) within and outside the department's correctional facilities in the course of performing drug searches and training assignments.

(7) Physical welfare cannot be guaranteed since there is an inherent risk for violence in a prison environment.

(8) All persons entering the facility will be subject to screening devices similar to metal detectors. All inmates, employees, volunteers and visitors confined, working or visiting will be subject to search of their persons, living units, work areas, vehicles, possessions and other property as specified in the Department of Corrections rule on Searches (Institutions) (OAR 291-041).

(9) All persons entering the facility will be required to provide sufficient information for the functional unit to review criminal history and background. Any persons may be denied access to a facility if it would compromise the security, sound order, or discipline of the facility.

(10) All persons entering the facility will be required to possess and present on demand adequate identification as defined in the Department of Corrections rule on Visiting (Inmate) (OAR 291-127) or the policy on Identification Cards #20.5.15.

(11) All persons entering the facility, other than the employees assigned to work at that facility or OCE employees assigned to work at that facility, will be required to complete the appropriate facility register.

(12) All persons entering the facility will be required to meet the appropriate dress code as specified in the Department of Corrections rule on Visiting (Inmate) (OAR 291-127) or the policy on Dress Code #20.1.6.

(13) All facility visitors, except department and OCE employees, carded volunteers, contractors, and other agency liaison, will be under the continual supervision of a functional unit person, unless no supervision has been authorized by the functional unit manager or designee or department directive.

(14) No exchange of material or conversation will be permitted between an inmate and a visitor entering the facility or grounds except as authorized by the functional unit manager or designee.

[ED. NOTE: Attachment referenced is available from the agency.]

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; CD 3-1993(Temp), f. & cert. ef. 2-4-93; CD 13-1993, f. 5-12-93, cert. ef. 6-1-93; DOC 24-1999(Temp), f. 7 cert ef. 12-22-99 thru 6-19-00; DOC 12-2000, f. & cert. ef. 6-19-00; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0040

Employee Access

(1) The Department employee ID card will grant access to its authorized holder to any Department of Corrections functional unit or facility to perform required Department duties.

(2) An employee will be granted unrestricted access to his/her assigned functional unit facility(ies) to perform required Department duties.

(3) An employee will be granted access to a facility other than his/her assigned facility(ies) to perform required Department duties. The employee will perform the following:

(a) Present his/her Department ID card at the facility entrance and/or reception center;

(b) Complete the Facility Access Register (CD 52a);

(c) Display his/her Department ID card on the upper chest area while at the facility; and

(d) Place the time of departure and initial the Facility Access Register before leaving the facility.

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0045

Oregon Corrections Enterprises Employee Access

(1) The OCE employee ID card will grant access to its authorized holder to any Department of Corrections functional unit or facility to perform required agency duties.

(2) An OCE employee will be granted unrestricted access to his/her assigned functional unit facility(ies) to perform required agency duties.

(3) An OCE employee will be granted access to a facility other than his/her assigned facility(ies) to perform required agency duties. The employee will perform the following:

(a) Present his/her Oregon Corrections Enterprises ID card at the facility entrance and/or reception center;

(b) Complete the Facility Access Register (CD 52a);

(c) Display his/her Oregon Corrections Enterprises ID card on the upper chest area while at the facility, and

(d) Place the time of departure and initial the Facility Access Register before leaving the facility.

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

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

Hist.: DOC 24-1999(Temp), f. 7 cert ef. 12-22-99 thru 6-19-00; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0050

Contractor, Volunteer, and Other Agency Liaison Access

(1) The department contractor, volunteer, or other agency liaison ID card will grant access to its authorized holder to the assigned functional unit or facility(ies) to perform required Department duties and/or activities.

(2) The contractor, volunteer, or other agency liaison will perform the following:

(a) Proceed through the metal detector or similar device and meet security and dress standards as required by department directives (except police officers and parole and probation officers with proper identification will not be required to proceed through the metal detector);

(b) Present his/her Department ID card at the facility entrance or reception center;

(c) Complete the Facility Access Register (CD 52a);

(d) Present his/her Department ID card on the upper chest area while at the facility; and

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(e) Place the time of departure and initial the Facility Access Register before leaving the facility.

(3) Steps (a) through (e) above may be waived individually or collectively by authorization of the facility functional unit manager.

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0060

Facility Visitor Access

(1) The facility reception center will maintain sufficient quantities of "facility visitor" ID cards. The facility visitor ID cards will be red in color and numbered in sequence.

(2) The facility visitor ID card will be worn by the facility visitor entering the secure perimeter.

(3) The Visitor Authorization form (CD 451) will be used to authorize persons for official business for tours, meetings, repair service, estimates, consultation and other operational necessities.

(4) A Visitor Authorization form will be completed to authorize the entry of a facility visitor into the secure perimeter. Names on the form will be listed by last name first, first name last, and in alphabetical order.

(5) The Visitor Authorization form will require the authorization signature of a functional unit manager or designee.

(6) The Visitor Authorization form will be routed to the reception center (public) prior to the designated time of the visit.

(7) The facility visitor will perform the following:

(a) Proceed through the metal detector or similar device and meet security and dress standards as required by the functional unit facility. Police officers and parole officers with proper identification will not be required to pass through the metal detector, however, they will be required to follow all of steps (b) through (g) below;

(b) Complete the Facility Access Register (CD 52a);

(c) Provide his/her drivers license or other suitable photo identification as a deposit to the reception center. Police officers and parole officers will be required to provide their professional police officer and parole officer identification. Police officers and parole officers may be requested to provide a phone number or contact person for verification purposes;

(d) Obtain a facility visitor ID card at the reception center;

(e) Display the facility visitor ID card on the upper chest area while at the facility;

(f) Remain under the supervision of the functional unit person, (escort) authorized by the functional unit manager or designee, while inside the secure perimeter; and

(g) Return the facility visitor ID card to the reception center, obtain his/her deposited photo identification, and place the time of departure and initial the Facility Access Register before leaving the facility.

(8) The use of the metal detector or similar device may be waived individually or collectively by authorization of the facility functional unit manager.

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 10-2006, f. & cert. ef. 10-9-06

291-016-0100

Tool and Equipment Access

(1) All tools and equipment that enter or exit the facility's secure perimeter require approval of the security manager or designee.

(2) Electronic Devices:

(a) A person will not be allowed to bring in a *personal* cellular phone, pager, laptop computer, personal digital assistant or other electronic communication device beyond the control point of a correctional facility unless specifically authorized by the security manager or designee. The functional unit manager shall designate the control point of the correctional facility.

(b) Department staff may bring in department-issued electronic two-way communication devices (e.g., pager, cellular phone, personal digital assistant, etc.) beyond the control point of a correctional facility when such devices are necessary for the staff member to perform official duties. Department staff must declare the two-way communication device on the Facility Access Register (CD 52a).

(c) Investigators from the Oregon State Police are permitted to bring state-issued cell phones and pagers beyond the control point of a correctional facility while conducting official business without prior authorization from the security manager or designee.

(d) Any other electronic devices *not* covered in sections (a) through (c) that enter a correctional facility beyond the control point require approval of the security manager or designee.

(3) All tools and equipment will be searched for contraband prior to entry and exit of the secure perimeter.

(4) All tools and equipment that enter the secure perimeter on a temporary basis will be inventoried prior to entry and re inventoried before exit from the facility. Any discrepancies with the inventory will be immediately reported to the security manager or designee.

(5) All tools and equipment that enter the secure perimeter on a temporary basis will be under continual surveillance by a functional unit employee while inside the facility or locked in a secure area.

(6) Tools and equipment that enter or exit a facility with no secure perimeter will be granted access as authorized by the security manager or designee.

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

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

Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 10-2006, f. & cert. ef. 10-9-06

Rule Caption: Assignment of Inmates to Disciplinary Segregation.

Adm. Order No.: DOC 11-2006

Filed with Sec. of State: 10-12-2006

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Rules Amended: 291-011-0010, 291-011-0015, 291-011-0020, 291-011-0025, 291-011-0030, 291-011-0035, 291-011-0040, 291-011-0050, 291-011-0060, 291-011-0064, 291-011-0080

Subject: These rule amendments are necessary to update procedures for the management and observation of inmates assigned to the disciplinary segregation unit, in particular those inmates who display aggressive or destructive behavior and those inmates placed on dry cell status for safe recovery of internally concealed contraband. Other amendments are needed to make the rule consistent with other department rules, and reflect operational changes that have occurred within the department.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-011-0010

Definitions

(1) Close Supervision Status: Placement of an inmate so that he/she is more restricted than other inmates in disciplinary segregation status. This status is designated for inmates whose actions disrupt the safe and orderly operation of disciplinary segregation.

(2) Disciplinary Segregation: The placement of an inmate in a housing program status which separates him/her from the main population of the facility in accordance with Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Disciplinary Segregation Supervisor: That person designated by the functional unit manager to oversee the daily operation of the Disciplinary Segregation Unit (DSU).

(4) Dry Cell Status: A visual inspection process which, after reasonable suspicion has been established, allows for the placement of an inmate in a cell for the safe recovery of internally concealed foreign substances, instruments, and other contraband.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, or Assistant Director, or administrator and has responsibility for the delivery of program services or the coordination of program operations. In a correctional facility, the superintendent is the functional unit manager.

(6) Long-Term Status: Any inmate confined in segregation status or in disciplinary segregation for 30 or more consecutive days.

(7) Mental Health Professional: An individual who by virtue of his/her education, credentials, and experience is permitted to care for the mental health needs of patients. This includes, but is not limited to, psychiatrists, psychologists, psychiatric social workers and psychiatric nurse practitioners.

(8) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(9) Officer-of-the-Day: That person designated by the functional unit manager and approved by the Assistant Director for Operations or Institutions Administrator to act on behalf of the functional unit manager during non-business hours and other periods when the functional unit manager may be absent.

(10) Oregon Accountability Model: A plan composed of six components that is designed to strengthen the department's ability to hold inmates

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and offenders accountable for their actions and staff accountable for achieving the mission and vision of the department.

(11) **Qualified Health Care Professional:** This includes physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients.

(12) **Reasonable Suspicion:** An apparent state of objective facts and rational inferences drawn there from which would permit a reasonable and experienced correctional staff person to conclude that an inmate is possessing contraband or is committing a crime or rule violation or conspiring or attempting the same.

(13) **Short-Term Status:** Any inmate confined in segregation status or in disciplinary segregation less than 30 consecutive days.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0015

Selection of Disciplinary Segregation Unit (DSU) Staff

(1) Selection Criteria:

(a) To qualify for a post solely assigned to disciplinary segregation, the employee:

(A) Must have successfully completed trial service;

(B) Must have completed mental health training for working with mentally ill inmates as provided by the Professional Development Unit; and

(C) Must have achieved a satisfactory on the most recent performance appraisal at the time of application and assignment to disciplinary segregation. At a minimum, the staff member must meet the criteria listed in this rule:

(i) Have demonstrated support of the Oregon Accountability Model;

(ii) Have demonstrated maturity and tolerance;

(iii) Have demonstrated a constructive interest in working with inmates in disciplinary segregation;

(iv) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(v) Have demonstrated the ability to use good judgment.

(2) Assignments to Disciplinary Segregation Posts:

(a) Assignment to disciplinary segregation posts will be made by the functional unit manager or designee and will be reviewed at least semi-annually.

(b) Rotation of staff assigned to disciplinary segregation posts may occur as it is found to be in the best interest of the employee or the facility, upon determination by the functional unit manager or designee.

(c) Staff may not be assigned to a disciplinary segregation post for a period exceeding 24 consecutive months. Any staff having been assigned to a disciplinary segregation post for 24 consecutive months must be reassigned to a post not associated with a special housing unit for a minimum of six months.

(d) Temporary assignment to a fixed disciplinary segregation post will be made by the functional unit manager or designee. Temporary assignments shall be given only to employees who meet the initial qualifications as specified in this rule, unless waived by the Assistant Director for Operations or designee. Whenever possible, temporary assignments will be given only to employees who have successfully completed training specified by the Department of Corrections.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0020

Handling Disturbances/Officer-in-Charge

(1) Any and all disturbances which involve inmates in disciplinary segregation will be reported immediately to the officer-in-charge who will take any necessary, immediate emergency action. When any disturbance occurs that requires an unusual incident report, the officer-in-charge will immediately notify the appropriate administrative staff. The unusual incident report will be completed as required by the Department of Corrections policy on Unusual Incident Reporting Process (40.1.6).

(2) The officer-in-charge or designee will make the decisions, organize, assign, direct, control and observe, but will not become physically involved in situations where an inmate must be subdued and placed in or

removed from a cell, nor in other disturbance situations which require time to organize necessary control action and assemble personnel.

(3) The use of physical force, chemical agents, and/or physical restraints must be in accordance with the Department of Corrections rule on Use of Force (OAR 291-013).

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0025

Assignment and Removal of Inmates

(1) Inmates will be assigned to disciplinary segregation in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or designee or the officer-in-charge may order immediate placement of an inmate in disciplinary segregation when it is necessary to protect the inmate or others, or for the safety, security and orderly operation of the facility.

(2) Immediately following any verbal threat of self destruction or act of self-destruction by an inmate, a mental health professional, if readily available or a registered nurse if a mental health professional is not readily available, will be consulted by the officer-in-charge to determine the proper course of action, in accordance with the rule on Suicide Prevention in Correctional Facilities (OAR 291-076).

(3) Dry Cell Status:

(a) An inmate may be placed on dry cell status by the officer-in-charge.

(b) An inmate placed on dry cell status will remain isolated from other inmates for a period not to exceed 72 hours, unless authorized by the functional unit manager.

(c) An inmate shall not be permitted visits while on dry cell status.

(d) There will be no interruption of normal food intake. The inmate will be provided water upon request.

(e) Additional specific procedures for placing an inmate on dry cell status are included in the department's policy on Dry Cell Status (40.1.11).

(4) Inmates assigned to the Disciplinary Segregation Unit may be temporarily assigned to other treatment, program or service units (e.g., infirmary, Administrative Segregation Unit, Special Management Unit) for treatment or programming as deemed necessary and advisable by the department. Once the inmate has been assigned to a unit other than the Disciplinary Segregation Unit, the operating policies of the newly assigned unit will be used to manage the inmate.

(5) Release from disciplinary segregation, other than for emergency medical treatment or for transfer to another agency, will be authorized only upon order of the functional unit manager or designee.

(6) Inmates assigned to disciplinary segregation will be permitted minimally to leave their cell for visits, exercise, showers, medical, dental, mental health or authorized services or activities. An employee designated by the officer-in-charge will assign escort supervision. Disciplinary-segregated inmates will not be permitted to leave their cells without prior approval from the disciplinary segregation supervisor. Routine staff/inmate interviews shall take place at the inmate's cell.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 13-2005(Temp), f. & cert. ef. 9-27-05 thru 3-26-06; Administrative correction 4-19-06; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0030

Situational Reviews

(1) Inmates assigned to disciplinary segregation shall remain so assigned for only the shortest length of time necessary to achieve the purpose for which assignment was prescribed in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(2) For inmates who have been identified with severe or the highest mental health treatment needs, a clinical interview will be conducted and documented by a qualified mental health professional upon notification of the admission of the inmate into a disciplinary segregation unit. Requests for psychological intervention by a qualified mental health professional may also be initiated by a staff member working in disciplinary segregation, or by an inmate in disciplinary segregation.

(3) An assessment will be made by the Special Needs Inmate Evaluation Committee on each inmate in continuous disciplinary segrega-

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tion at least every 30 days. Adjustment to segregation and early release from segregation will be considered for recommendation to the functional unit manager.

(4) Close Supervision:

(a) A close supervision status cell may temporarily be used to house an inmate:

(A) Whose behavior is deemed so aggressive or destructive that housing for protection of self, others or property is indicated.

(B) Whose behavior creates a serious disruption to the safety, security or orderly operation of the unit.

(b) An inmate placed on close supervision status must be reviewed and approved by the officer-in-charge or designee.

(c) An inmate on close supervision status will be reviewed daily by the officer-in-charge. If the inmate's behavior warrants, he/she may be removed from close supervision status.

(d) The security manager or Assistant Superintendent of Security will review inmates on close supervision status at least weekly.

(5) Every inmate in disciplinary segregation status will be checked at least once every 30 minutes, but on an irregular basis by a DSU staff member.

(6) Inmates will receive visits from the disciplinary segregation supervisor at least once a shift.

(7) A qualified health care professional will tour the unit daily unless medical or mental health attention is needed more frequently.

(8) The officer-in-charge or designee will tour the Disciplinary Segregation Unit at least once per shift.

(9) The functional unit manager or designee and the security manager or Assistant Superintendent of Security will tour the Disciplinary Segregation Unit weekly.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0035

Maintaining and Recording Information

(1) Disciplinary segregation logs will be maintained with the following methods:

(a) All entries made with ink.

(b) Mistakes will be lined out and initialed by the person who made the error.

(c) No spaces will be left blank between entries.

(d) No pages will be skipped.

(e) No sheets will be removed.

(f) Sheets may be added for continued or additional information.

(g) All logs will be retained in accordance with archive records retention schedules.

(h) All entries in the log must bear the staff member's signature.

(i) All logs will be reviewed monthly by the Assistant Superintendent of Security or security manager.

(2) Disciplinary segregation logs will record the following minimum information:

(a) All movement in or out or within the Disciplinary Segregation Unit and purpose of the visit.

(b) All cell assignments in the Disciplinary Segregation Unit.

(c) All unusual incidents that occur in the Disciplinary Segregation Unit.

(d) All inmate telephone calls.

(e) All cell searches.

(f) All 30-minute cell checks.

(g) All services and activities deprived or not provided an inmate as required by this rule.

(h) Any non-compliance of a requirement of this rule, which should immediately be reported to the Assistant Superintendent of Security or security manager.

(i) All exercise periods.

(j) All inmates placed on close supervision or dry cell status.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0040

Security

(1) Door Security:

(a) Entry doors into the Disciplinary Segregation Unit and the entry door to each tier in disciplinary segregation will be locked at all times, except when in use for authorized traffic. If the entry doors to the facility are open, all entry doors to the tiers must be locked.

(b) Cell doors will be closed and locked at all times, except during inspections and when an inmate is entering or leaving the cell. There will be no instances of two occupied cells on individual tiers or two occupied cells in the same section being opened at any given moment, except in case of an emergency (i.e., emergency evacuation).

(c) Two staff members to one inmate must be present at the cell when the door of any occupied single person cell is unlocked.

(d) If the cell houses two inmates and only one inmate is to be removed from the cell, at least three staff members must be present to complete the removal. The cell door will remain secured until the inmate scheduled for removal has been restrained.

(e) At least four staff members must be present at the cell when the door of any cell occupied by two unrestrained inmates is unlocked or opened or when both inmates are removed from the cell at the same time.

(2) Escort Security:

(a) All inmates will be placed in restraints when escorted by staff.

(b) Escort levels in the Disciplinary Segregation Unit will be determined by the Assistant Superintendent of Security or security manager. The escort level will be based on the inmate's behavior while housed in disciplinary segregation.

(c) Minimally, the escort level must be one staff member to one inmate when the inmate is outside the segregation unit. Escort requirements can be adjusted to two staff members to one inmate when deemed appropriate.

(3) Searches:

(a) Every inmate assigned to the Disciplinary Segregation Unit will be skin searched before being placed in a cell. All items of clothing issued or worn by the inmate will be thoroughly examined for contraband. All inmates will be searched in accordance with the Department of Corrections rule on Searches (Institutions) (OAR 291-041).

(b) Inmates entering the Disciplinary Segregation Unit for purposes other than segregation will be minimally frisk searched.

(c) Every item of material or equipment (i.e., book magazine, clothing, etc.) will be carefully searched by the disciplinary segregation staff before acceptance in the Disciplinary Segregation Unit.

(d) All disciplinary segregation cells and cell equipment will be visually inspected daily.

(e) Every disciplinary segregation cell will be searched at least twice monthly and before and after each occupancy.

(A) Any deficiencies noted will be immediately reported to the disciplinary segregation supervisor.

(B) Any unauthorized materials located will be removed and delivered immediately to the disciplinary segregation supervisor and processed in accordance with the rule on Personal Property Control (Inmate) (OAR 291-117).

(C) Sanitation standards will be maintained to ensure the same standards as those required throughout the facility.

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0050

Property

(1) Any personal property, as defined in the Department of Corrections rule on Personal Property Control (Inmate) (OAR 291-117), not permitted in the cell of any disciplinary-segregated inmate will be properly protected in a location designated by the functional unit manager. Upon release from the Disciplinary Segregation Unit, the inmate will check his/her personal property and sign the property sheet.

(2) The following standard items are issued to all inmates in disciplinary segregation:

(a) Writing utensil

(b) Coveralls (orange)/two-piece scrub;

(c) Shower shoes (one pair);

(d) Towel;

(e) Blanket(s) (staff will determine appropriate number issued consistent with general population standards);

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- (f) Sheets (two total);
- (g) Mattress;
- (h) Pillow;
- (i) Pillow case;
- (j) Socks (one pair);
- (k) Soap;
- (l) Toothbrush;
- (m) Comb;
- (n) Undergarments;
- (o) Property box;
- (p) Envelopes (two);
- (q) Writing paper; and
- (r) Inmate communication forms (two total).

(3) Inmates classified as short-term status are allowed the standard issued items plus the following personal property:

- (a) Envelopes (20 total);
- (b) Library book (one);
- (c) Newspaper (one);
- (d) Magazines (three total);
- (f) Legal work (pending); and
- (g) Address book.

(4) Those inmates classified as long-term status are allowed the standard issued items, personal property identified for short-term status inmates, plus the following personal property:

- (a) Library books (three total)
- (b) Disciplinary Segregation Unit approved canteen items purchased after admission to DSU;
- (c) Photographs (ten total); and
- (d) Magazines and newspapers which MAY be exchanged if approved by the disciplinary segregation supervisor.

(5) Property for inmates in close supervision status includes the following (unless a specific deprivation order exists as authorized in OAR 291-011-0064):

- (a) Clothing (coveralls, shower shoes, undergarments, socks);
- (b) Bedding/linens (mattress, pillow and pillowcase, two sheets, blankets and towel); and
- (c) Basic hygiene items (toothbrush, comb, toilet paper and soap).

(6) An inmate on close supervision status will not be allowed to maintain personal property in his/her cell. Pen or pencil, paper, envelopes and mail/legal work will be issued daily if requested for a four-hour block of time.

(7) Disciplinary-segregated inmates will be permitted to retain basic personal health items (i.e., dentures, prescribed glasses, hearing aids).

(8) Disciplinary-segregated inmates will be permitted religious items as approved by the chaplain and security manager in accordance with the rule on Religious Activities (OAR 291-143).

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075

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

Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0060

Services and Activities

(1) Canteen: Canteen items may be purchased every other week by those inmates who have available funds in their trust accounts.

(a) Close supervision status and short-term status inmates may ONLY purchase envelopes (maximum of 20).

(b) Long-term status inmates may purchase authorized items from the disciplinary segregation canteen list and additional items as authorized by the functional unit manager.

(2) Food:

(a) Except when under special diet specifically prescribed by the medical officer, each disciplinary-segregated inmate shall receive food prepared in accordance with the sanitation standards specified in the Department of Corrections rule on Food Service Programs (OAR 291-061). Inmates in disciplinary segregation will receive food of the same quality and standard ration as inmates in general population, unless security circumstances dictate otherwise or the inmate has been placed on a special medically approved diet. Partial meals will not be served.

(b) Religious diets must be approved by the facility chaplain.

(c) Food delivery to each inmate in his/her cell will be accomplished by a staff member.

(d) Controlled feeding (nutra loaf) may be substituted for the meal in accordance with the department's rule on Controlled Feeding (OAR 291-083).

(e) Food shall never be used as a reward or as a punishment.

(3) Clothing: A clean set of outer garments and undergarments will be provided on an exchange basis three times a week.

(4) Linen: A clean towel will be provided when an inmate showers. Clean sheets and pillow cases will be provided on a weekly basis.

(5) Medical/Dental/Mental Health Services:

(a) Each disciplinary-segregated inmate will be visited at least daily by a member of the medical staff. The medical staff member will then process requests for medical, dental, and mental health services to the appropriate staff member.

(b) Health care and mental health services will be provided to inmates in disciplinary segregation according to the Department of Corrections rule on Health Services (Inmate) (OAR 291-124).

(c) If a disciplinary-segregated inmate complains of a medical, dental or psychological problem at other than the time of the medical staff member's visit, the staff member receiving the complaint will notify the disciplinary segregation supervisor who will make the request for service to the appropriate section in a timely manner. The request for service will be documented on the inmate's record.

(d) If the disciplinary-segregated inmate's medical or mental health condition is not treatable in his/her cell, the inmate will be escorted to appropriate facilities. Unless otherwise ordered by the Assistant Superintendent of Security or security manager, security supervision will be maintained throughout the inmate's examination and treatment.

(e) Any disciplinary-segregated inmate transferred from the facility for treatment will, upon his/her return, resume disciplinary segregation assignment unless confinement elsewhere is recommended by facility medical, dental, or mental health professionals and approved by the functional unit manager or the officer-of-the-day.

(6) Personal Hygiene:

(a) Inmates in disciplinary segregation will have the opportunity to shower and shave at least three times weekly.

(b) Arrangements for haircuts will be made by the disciplinary segregation supervisor once a month.

(7) Inmate Communication Form: Each disciplinary-segregated inmate may write to any staff member by submitting an inmate communication form. Inmate communication forms will be made available once per day. Submitted inmate communication forms will be forwarded without undue delay.

(8) Correspondence:

(a) Each disciplinary-segregated inmate will be allowed to correspond in accordance with the Department of Corrections rule on Mail (Inmate) (OAR-291-131).

(b) Disciplinary segregation staff will inspect all incoming mail prior to distributing to inmate. All legal mail must be opened in the presence of the inmate.

(9) Visits: Inmates assigned to disciplinary segregation shall be granted visits in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127).

(10) Legal visits will not be denied to a segregated inmate unless his/her conduct is so disruptive that the safety, security and orderly operation of the facility would be compromised.

(11) Reading:

(a) Reading material will be issued or exchanged at least weekly.

(b) The disciplinary segregation supervisor will coordinate activity with the appropriate staff member to assure adequate availability of books and/or magazines for disciplinary-segregated inmates. All such items entering or leaving disciplinary segregation shall be inspected by the Disciplinary Segregation Unit staff member handling entry/exit for contraband and/or abuse.

(12) Exercise: Inmates in disciplinary segregation will be provided opportunity to exercise a minimum of 40 minutes, which includes shaving and showering, per day, five days a week, in an area and manner specified by the functional unit manager, unless security, staff availability or safety considerations dictate otherwise as authorized by the security manager.

(13) Religious Services:

(a) Religious Services staff will visit each disciplinary-segregated inmate once a week, if the inmate requests.

(b) No inmate will be denied the opportunity to receive religious guidance from staff chaplains or approved religious volunteers while in disciplinary segregation. The practice of his/her religion may be restricted to the inmate's cell.

(14) Work: Inmates in disciplinary segregation will only be permitted work assignments that include maintenance of their own quarters and the disciplinary segregation facilities.

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(15) Telephone Services: Telephone calls related to legal matters will be handled in accordance with the Department of Corrections rule on Telephones (Inmate) (OAR 291-130). Telephone calls other than legal calls will be limited to verified emergency situations (death, serious illness, or injury to an immediate family member, etc.) or as authorized by the functional unit manager or designee.

(16) Legal Activities: Inmates assigned to disciplinary segregation shall be permitted to pursue their legal activities according to the procedures prescribed in the Department of Corrections rule on Legal Affairs (Inmate) (OAR 291-139).

Stat. Auth.: ORS 179.040, 421, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0064

Forfeiture/Deprivation of Service or Activity

(1) A disciplinary-segregated inmate may be required to forfeit or be temporarily deprived of any service or activity when the inmate is using them to destroy or damage property, obstruct security, or threatens physical violence to himself/herself or others. If an inmate is using any service or activity for self-destruction, that service/activity may be temporarily removed upon order of the officer-in-charge or designee. Any item(s) withheld shall be returned at the earliest possible time when the basis for removal has ceased to exist. Deprivation orders will be reviewed every eight hours by the officer-in-charge.

(2) Services and activities may be forfeited or deprived as a result of a disciplinary sanction in accordance with the Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Forfeiture of a service/activity will be reviewed weekly by the Special Needs Inmate Evaluation Committee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

291-011-0080

Disciplinary Segregation Units in Minimum Custody Facilities

(1) Due to their size and available staffing, minimum custody facilities will be exempt from the following provisions of the Department of Corrections rule on Segregation (Disciplinary) (OAR 291-011). These provisions will be modified as described below.

(2) An inmate may be placed on close supervision status under the provisions listed in OAR 291-011-0030 and remain so until terminated by the functional unit manager or transfer to another facility.

(3) Recreation outside of the cell will not be available.

(4) Staff Selection Criteria: Employees regularly assigned to the facility will staff the Disciplinary Segregation Unit.

(5) Inmates in disciplinary segregation requesting psychological intervention will be referred to the facility medical staff.

(6) Inmates in disciplinary segregation will be visited by a qualified health care professional at least daily, unless medical attention is ordered more frequently in specific cases by the facility's physician. Requests for medical attention made to security staff will be referred to the officer-in-charge who will determine the appropriate action to be taken.

(7) Facilities that have five or seven-day-a-week health care available will ensure that inmates in disciplinary segregation are seen by a health care official each day.

(8) Door Security: The outer door to each segregation cell shall remain locked when not in use for authorized traffic.

(9) When possible, staff will restrain all inmates in a cell prior to the unlocking/opening of the cell door. The functional unit manager may waive this requirement based upon facility design and operational requirements.

(10) Property: In addition to authorized issued items, the following property will be authorized in disciplinary segregation:

(a) Personal letters;

(b) Photographs (ten total, will not be retrieved from inmate's personal property);

(c) Paperback books (three total);

(d) Magazines (three total, will not be retrieved from inmate's personal property);

(e) Legal papers requiring immediate action (approved by facility legal librarian);

(f) Pen or pencil;

(g) Paper;

(h) Envelopes; and

(i) Medically approved denture cleanser and denture adhesive.

(11) Canteen will not be available except for the purchase of ten envelopes.

(12) If a disciplinary segregated inmate complains of medical, dental or mental health problems at other than the time of the medical staff member's visit, the officer-in-charge will consider the request and determine if immediate action is warranted. If necessary, the officer-in-charge will utilize the established mental health/medical on-call system.

(13) All requests for religious guidance or counseling will be submitted in writing by the inmate and directed to the chaplain or approved religious volunteer for the facility.

(14) Inmates receiving disciplinary sanctions of 14 days or less may complete their sanctions at these facilities. Any inmate sanctioned to 15 or more consecutive days of disciplinary segregation shall be transferred to a facility capable of housing disciplinary segregated inmates in compliance with OAR 291-011-0015 through 291-011-0064.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06

Department of Energy Chapter 330

Rule Caption: Business Energy Tax Credit program changes that primarily impact transportation projects.

Adm. Order No.: DOE 2-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 7-1-06

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0130

Subject: All Types of Transportation, except Research Development and Demonstration and bicycle purchase: Adopts a model to evaluate project cost effectiveness by establishing the cost per Vehicle Mile Reduced to calculate the maximum eligible cost of each project.

Bicycles: Establishes a maximum eligible cost for a commuting bicycle.

Commuter Pool Vehicles: Increases the ridership requirement for commuter pool vehicle eligibility from two persons to three persons.

New Types of Transportation projects: Establishes definitions and criteria for three new types of transportation projects to be eligible for the Business Energy Tax Credit: individualized travel behavior change programs, ridershare matching service programs, carpools and vanpools.

Housekeeping: Housekeeping changes will be considered including re-formatting definitions for clarification and changing language to improve the application review process or other changes required to better meet the objectives of Oregon Revised Statute 469.185; 315.354; 315.356.

Rules Coordinator: Kathy Stuttaford—(503) 378-5268

330-090-0105

What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying energy or conservation projects. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying energy or conservation projects. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications received by ODOE on or after October 1, 2006.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

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330-090-0110

Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A fueling facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(6) "Building Automation Controls Project": Systems that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 17(b)(D) of this rule.

(7) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(8) "Carpool Program": A program in which riders share the same vehicle to commute between different communities/ neighborhoods on a regular basis.

(9) "Car Sharing Program": A program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(10) "Commercial New Construction": A new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(11) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process

of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(12) "Commercial Process": An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(13) "Commuter Parking Space" means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(14) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(15) "Completed Project": An energy or conservation project for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(16) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(17) "Cost": The actual capital costs and expenses the Director finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the project; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) Other costs the Director excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the project is the value paid for the project. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If an energy or conservation project serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more

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because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have a 15-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project,

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service and transportation services. Except for RD&D projects, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation projects is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the project.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the project cost based on similar projects, but not exceeding 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building projects OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(18) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Web site of the Oregon Department of Energy.

(19) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(20) "Energy or Conservation Project": A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be

located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself; and

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units; and

(C) The entire project complies with these rules; and

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(17)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (20)(d), an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and

(B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Final Certification": Final certificate issued upon completion of an approved BETC project.

(23) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(24) "Hybrid Electric Vehicle": A vehicle which draws propulsion energy from onboard sources of stored energy which include both an inter-

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nal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(25) "Individualized Travel Behavior Change Program": A program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(26) "Industrial Process Energy Project": Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) Provides substantial energy savings from conservation, or;

(b) Provides substantial energy savings through the use of renewable resources; or

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) Prepares or conditions alternative fuels for distribution or dispensing; or

(e) Increases industrial process efficiency through recycling market development; or

(f) Provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(27) "Lease Contract": A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(28) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(29) "Lighting Project": Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(30) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(31) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(32) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(33) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(34) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(35) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit cor-

poration, or federal, state or local government including school district, water district, or any other special district.

(36) "Parking Cash Out" means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(37) "Pass-through Option": An option that allows a project owner to transfer the project's tax credit eligibility to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(38) "Pass-through Partner": A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(39) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(40) "Premium Efficient Appliance": An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

(41) "Project Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(42) "Project Operator": The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant's agent for all reasons related to the project once its development begins.

(43) "Project Owner": An applicant who purchases and owns a qualified project.

(44) "Project Start": The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment;

(b) A purchase order is placed for the energy or conservation project equipment;

(c) A contract is executed for the design of the energy or conservation project;

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project; or

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(45) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(46) "Qualified Transit Pass Contract": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(47) "Recycling": A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an "Energy Project" where they include characteristics required to meet that definition.

(48) "Recycling Project": Equipment used in a business for recycling in communities not subject to OAR 340-090-0030 (2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any projects which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

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(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(49) "Recycling Market Development Project": Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(50) "Renewable Energy Resource": A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in OAR 330-090-0110 (52) or definition 52 of this rule.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(51) "Renewable Resource Project": Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(52) "Research, Development, and Demonstration Project (RD&D)": A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Director's determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(53) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(54) "Rideshare Matching Services Program": A program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(55) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the

Director for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

(56) "Simple Payback": The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(57) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy projects it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(58) "Substantial Energy Savings": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project as defined in Definition 59 of this rule; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(59) "Sustainable Building Project": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(60) "Transportation District": A transportation district included in ORS 184.675(7).

(61) "Transportation Facility": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(62) "Transportation Project": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation project must meet one or more of the following criteria:

(a) Telework defined as working from home or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). If vehicles with special equipment are being purchased,

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a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible costs include purchase of bicycles and equipment used to store bicycles. Accessory items such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) "Transportation Service": is defined as a project that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service project is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service project must provide service for a minimum of 150 days per year. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible.

(k) "Individualized Travel Behavior Change": is defined as a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula

(l) "Rideshare Matching Service": is defined as a program that provides matching services to registered members to find shared rides for commuting on a regular basis. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula.

(m) "Carpool/Vanpool Program": is a program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but does not include the cost of the vehicle. The applicant must conduct pre and post-project surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 calendar days per year. Projects are subject to the VMR cost-effectiveness formula.

(63) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(64) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(65) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(66) "Vanpool Program": A program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(67) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a project when compared to single occupant vehicles.

(68) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

330-090-0130

How ODOE Handles a BETC

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the project during the review process, an applicant must notify ODOE in writing.

(c) A project owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for projects that ODOE has reviewed and determined to be otherwise qualified under these rules. Such projects may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a project owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Projects that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on an energy or conservation project begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

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(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the project change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is an energy or conservation project under these rules.

(e) Project start and finish dates.

(f) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the project.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before project development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable resource project, proof the resource level is adequate for a feasible project. Such proof includes data listed in (A) through (F). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D projects.

(A) For a solar energy project: A sun chart and solar insolation data for the site.

(B) For a wind energy project: The average monthly wind speed for 12 consecutive months. Measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy project (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power project: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy project: Data that show the resource is available in an amount that meets the project's energy needs.

(F) For a waste heat recovery project: A table showing how much waste heat is available and from what sources.

(k) The payment required by OAR 330-090-0150(2).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: proof that the vehicle or conversion equipment is on DEQ's approved list, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicles: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling stations: description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) For transportation projects: required documentation for each category specified by OAR 330-090-0110 (62) (a through m).

(q) Other data the Director requires to assure a project complies with these rules.

(5) Preliminary Certification After Start of an Energy or Conservation Project:

(a) If an energy or conservation project has been started an applicant may file a written request with the Director for preliminary certification after project start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after project start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before project start up a hardship. Such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of project start date. Under extraordinary circumstances the Director may extend the waiver period provided the project serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A project is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before project development starts.

(c) The project undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a project that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, project design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed project complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the project owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the project owner has received the pass-through payment in full and notified ODOE.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the project is complete.

ADMINISTRATIVE RULES

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. If it is not complete, the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration project, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The project complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the project remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the project costs, including prorated costs.

(i) If project costs are less than \$50,000, the account may be records of project costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the project owner or pass-through partner; or

(ii) If the project costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17); or

(iii) For a sustainable building project, a copy of the project U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of project cost receipts.

(C) Proof the project is completed.

(D) If the project is leased, a copy of the lease.

(E) For Alternative Fuel Vehicles, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a project complies with these rules.

(10) Changes After Final Certification:

(a) The applicant must inform the Director in writing if a project that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a project may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a project owner who has transferred the final certifica-

tion to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The project has been moved; or

(B) Title to the project has been conveyed; or

(C) The project is not operating; or

(D) The term of a leased project has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the project in a reasonable time after the Director requests it.

(d) Other changes in the project or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the project owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the project owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full net present value, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the project. ODOE will schedule the inspection during normal working hours, following reasonable notice to the project operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Establishment of coho salmon seasons and bag limits for Tahkenitch and Siltcoos lakes.

Adm. Order No.: DFW 104-2006(Temp)

Filed with Sec. of State: 9-19-2006

Certified to be Effective: 10-1-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-014-0090

Subject: Amend rule to increase harvest opportunity, establish a coho salmon season and bag limits for Tahkenitch and Siltcoos lakes.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

ADMINISTRATIVE RULES

635-014-0090

Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) The Siletz River and Drift Creek (Siletz Basin) are open to retention of radio-tagged fall Chinook from 12:01 a.m. August 1, 2006 through 11:59 p.m. December 31, 2006. The gastrically-implanted radio tags are recognizable by a trailing antenna and radio-tagged fish will be clearly marked with colored external "Floy" tags.

(3) Siltcoos Lake and Tahkenitch Lake is open to angling for coho salmon effective October 1, 2006 through December 15, 2006. The daily bag limit is one adult coho salmon and one jack coho salmon. The annual limit, in aggregate from both lakes, is five adult coho.

(a) The waters of Siltcoos Lake is defined as that area upstream from the Highway 101 Bridge and downstream of the railroad trestle on the Maple Creek arm and the Fivemile Road crossing on the Fiddle Creek arm.

(b) The waters of Tahkenitch Lake is defined as that area upstream from the Highway 101 Bridge and downstream of the first road crossing on the Leitell Creek arm and the ODFW Marker at the bridge on the 059 Road just west of Douglas County Road 49.

(4) All other specifications and restrictions as specified 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.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06

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Rule Caption: Prohibit retention of cabezon in the ocean and estuary boat fisheries

Adm. Order No.: DFW 105-2006(Temp)

Filed with Sec. of State: 9-21-2006

Certified to be Effective: 9-22-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-039-0090

Subject: Amend rule to close sport harvest of cabezon in the ocean and estuary boat fisheries due to attainment of Oregon Fish and Wildlife Commission 2006 harvest cap.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2006 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2006 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 175 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2006 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 365 metric tons, of which no more than 324.5 metric tons may be black rockfish.

(b) Other nearshore rockfish, 15.3 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) Effective Friday September 22, 2006 at 11:59 p.m. retention of cabezon as identified in (4)(c) is prohibited in the ocean and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) In addition to the regulations for Marine Fish in the **2006 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2006:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass", "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the **2006 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited. Effective 12:01 a.m. July 24, 2006, retention of vermilion rockfish is prohibited in the ocean and estuary boat fisheries. Shore-based angling for and retention of vermilion rockfish is permitted.

(c) Retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) Harvest methods and other specifications for marine fish in subsections (6)(a) and (6)(b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

ADMINISTRATIVE RULES

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(e) Sport fisheries for species in subsections (6)(a) and (6)(b) are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 section 391 subsection (h). A 20-fathom curve (Table 1) and a 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 section 391 subsection (h), may be implemented as the management line as in-season modifications necessitate.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 1-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06

Rule Caption: Expansion of the Late Fall salmon season in the Columbia River.

Adm. Order No.: DFW 106-2006(Temp)

Filed with Sec. of State: 9-22-2006

Certified to be Effective: 9-25-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-042-0060

Subject: Amend rule to add fishing periods to the Late Fall commercial gillnet salmon season in the Columbia River mainstem. Adoption of this rule is consistent with action taken September 22, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purposes from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1–5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 8:00 p.m. Tuesday September 19, 2006 to 8:00 a.m. Wednesday September 20, 2006 (12 hours);

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) above gear is restricted to gill nets with an 8-inch minimum mesh size.

(b) 7:00 a.m. to 7:00 p.m. Monday September 25, 2006 (12 hours);

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(b) above gear is restricted to gill nets with an 9-inch minimum and 9-3/4 inch maximum mesh size.

(3) In Zones 1–3, from the mouth of the Columbia River upstream to a line projected true west from the east or upstream bank of the Lewis River mouth in Washington, the open fishing periods are:

(a) 7:00 a.m. to 7:00 p.m. Wednesday September 27, 2006 (12 hours).

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, and Lewis-B sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) above gear is restricted to 6-inch maximum mesh size, unslackened floater gillnet restriction in effect.

(4) In Zones 4-5, from a line projected true west from the east or upstream bank of the Lewis River in Washington upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(a) 9:00 p.m. Wednesday September 27, 2006 to 2:00 a.m. Thursday September 28, 2006 (5 hours).

(A) The Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) above gear is restricted to 8-inch minimum and 9-3/4 inch maximum mesh size.

(5) A maximum of eight white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. Retention of green sturgeon is prohibited. During the fishing periods identified above the weekly aggregate white sturgeon limit applies to possession and sales in the Columbia River mainstem, Youngs Bay, and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109

Stats. Implemented: ORS 506.119, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; 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 113-2005(Temp), f. & cert. ef. 9-28-05 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; DFW 126-2005(Temp), f. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. 9-22-06, cert. ef. 9-25-06 thru 12-31-06

Rule Caption: In-season modification to Tribal Treaty Fall salmon fishery in the Columbia River.

Adm. Order No.: DFW 107-2006(Temp)

Filed with Sec. of State: 9-28-2006

Certified to be Effective: 10-3-06 thru 12-31-06

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Amended: 635-041-0075

Subject: Amending this rule extends the Tribal Treaty fall salmon gill net fishery in Zone 6 of the mainstem Columbia River with one additional fishing period beginning 6:00 a.m. Tuesday October 03, 2006 through 6:00 p.m. Friday October 06, 2006 (84 hours) and allowing the sale of fish caught in Drano Lake during any Yakima Indian Nation authorized commercial fishery. Adoption of this rule is consistent with action taken September 27, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Chinook, coho, steelhead, walleye, carp, and shad may be taken with gill net for commercial purposes in the mainstem Columbia River in all of Zone 6.

(2) The open fishing periods are:

(a) 6:00 a.m. Monday August 21, 2006 through 6:00 p.m. Thursday August 24, 2006 (84 hours);

(b) 6:00 a.m. Monday August 28, 2006 through 6:00 p.m. Friday September 1, 2006 (108 hours);

(c) 6:00 a.m. Tuesday September 5, 2006 through 6:00 p.m. Saturday September 9, 2006 (108 hours);

(d) 6:00 a.m. Monday September 11, 2006 through 6:00 p.m. Friday September 15, 2006 (108 hours);

(e) 6:00 a.m. Monday September 18, 2006 through 6:00 p.m. Friday September 22, 2006 (108 hours);

(f) 6:00 a.m. Monday September 25, 2006 through 6:00 p.m. Friday September 29, 2006 (108 hours);

(g) 6:00 a.m. Tuesday October 3, 2006 through 6:00 p.m. Friday October 6, 2006 (84 hours).

(3) Through September 1, 2006 there is no mesh size restriction. Beginning September 5, 2006 there is an 8-inch minimum mesh size restriction.

(4) Closed areas are set forth in OAR 635-041-0045, including the closure at the mouth of Spring Creek which is the larger area described in OAR 635-041-0045 (11).

(5) Sturgeon may not be sold. However, sturgeon between 48 inches and 60 inches in length from The Dalles and John Day Pools and sturgeon between 45 inches and 60 inches from the Bonneville Pool may be kept for subsistence use.

(6) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 12:01 a.m., Tuesday August 1, 2006 until further notice.

(a) Gear is restricted to: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Allowable sales include chinook, coho, steelhead, walleye, carp, and shad. Sockeye may be kept for subsistence use but not sold.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools and sturgeon from the Bonneville Pool between 45 inches and 60 inches in length may be kept for subsistence use.

(7) Fish caught during Yakama Nation's scheduled open tributary fishing periods in Drano Lake, the Klickitat and White Salmon rivers may be sold when the sale of platform and hook-and-line fish is allowed.

Stat. Auth.: ORS 183.325, 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 25-1979, f. & ef. 8-2-79; FWC 36-1979(Temp), f. & ef. 8-22-79; FWC 47-1979(Temp), f. & ef. 9-21-79; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 46-1980(Temp), f. & ef. 9-13-80; FWC 33-1981(Temp), f. & ef. 9-15-81; FWC 58-1982(Temp), f. & ef. 8-27-82; FWC 62-1982(Temp), f. & ef. 9-7-82; FWC 63-1982(Temp), f. & ef. 9-14-82; FWC 75-1982(Temp), f. & ef. 10-29-82; FWC 36-1983, f. & ef. 8-18-83; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 51-1983(Temp), f. & ef. 9-30-83; FWC 55-1983(Temp), f. & ef. 10-4-83; FWC 46-1984, f. & ef. 8-30-84; FWC 55-1984(Temp), f. & ef. 9-10-84; FWC 58-1984(Temp), f. & ef. 9-17-84; FWC 61-1984(Temp), f. & ef. 9-21-84; FWC 70-1984(Temp), f. & ef. 10-9-84; FWC 47-1985, f. & ef. 8-23-85; FWC 60-1985(Temp), f. & ef. 9-13-85; FWC 63-1985(Temp), f. & ef. 9-24-85; FWC 42-1986, f. & ef. 8-15-86; FWC 53-1986(Temp), f. & ef. 9-4-86; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 57-1986(Temp), f. & ef. 9-11-86; FWC 60-1986(Temp), f. & ef. 9-26-86; FWC 62-1986(Temp), f. & ef. 10-2-86; FWC 63-1987, f. & ef. 8-7-87; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-1-87; FWC 78-1987(Temp), f. & ef. 9-15-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 89-1987(Temp), f. & ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988(Temp), f. & cert. ef. 9-28-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 87-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989(Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. & cert. ef. 9-7-90; FWC 98-

1990(Temp), f. & cert. ef. 9-17-90; FWC 85-1991, f. & cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. & cert. ef. 9-17-91, cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. & cert. ef. 9-2-92; FWC 87-1992(Temp), f. & cert. ef. 9-7-92; FWC 91-1992(Temp), f. & cert. ef. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. & cert. ef. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. & cert. ef. 10-2-92, cert. ef. 10-5-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. & cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. & cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. & cert. ef. 8-29-94; FWC 61-1994(Temp), f. & cert. ef. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. & cert. ef. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. & cert. ef. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. & cert. ef. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. & cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. & cert. ef. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. & cert. ef. 9-17-97, cert. ef. 9-17-97; DFW 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; DFW 76-1998(Temp), f. & cert. ef. 9-8-98 thru 9-25-98; DFW 77-1998(Temp), f. & cert. ef. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. & cert. ef. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; DFW 80-1998(Temp), f. & cert. ef. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. & cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. & cert. ef. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. & cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. & cert. ef. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. & cert. ef. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. & cert. ef. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. & cert. ef. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. & cert. ef. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. & cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. & cert. ef. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. & cert. ef. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. & cert. ef. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. & cert. ef. 9-12-03, cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. & cert. ef. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. & cert. ef. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. & cert. ef. 10-12-04, cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction 2-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. & cert. ef. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. & cert. ef. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. & cert. ef. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 107-2006(Temp), f. & cert. ef. 9-28-06, cert. ef. 10-3-06 thru 12-31-06

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Rule Caption: Revise cumulative monthly landing limits for nearshore species in the commercial nearshore fishery.

Adm. Order No.: DFW 108-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-004-0033

Subject: Revise the cumulative monthly landing limits for vessels with limited entry black rockfish and blue rockfish permits as follows: black and blue rockfish combined — increase to 600 pounds per month for October 2006; greenling — increase to 600 pounds per month for October, November and December 2006. These changes are effective 12:01 a.m. October 1, 2006.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish;
- (b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);
- (c) Minor Slope Rockfish;
- (d) Black Rockfish;
- (e) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermilion Rockfish;

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- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2006, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 106.5 metric tons, of which no more than 102.5 metric tons may be black rockfish.

(b) Other nearshore rockfish, 13.5 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) In 2006, no vessel may land black rockfish and blue rockfish, combined, more than:

(a) 300 pounds per month in the months of January and February;

(b) 700 pounds per month in the months of March, April, May, June, July;

(c) 1,400 pounds per month in the months of August and September;

(d) 600 pounds per month in the month of October;

(e) 250 pounds per month in the months of November and December.

(4) In 2006, in any month, no vessel may land more than:

(a) 350 pounds of other nearshore rockfish.

(b) 2,000 pounds of cabezon.

(c) 600 pounds of greenling.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06

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Rule Caption: Open fall Chinook salmon sport fishery in the Mainstem Columbia River.

Adm. Order No.: DFW 109-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 9-30-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-023-0130

Subject: Amend rule to open the Columbia River fall Chinook salmon sport fishery in the mainstem from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington, effective 12:01

a.m. Saturday September 30, 2006. Revision is consistent with action taken at the September 29, 2006 Joint State Hearing.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-023-0130

Fall Sport Fishery

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.

(1) Notwithstanding, all other specifications and restrictions as outlined in the current 2006 Oregon Sport Fishing Regulations, the following conditions apply:

(2) Effective August 1 through December 31, 2006, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the bag limit is two salmon per day of which only one may be a chinook.

(3) Effective 11:59 pm Thursday September 14, 2006, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the retention of Chinook salmon (adults and jacks) is prohibited.

(4) Effective 11:59 pm Friday September 15, 2006 retention of Chinook salmon (adults and jacks) is prohibited in the mainstem Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington. Non-adipose fin-clipped coho salmon caught downstream of the Hood River Bridge must be released immediately unharmed.

(5) Effective 12:01 am Saturday September 30, 2006, in the mainstem Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington is open to the retention of Chinook salmon.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06

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Rule Caption: Amend rules to reflect in-season changes to federal regulations for commercial groundfish fisheries.

Adm. Order No.: DFW 110-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-004-0019

Subject: Amend rules to adopt in-season commercial groundfish actions implemented by the federal government to increase the sablefish and petrale sole trip limit for the limited entry trawl fishery, and close the open access daily trip limit sablefish fishery effective October 1, 2006.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0019

Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-06-01, announced inseason management measures, effective March 1, 2006, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries, commercial trip limit tables and darkblotched rockfish optimal yield (OY).

ADMINISTRATIVE RULES

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-06-03, announced inseason management measures, effective May 1, 2006, including but not limited to adjustments to chilipepper rockfish limited entry trawl; sablefish open access trip limits; and gear restrictions in the limited entry fixed gear and open access fisheries for "other flatfish."

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-06-04, announced inseason management measures, effective July 1, 2006, including but not limited to adjustments to the trawl rockfish conservation area (RCA); minor slope and darkblotched rockfish limited entry trawl trip limits; spltnose rockfish limited entry trawl trip limits and an inseason "trigger" mechanism which will be used to close and/or adjust bottom trawl fisheries if specific criteria are met prior to the September, 2006, Pacific Fishery Management Council (PFMC) meeting.

(6) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-06-05, announced inseason management measures, effective October 1, 2006, including but not limited to adjustments to sablefish and petrale sole limited entry trawl trip limits; and closure of the open access daily trip limit sablefish fishery.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06

Rule Caption: Expansion of the Late Fall salmon season in the Columbia River.

Adm. Order No.: DFW 111-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-2-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-042-0060

Subject: Amend rule to add fishing periods to the Late Fall commercial gillnet salmon season in the Columbia River mainstem effective 7:00 a.m. Monday October 2, 2006 to 7:00 a.m. Tuesday October 3, 2006 (24 hours). Adoption of this rule is consistent with action taken September 29, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purposes from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 8:00 p.m. Tuesday September 19, 2006 to 8:00 a.m. Wednesday September 20, 2006 (12 hours);

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) above gear is restricted to gill nets with an 8-inch minimum mesh size.

(b) 7:00 a.m. to 7:00 p.m. Monday September 25, 2006 (12 hours);

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(b) above gear is restricted to gill nets with an 9-inch minimum and 9 3/4 inch maximum mesh size.

(3) In Zones 1-3, from the mouth of the Columbia River upstream to a line projected true west from the east or upstream bank of the Lewis River mouth in Washington, the open fishing periods are:

(a) 7:00 a.m. to 7:00 p.m. Wednesday September 27, 2006 (12 hours).

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, and Lewis-B sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) above gear is restricted to 6-inch maximum mesh size, unslackened floater gillnet restriction in effect.

(4) In Zones 4-5, from a line projected true west from the east or upstream bank of the Lewis River in Washington upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(a) 9:00 p.m. Wednesday September 27, 2006 to 2:00 a.m. Thursday September 28, 2006 (5 hours).

(A) The Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) above gear is restricted to 8-inch minimum and 9 3/4 inch maximum mesh size.

(5) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 7:00 a.m. Monday October 2, 2006 to 7:00 a.m. Tuesday October 3, 2006 (24 hours);

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (5)(a) above, gear is restricted to a 9 3/4-inch maximum mesh size in Zones 1-3, and an 8-inch minimum and 9 3/4-inch maximum mesh size in Zones 4-5.

(6) A maximum of eight white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. Retention of green sturgeon is prohibited. During the fishing periods identified above the weekly aggregate white sturgeon limit applies to possession and sales in the Columbia River mainstem, Youngs Bay, and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109

Stats. Implemented: ORS 506.119, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; FWC 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-28-05 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; DFW 126-2005(Temp), f. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. 9-15-06, cert.

ADMINISTRATIVE RULES

ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. 9-29-06, cert. ef. 10-2-06 thru 12-31-06

Rule Caption: Expansion of the Late Fall salmon season in the Columbia River.

Adm. Order No.: DFW 112-2006(Temp)

Filed with Sec. of State: 10-4-2006

Certified to be Effective: 10-8-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-042-0060

Subject: Amend rule to add a fishing period to the Late Fall commercial gillnet salmon season in the Columbia River mainstem effective 7:00 p.m. Sunday October 8, 2006 to 7:00 p.m. Monday October 9, 2006 (24 hours). Adoption of this rule is consistent with action taken October 4, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purposes from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 8:00 p.m. Tuesday September 19, 2006 to 8:00 a.m. Wednesday September 20, 2006 (12 hours);

(A) The Elokomina-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) above gear is restricted to gill nets with an 8-inch minimum mesh size.

(b) 7:00 a.m. to 7:00 p.m. Monday September 25, 2006 (12 hours);

(A) The Elokomina-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(b) above gear is restricted to gill nets with an 9-inch minimum and 9 3/4 inch maximum mesh size.

(c) 7:00 p.m. Sunday October 8 to 7:00 p.m. Monday October 9, 2006 (24 hours);

(A) The Elokomina-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(c) above gear is restricted to gill nets with a 9 3/4 inch maximum mesh size.

(3) In Zones 1-3, from the mouth of the Columbia River upstream to a line projected true west from the east or upstream bank of the Lewis River mouth in Washington, the open fishing periods are:

(a) 7:00 a.m. to 7:00 p.m. Wednesday September 27, 2006 (12 hours).

(A) The Elokomina-B, Abernathy, Cowlitz, Kalama-B, and Lewis-B sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) above gear is restricted to 6-inch maximum mesh size, unslackened floater gillnet restriction in effect.

(4) In Zones 4-5, from a line projected true west from the east or upstream bank of the Lewis River in Washington upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(a) 9:00 p.m. Wednesday September 27, 2006 to 2:00 a.m. Thursday September 28, 2006 (5 hours).

(A) The Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) above gear is restricted to 8-inch minimum and 9 3/4 inch maximum mesh size.

(5) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 7:00 a.m. Monday October 2, 2006 to 7:00 a.m. Tuesday October 3, 2006 (24 hours);

(A) The Elokomina-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (5)(a) above, gear is restricted to a 9 3/4-inch maximum mesh size in Zones 1-3, and an 8-inch minimum and 9 3/4-inch maximum mesh size in Zones 4-5.

(6) A maximum of eight white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. Retention of green sturgeon is prohibited. During the fishing periods identified above the weekly aggregate white sturgeon limit applies to possession and sales in the Columbia River mainstem, Youngs Bay, and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109

Stats. Implemented: ORS 506.119, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. & cert. ef. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. & cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. & cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. & cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. & cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. & cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. & cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. & cert. ef. 10-21-96; FWC 61-1997(Temp), f. & cert. ef. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; FWC 79-1999(Temp), f. & cert. ef. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. & cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. & cert. ef. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. & cert. ef. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. & cert. ef. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. & cert. ef. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. & cert. ef. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. & cert. ef. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. & cert. ef. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. & cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. & cert. ef. 9-12-03 cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. & cert. ef. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. & cert. ef. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. & cert. ef. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. & cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. & cert. ef. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; 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 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 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; DFW 126-2005(Temp), f. & cert. ef. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. & cert. ef. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. & cert. ef. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 106-2006(Temp), f. & cert. ef. 10-4-06, cert. ef. 10-8-06 thru 12-31-06

Rule Caption: Open fall Chinook salmon sport fishery in the Mainstem Columbia River.

Adm. Order No.: DFW 113-2006(Temp)

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-13-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-023-0130

Subject: Amend rule to open the Columbia River fall Chinook salmon sport fishery in the mainstem from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, effective 12:01 am Friday October 13, 2006. Revision is consistent with action taken at the October 11, 2006 Joint State Hearing.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

ADMINISTRATIVE RULES

635-023-0130

Fall Sport Fishery

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**.

(1) Notwithstanding, all other specifications and restrictions as outlined in the current 2006 Oregon Sport Fishing Regulations, the following conditions apply:

(2) Effective August 1 through December 31, 2006, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the bag limit is two salmon per day of which only one may be a chinook.

(3) Effective 11:59 pm Thursday September 14, 2006, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the retention of Chinook salmon (adults and jacks) is prohibited.

(4) Effective 11:59 pm Friday September 15, 2006 retention of Chinook salmon (adults and jacks) is prohibited in the mainstem Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington. Non-adipose fin-clipped coho salmon caught downstream of the Hood River Bridge must be released immediately unharmed.

(5) Effective 12:01 am Saturday September 30, 2006, in the mainstem Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco, Washington is open to the retention of Chinook salmon.

(6) Effective 12:01 am Friday October 13, 2006 in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the retention of Chinook salmon (adults and jacks) is allowed. The bag limit is two salmon per day of which only one may be a Chinook. Adipose fin-clipped coho, and adipose fin-clipped steelhead remain open for retention.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06

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Rule Caption: Expansion of the Late Fall salmon season in the Columbia River.

Adm. Order No.: DFW 114-2006(Temp)

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-042-0060

Subject: Amend rule to add fishing periods to the Late Fall commercial gillnet salmon season in the Columbia River Mainstem, effective October 12, 2006. Adoption of this rule is consistent with action taken October 11, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0060

Late Fall Salmon Season

(1) Salmon and sturgeon may be taken by gill nets for commercial purposes from the Columbia River in the following areas and during the open fishing periods as identified.

(2) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 8:00 p.m. Tuesday September 19, 2006 to 8:00 a.m. Wednesday September 20, 2006 (12 hours);

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(a) above gear is restricted to gill nets with an 8-inch minimum mesh size.

(b) 7:00 a.m. to 7:00 p.m. Monday September 25, 2006 (12 hours);

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(b) above gear is restricted to gill nets with an 9-inch minimum and 9 3/4 inch maximum mesh size.

(c) 7:00 p.m. Sunday October 8 to 7:00 p.m. Monday October 9, 2006 (24 hours);

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(c) above gear is restricted to gill nets with a 9 3/4 inch maximum mesh size.

(d) 7:00 p.m. Monday October 16, 2006 to 7:00 a.m. Tuesday October 17, 2006 (12 hours);

(A) The Elokomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (2)(d) above gear is restricted to gill nets with an 9-inch minimum and 9 3/4 inch maximum mesh size.

(3) In Zones 1-3, from the mouth of the Columbia River upstream to a line projected true west from the east or upstream bank of the Lewis River mouth in Washington, the open fishing periods are:

(a) 7:00 a.m. to 7:00 p.m. Wednesday September 27, 2006 (12 hours).

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, and Lewis-B sanctuaries are in effect.

(B) During the open fishing periods identified in (3)(a) above gear is restricted to 6-inch maximum mesh size, unslackened floater gillnet restriction in effect.

(4) In Zones 4-5, from a line projected true west from the east or upstream bank of the Lewis River in Washington upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(a) 9:00 p.m. Wednesday September 27, 2006 to 2:00 a.m. Thursday September 28, 2006 (5 hours).

(A) The Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(a) above gear is restricted to 8-inch minimum and 9 3/4 inch maximum mesh size.

(b) 7:00 p.m. Thursday October 12, 2006 to 7:00 a.m. Friday October 13, 2006 (12 hours);

(A) The Lewis-A, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (4)(b) above gear is restricted to an 8-inch minimum and 9 3/4 inch maximum mesh size.

(5) In Zones 1-5, from the mouth of the Columbia River upstream to a line projected from deadline markers on the Oregon and Washington banks, both such deadline markers located approximately five miles downstream from Bonneville Dam, the open fishing periods are:

(a) 7:00 a.m. Monday October 2, 2006 to 7:00 a.m. Tuesday October 3, 2006 (24 hours);

(A) The Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy and Washougal river sanctuaries are in effect.

(B) During the open fishing periods identified in (5)(a) above, gear is restricted to a 9 3/4-inch maximum mesh size in Zones 1-3, and an 8-inch minimum and 9 3/4-inch maximum mesh size in Zones 4-5.

(6) A maximum of eight white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. Retention of green sturgeon is prohibited. During the fishing periods identified above the weekly aggregate white sturgeon limit applies to possession and sales in the Columbia River mainstem, Youngs Bay, and other open Select Area fisheries.

Stat. Auth.: ORS 496.118, 506.109

Stats. Implemented: ORS 506.119, 506.129 & 507.030

Hist.: FWC 40-1979, f. & ef. 9-10-79; FWC 45-1979(Temp), f. & ef. 9-21-79; FWC 52-1979(Temp), f. & ef. 11-2-79; FWC 48-1980(Temp), f. & ef. 9-19-80; FWC 51-1980(Temp), f. & ef. 9-22-80; FWC 55-1980(Temp), f. & ef. 9-26-80; FWC 56-1980(Temp), f. & ef. 9-29-80; FWC 58-1980(Temp), f. & ef. 10-17-80; FWC 37-1981(Temp), f. & ef. 9-24-81; FWC 38-1981(Temp), f. & ef. 9-29-81; FWC 69-1982(Temp), f. & ef. 9-30-82; FWC 72-1982(Temp), f. & ef. 10-20-82; FWC 56-1983(Temp), f. & ef. 10-5-83; FWC 54-1984(Temp), f. & ef. 9-10-84; FWC 59-1984(Temp), f. & ef. 9-18-84; FWC 66-1984(Temp), f. & ef. 9-26-84; FWC 68-1984(Temp), f. & ef. 10-2-84; FWC 58-1985(Temp), f. & ef. 9-13-85; FWC 62-1985(Temp), f. & ef. 9-24-85; FWC 66-1985(Temp), f. & ef. 10-11-85; FWC 54-1986(Temp), f. & ef. 9-5-86; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 67-1986(Temp), f. & ef. 10-17-86; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 75-1987(Temp), f. & ef. 9-11-87; FWC 80-1987(Temp), f. & ef. 9-18-87; FWC 87-1987(Temp), f. & ef. 10-9-87; FWC 91-1987(Temp), f. & ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. &

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cert. ef. 10-6-89; FWC 113-1989 (Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; Administrative correction, 2-18-05; 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 113-2005(Temp), f. & cert. ef. 9-28-05 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; DFW 126-2005(Temp), f. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. 10-4-06, cert. ef. 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. ef. 10-12-06 thru 12-31-06

Rule Caption: Close the Treaty Indian hook-and-line commercial fall salmon fishery within Zone 6.

Adm. Order No.: DFW 115-2006(Temp)

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-15-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 635-041-0075

Subject: Amend rule to close the Treaty Indian platform and hook-and-line commercial fall salmon fisheries within Zone 6, and to allow commercial sales and or subsistence use during Yakama Indian Nation's scheduled open tributary fishing periods in Drano Lake, the Klickitat and Big White Salmon river to be sold when accompanied by a Yakama Indian Nation fish transport permit, effective 6:00 p.m. October 15, 2006. Revision is consistent with action taken at the October 13, 2006 Compact Hearing.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-041-0075

Fall Salmon Season

(1) Chinook, coho, steelhead, walleye, carp, and shad may be taken with gill net for commercial purposes in the mainstem Columbia River in all of Zone 6.

(2) The open fishing periods are:

(a) 6:00 a.m. Monday August 21, 2006 through 6:00 p.m. Thursday August 24, 2006 (84 hours);

(b) 6:00 a.m. Monday August 28, 2006 through 6:00 p.m. Friday September 1, 2006 (108 hours);

(c) 6:00 a.m. Tuesday September 5, 2006 through 6:00 p.m. Saturday September 9, 2006 (108 hours);

(d) 6:00 a.m. Monday September 11, 2006 through 6:00 p.m. Friday September 15, 2006 (108 hours);

(e) 6:00 a.m. Monday September 18, 2006 through 6:00 p.m. Friday September 22, 2006 (108 hours);

(f) 6:00 a.m. Monday September 25, 2006 through 6:00 p.m. Friday September 29, 2006 (108 hours);

(g) 6:00 a.m. Tuesday October 3, 2006 through 6:00 p.m. Friday October 6, 2006 (84 hours).

(3) Through September 1, 2006 there is no mesh size restriction. Beginning September 5, 2006 there is an 8-inch minimum mesh size restriction.

(4) Closed areas are set forth in OAR 635-041-0045, including the closure at the mouth of Spring Creek which is the larger area described in OAR 635-041-0045(11).

(5) Sturgeon may not be sold. However, sturgeon between 48 inches and 60 inches in length from The Dalles and John Day Pools and sturgeon between 45 inches and 60 inches from the Bonneville Pool may be kept for subsistence use.

(6) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 12:01 a.m., Tuesday August 1, 2006 through 6:00 p.m. Sunday October 15, 2006.

(a) Gear is restricted to: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Allowable sales include chinook, coho, steelhead, walleye, carp, and shad. Sockeye may be kept for subsistence use but not sold.

(c) Sturgeon may not be sold. However, sturgeon between 4 feet and 5 feet in length from The Dalles and John Day pools and sturgeon from the Bonneville Pool between 45 inches and 60 inches in length may be kept for subsistence use.

(7) Fish caught during Yakama Indian Nation's scheduled open tributary fishing periods in Drano Lake, the Klickitat and Big White Salmon river may be sold when accompanied by a Yakama Indian Nation fish transport permit.

Stat. Auth.: ORS 183.325, 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Historic: FWC 25-1979, f. & cert. ef. 8-2-79; FWC 36-1979(Temp), f. & cert. ef. 8-22-79; FWC 47-1979(Temp), f. & cert. ef. 9-21-79; FWC 44-1980(Temp), f. & cert. ef. 8-22-80; FWC 46-1980(Temp), f. & cert. ef. 9-13-80; FWC 33-1981(Temp), f. & cert. ef. 9-15-81; FWC 58-1982(Temp), f. & cert. ef. 8-27-82; FWC 62-1982(Temp), f. & cert. ef. 9-7-82; FWC 63-1982(Temp), f. & cert. ef. 9-14-82; FWC 75-1982 (Temp), f. & cert. ef. 10-29-82; FWC 36-1983, f. & cert. ef. 8-18-83; FWC 49-1983(Temp), f. & cert. ef. 9-26-83; FWC 51-1983(Temp), f. & cert. ef. 9-30-83; FWC 55-1983(Temp), f. & cert. ef. 10-4-83; FWC 46-1984, f. & cert. ef. 8-30-84; FWC 55-1984(Temp), f. & cert. ef. 9-10-84; FWC 58-1984(Temp), f. & cert. ef. 9-17-84; FWC 61-1984 (Temp), f. & cert. ef. 9-21-84; FWC 70-1984(Temp), f. & cert. ef. 10-9-84; FWC 47-1985, f. & cert. ef. 8-23-85; FWC 60-1985(Temp), f. & cert. ef. 9-13-85; FWC 63-1985(Temp), f. & cert. ef. 9-24-85; FWC 42-1986, f. & cert. ef. 8-15-86; FWC 53-1986(Temp), f. & cert. ef. 9-4-86; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 57-1986(Temp), f. & cert. ef. 9-11-86; FWC 60-1986(Temp), f. & cert. ef. 9-26-86; FWC 62-1986(Temp), f. & cert. ef. 10-2-86; FWC 63-1987, f. & cert. ef. 8-7-87; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987 (Temp), f. & cert. ef. 9-1-87; FWC 78-1987(Temp), f. & cert. ef. 9-15-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 89-1987(Temp), f. & cert. ef. 10-12-87; FWC 67-1988, f. & cert. ef. 8-15-88; FWC 72-1988(Temp), f. & cert. ef. 8-19-88; FWC 77-1988(Temp), f. & cert. ef. 9-2-88; FWC 91-1988(Temp), f. & cert. ef. 9-16-88; FWC 95-1988 (Temp), f. 9-27-88, cert. ef. 9-28-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 97-1989(Temp), f. & cert. ef. 9-1-89; FWC 95-1989(Temp), f. & cert. ef. 9-19-89; FWC 96-1989 (Temp), f. & cert. ef. 9-21-89; FWC 99-1989(Temp), f. & cert. ef. 9-27-89; FWC 100-1989(Temp), f. & cert. ef. 9-28-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 90-1990, f. & cert. ef. 8-31-90; FWC 96-1990(Temp), f. 9-7-90, cert. ef. 9-10-90; FWC 98-1990(Temp), f. 9-14-90, cert. ef. 9-17-90; FWC 85-1991, f. 8-7-91, cert. ef. 8-12-91; FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991(Temp), f. & cert. ef. 9-10-91; FWC 103-1991(Temp), f. 9-17-91, cert. ef. 9-18-91; FWC 110-1991(Temp), f. & cert. ef. 9-27-91; FWC 73-1992(Temp), f. & cert. ef. 8-10-92; FWC 86-1992(Temp), f. 9-1-92, cert. ef. 9-2-92; FWC 87-1992(Temp), f. 9-4-92, cert. ef. 9-7-92; FWC 91-1992(Temp), f. 9-16-92, cert. ef. 9-17-92; FWC 96-1992(Temp), f. 9-22-92, cert. ef. 9-23-92; FWC 105-1992(Temp), f. 10-2-92, cert. ef. 10-5-92; FWC 107-1992 (Temp), f. & cert. ef. 10-9-92; FWC 47-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 52-1993, f. & cert. ef. 8-30-93; FWC 57-1993(Temp), f. & cert. ef. 9-13-93; FWC 59-1993(Temp), f. 9-17-93, cert. ef. 9-20-93; FWC 61-1993(Temp), f. & cert. ef. 9-24-93; FWC 55-1994(Temp), f. 8-26-94, cert. ef. 8-29-94; FWC 61-1994(Temp), f. 9-7-94, cert. ef. 9-8-94; FWC 74-1994(Temp), f. & cert. ef. 10-12-94; FWC 68-1995(Temp), f. 8-25-95, cert. ef. 8-29-95; FWC 72-1995(Temp), f. & cert. ef. 9-1-95; FWC 75-1995(Temp), f. 9-12-95, cert. ef. 9-13-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1996(Temp), f. 8-29-96, cert. ef. 9-2-96; FWC 51-1996(Temp), f. 9-6-96, cert. ef. 9-9-96; FWC 53-1996(Temp), f. & cert. ef. 9-26-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 52-1997(Temp), f. 8-29-97, cert. ef. 9-2-97; FWC 57(Temp), f. & cert. ef. 9-9-97; FWC 60-1997(Temp), f. 9-16-97, cert. ef. 9-17-97; DFW 68-1998(Temp), f. & cert. ef. 8-25-98 thru 9-25-98; DFW 76-1998(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 77-1998(Temp), f. 9-14-98, cert. ef. 9-15-98 thru 9-25-98; DFW 79-1998(Temp), f. 9-21-98, cert. ef. 9-22-98 thru 9-25-98; DFW 80-1998(Temp), f. 9-23-98, cert. ef. 9-24-98 thru 9-25-98; DFW 59-1999(Temp), f. & cert. ef. 8-23-99 thru 9-11-99; DFW 62-1999(Temp), f. 9-2-99, cert. ef. 9-3-99 thru 9-11-99; DFW 65-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 9-17-99; DFW 69-1999(Temp), f. & cert. ef. 9-17-99 thru 9-18-99; DFW 72-1999(Temp), f. 9-21-99, cert. ef. 9-22-99 thru 10-22-99; DFW 74-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; Administrative correction 11-17-99; DFW 50-2000(Temp), f. 8-18-00, cert. ef. 8-21-00 thru 9-9-00; DFW 60-2000(Temp), f. 9-11-00, cert. ef. 9-12-00 thru 12-31-00; DFW 61-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; Administrative correction 6-19-01; DFW 75-2001(Temp), f. & cert. ef. 8-20-01 thru 9-8-01; DFW 87-2001(Temp), f. 9-10-01, cert. ef. 9-11-01 thru 9-15-01; DFW 91-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 100-2001(Temp), f. 10-16-01, cert. ef. 10-17-01 thru 12-31-01; DFW 89-2002(Temp), f. 8-16-02, cert. ef. 8-18-02 thru 12-31-02; DFW 98-2002(Temp), f. & cert. ef. 8-30-02 thru 12-31-02; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 113-2002(Temp), f. 10-14-02, cert. ef. 10-15-02 thru 12-31-02; DFW 77-2003(Temp), f. & cert. ef. 8-13-03 thru 12-31-03; DFW 81-2003(Temp), f. 8-25-03, cert. ef. 8-26-03 thru 12-31-03; DFW 91-2003(Temp), f. 9-12-03, cert. ef. 9-16-03 thru 12-31-03; DFW 97-2003(Temp), f. 9-22-03, cert. ef. 9-24-03 thru 12-31-03; DFW 101-2003(Temp), f. 9-26-03, cert. ef. 10-1-03 thru 12-31-03; DFW 103-2003(Temp), f. 10-3-03, cert. ef. 10-8-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 88-2004(Temp), f. & cert. ef. 8-23-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 99-2004(Temp), f.

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& cert. ef. 9-24-04 thru 12-31-04; DFW 104-2004(Temp), f. 10-12-04 cert. ef. 10-13-04 thru 12-31-04; DFW 110-2004(Temp), f. & cert. ef. 10-29-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 96-2005(Temp), f. & cert. ef. 8-22-05 thru 12-31-05; DFW 104-2005(Temp), f. & cert. ef. 9-12-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 71-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 12-31-06; DFW 86-2006(Temp), f. 8-18-06, cert. ef. 8-21-06 thru 12-31-06; DFW 94-2006(Temp), f. 9-8-06, cert. ef. 9-11-06 thru 12-31-06; DFW 101-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 107-2006(Temp), f. 9-28-06, cert. ef. 10-3-06 thru 12-31-06; DFW 115-2006(Temp), f. 10-13-06, cert. ef. 10-15-06 thru 12-31-06

Rule Caption: Amend rule to legalize Waterfowl hunting in a portion of the City of Coos Bay.

Adm. Order No.: DFW 116-2006(Temp)

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06 thru 4-10-07

Notice Publication Date:

Rules Amended: 635-051-0048

Subject: Amend rule to permit waterfowl hunting within the following portion of Coos Bay city limits: the area of the city bounded on the west by Isthmus Slough Channel bounded on the south by what would be the natural extension of "A" Street, bounded on the east by the dike, and bounded on the north by the city limits.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-051-0048

Other Restrictions

Except as provided in section (1) (a), (b), (c), (2), (3), (4) and (5) of this rule, it is *unlawful*: To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(1) Migratory game bird hunting is permitted within the city limits of Warrenton in the following described areas:

(a) Beginning at a point located at the west end of the Lewis and Clark Bridge (Alternate Highway 101) at the southern boundary of the Warrenton city limits and west bank of the Lewis and Clark River, then westerly along the common southern boundary of the Port of Astoria airport and the Warrenton City limits to the west bank of Adams Slough (formerly Adair's Slough), then northerly along the west tracks, then westerly along said railroad tracks to its intersection with Northeast King Avenue, then northerly along Northeast King Avenue to the mouth of the Skipanon River, then generally northwesterly following a contour line 100 yards inland from the shoreline at mean high water of the Columbia River, and on the Columbia River side of the Burlington Northern Railroad tracks to its intersection with the Warrenton/Hammond city limits at Tansy Point, then in a generally southeasterly direction upstream along the Columbia River, Youngs Bay and Lewis and Clark River to the point of beginning.

(b) Beginning at a point of intersection with the low tide of the Pacific Ocean and the westerly extension of Delaura Beach Road (County Road #34), then easterly along Delaura Beach Road and Oceanview Cemetery Road (County Road #321) to the junction with Wild Ace Lake Drive to the Warrenton School Dump Road (County Road #286), then easterly along the Warrenton School Dump Road to the junction of Southwest Juniper Avenue, then northerly along Southwest Juniper Avenue to the road's end, then continuing northerly along the common boundary of Section 16 and 17 to the Warrenton/Hammond city limits, then westerly along the Warrenton/Hammond city limits to the low tide of the Pacific Ocean, then southerly to the point of beginning.

(c) Beginning at a point of intersection with the most southerly boundary of the Warrenton city limits and Oregon Coast Highway 101 and the west bank of the Skipanon River, then northerly along the west bank of the Skipanon River to the bridge on (Crab Pot Way) Alternate Highway 101 (Fort Stevens Highway #104), then in a generally easterly direction along Alternate Highway 101 to Southeast 14th Place, then in a generally southeasterly direction along Southeast 14th Place and its easterly extension, crossing the Oregon Coast Highway 101 to its intersection with the Warrenton city limits, then southerly and westerly along the line of the Warrenton city limits to the point of beginning.

(2) Game bird hunting is permitted within the city limits of Dunes City.

(3) Game bird hunting is permitted within the boundary limits of the Klamath Falls Airport.

(4) Waterfowl hunting is permitted in the following portion of Miami Cove lying within the city limits of Garibaldi: That land in the east one-half

of the northwest quarter of Section 22, Township 1 North, Range 10 West, Willamette Meridian, lying south of Coast Highway 101, and in the east one-half of the southwest quarter of Section 22, Township 1 North, Range 10 West, lying north and west of Coast Highway 101, provided that no hunting be permitted within 100 yards of any residence or commercial structure.

(5) Waterfowl hunting is permitted within the city limits of Coos Bay in the following described area: the area of the city bounded on the west by Isthmus Slough Channel, bounded on the south by what would be the natural extension of "A" Street, bounded on the east by the dike, and bounded on the north by the city limits.

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

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

Hist.: FWC 46-1983, f. & ef. 9-19-83; FWC 65-1983(Temp), f. & ef. 11-22-83; FWC 9-1984, f. & ef. 3-12-84; FWC 51-1984, f. & ef. 9-5-84; FWC 64-1985, f. & ef. 10-2-85; FWC 58-1986, f. & ef. 9-17-86; FWC 80-1988, f. & cert. ef. 9-2-88; FWC 105-1989, f. & cert. ef. 9-29-89; FWC 92-1990, f. & cert. ef. 9-4-90; FWC 80-1992, f. & cert. ef. 8-26-92; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 45-1997, f. & cert. ef. 8-13-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 116-2006(Temp), f. & cert. ef. 10-12-06 thru 4-10-07

Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 20-2006(Temp)

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06 thru 4-10-07

Notice Publication Date:

Rules Amended: 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0050, 413-090-0100, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150, 413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200, 413-090-0210, 413-090-0220

Subject: The Department is amending these rules to incorporate into these rules the adjustments to the foster care basic rates, Family Shelter Care, and Family Group Home payment rates and the Special Rate/Personal Care Hourly Reimbursement and Transportation reimbursements. These rate changes were a part of the legislatively approved budget of the 2007 changes. The Department is also amending these rules to update the terminology used.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-090-0000

Purpose

These rules (OAR 413-090-0000 to 413-090-0050) describe the payment for maintenance and treatment services for all children placed in substitute care with certified or licensed providers of care that are funded by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0005

Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption Assistance" means financial or medical assistance to adoptive families to assist them with costs associated with their adoptive child's needs. Financial benefits are funded by the Department's Adoption Assistance budget. Assistance can be in the form of cash and/or medical coverage, an Agreement Only, or special payments.

(2) "CAF" means the Children, Adults and Families Division of the Department.

(3) "Department" means the Child Welfare Program in the Children, Adults and Families Division of the Department of Human Services.

(4) "District" means a geographic area of one or more counties served by the Department and managed by a District Manager.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(6) "Provider" means a person approved by a licensed private child-caring agency to provide care for children or an employee of a licensed private child-caring agency approved to provide care for children.

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(7) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(8) "Sub-Acute Care" means psychiatric and mental health treatment under the direction of a psychiatrist provided as an alternative to hospitalization in a residential psychiatric treatment setting.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0010

Payments — General Guidelines

(1) Family Foster Care

(a) Payment by the Department — to foster parents or relative caregivers who care for a child who is eligible under the conditions described in Department Policy I-E.6.1, "Title IV-E-FC and General Assistance", OAR 413-100-0000 to 413-100-0360 — for a child's room, food, clothing, incidentals and cash allowance (known as the regular foster care rate) will be made on a monthly basis, or prorated for portions of a month, after the period during which care has been provided. It will include the day the child enters the home, but exclude the day the child leaves the home. Costs of special care or service in accordance with a written Department service plan may also be provided if essential for the child's well being and if specifically authorized by the Department. See DHS Child Welfare Policy I-E.5.1.2, "Special Rates/Personal Care" OAR 413-090-0100 to 413-090-0220.

(b) Regular foster care rates are based upon the age of the child and the type of program services they are receiving; Family Foster Care, Family Shelter Care, Family Group Home. The rate structure is established by the Department subject to the availability of funds and are uniformly applied throughout the state. The current monthly reimbursed rates effective April 1, 2006.

(A) Monthly Family Foster Care Rates:

- (i) Child's Age — 0-5 — 6-12 — 13-18;
- (ii) Room/Board/Other — \$ 334 — \$ 331 — \$395;
- (iii) Clothing Replacement — \$ 45 — \$ 51 — \$73;
- (iv) Personal Allowance — \$ 8 — \$ 20 — \$29;
- (v) **Total — \$ 387 — \$402 — \$497.**

(B) Family Shelter Care — \$20.71.

(C) Foster Family Group Home — \$1,218.

(c) Payments to foster parents or relative caregivers certified by the Department shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) Residential Treatment. Payment by the Department to purchase of care providers will be made as stipulated in signed contracts.

(3) Payments Prohibited:

(a) Payment will not be made for two simultaneous 24 hour out-of-home care services, such as foster care, relative care, family group homes, or residential treatment at the same time.

(b) Neither payment nor utilization credit will be given for duplicate simultaneous contracted treatment services, such as day treatment and residential treatment.

(c) Payment by the Department will not be authorized for the care of children in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court.

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.470
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0030

Payment for Temporary Absences

(1) Family Foster Care:

(a) Continued payment may be made to the foster parent, relative caregiver, or provider during a child's temporary absence when:

(A) The plan is for the child to return to the care of the same foster parent, relative caregiver, or provider; and

(B) No other foster parent, relative caregiver, or provider is receiving a maintenance payment for the child during the period of the absence.

(b) Payment may be authorized by the case worker for up to seven days after a child is temporarily absent from the home of the foster parent, relative caregiver, or provider for a home visit, vacation, or special activity or when the child is on runaway.

(c) Authorization for payment after a child is absent from the home of the foster parent, relative caregiver, or provider for more than seven days must be approved by the District Manager or designee.

(d) Hospitalization. The foster parent, relative caregiver, or provider will continue to receive payment when 24-hour medical care is required for a short period of time and the foster parent, relative caregiver, or provider continues to exercise child caring responsibilities in anticipation of the child's return. (Hospitalization for medical treatment is not considered a substitute care placement with a duplicate maintenance or board and room payment.)

(2) Residential Treatment:

(a) Payments or utilization credit may be made to contracted providers for days children are on home visits or planned visits to another provider in the following circumstances:

(A) The visit is part of planned activities identified in the child's BRS service plan. Workers will be aware of the inclusion of planned visits in the service plan due to their involvement in the service planning process as outlined in Department Policy I-E.4.3, "Residential Services", OAR 413-080-0200 to 413-080-0270.

(B) The assigned Department staff is informed prior to the visit taking place. It is the responsibility of providers to inform workers of scheduled visits.

(C) The child has no more than eight total visit days per month.

(b) Children may be allowed more visit days than the 4 consecutive days or 8 total days per month. However, payment or utilization credit will not be given for such visit days, and Department workers cannot authorize such payments or utilization credit under any circumstances;

(c) Payment or utilization credit will not be made for days children are on runaway, days prior to when the child physically enters a provider's facility or therapeutic foster home, and days after the child physically leaves a provider's facility or therapeutic foster home as discharged. Department workers cannot authorize such payments or utilization credit;

(d) Hospitalization and "Sub-Acute" Care. The provider will continue to receive payment when 24-hour medical care is required for a short period of time and the provider continues to exercise child caring responsibilities in anticipation of the child's return. (Hospitalization and "Sub Acute" Care for medical treatment is not considered a substitute care placement with a duplicate maintenance of board and room payment.)

(e) Planned Visits to Another Provider. It is the responsibility of the purchase-of-care provider to reimburse the visiting resource at a reasonable rate agreed upon by both parties. The Department may not make maintenance payment to two providers at the same time.

(f) A purchase of service client invoice must be completed in accordance with Department billing procedures.

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

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0050

Family Foster Care and Relative Caregiver Out-of-State Payment Rates

(1) Foster parents and relative caregivers who receive Department approval to move out-of-state with a foster child placed in their home may continue to receive foster care reimbursement for that foster child for up to 180 days or until licensed or certified in the receiving state, whichever is earlier.

(2) Once licensed or certified in the receiving state, the reimbursement rate will be paid at the receiving state's established rates for foster care.

(3) When extenuating circumstances exist an exception may be granted to extend payments beyond 180 days. The CAF Administrator or Foster Care Program Manager may grant the exception.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

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413-090-0100

Purpose

These rules (OAR 413-090-0100 to 413-090-0220) describe the requirements for a monthly payment to a substitute caregiver that is in addition to the foster care maintenance payment. This payment is for services to a child or young adult in the care and custody of the Department who has special needs inconsistent with his or her age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0110

Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0220:

(1) "Activities of Daily Living (ADL)": Personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.

(2) "Alternate caregiver": Any person who is charged with supervision of the special needs child other than the substitute caregiver with whom the child was placed by the Department.

(3) "Child": A person under 18 years of age.

(4) "Delegated nursing procedure": Routine and skilled nursing procedures identified in OAR 851-047-0000 to 851-047-0040 (Standards for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Persons) that can be safely assigned to an unlicensed person to perform.

(5) "Direct educational costs": Costs prior authorized by the Department that are incurred by the substitute caregiver that include educational services not eligible for payment by the local school district, educational services required to maintain this child in the home provided by a private resource, transportation to educational services excluded as part of the child's Individual Education Plan, and planned recreation which is part of the treatment plan. Also, one of the four fiscal categories used by the Department to track special rate payments to foster parents.

(6) "Direct maintenance costs": Costs to maintain the child in a foster home as a result of increased daily supervision and/or direct costs essential to a child's care plan goals. (Title IV-E Maintenance definition: Maintenance payments directly related to a child's special needs to cover the cost of (and cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation.)

(7) "District": A geographic area of one or more counties served by the Department and managed by a District Manager.

(8) "Extraordinary needs": Physical, mental, behavioral, emotional or educational needs inconsistent with the age of the child.

(9) "Personal Care Services": One-on-one medically oriented services for children with documented physical or mental impairments whose supportive care needs require a registered nurse assessment care plan, and periodic care plan review to allow the child to live safely in the most independent, least restrictive living situation. Also, one of four fiscal categories used by the Department to track special rate payments to foster parents.

(10) "Physician's order": A written order by a physician that states personal care services are required to meet the child's care needs.

(11) "Provider" means a person approved by a licensed private child-caring agency to provide care for children or an employee of a licensed private child-caring agency approved to provide care for children.

(12) "Registered nurse": An individual licensed and registered to practice nursing.

(13) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(14) "RN Assessment and Care Plan": A registered nurse assessment of a child's needs and a Care Plan which indicates the care, treatments, and procedures that are to be provided by the caregiver to meet the child's needs.

(15) "Special need": A trait or impairment peculiar to a child that requires extraordinary care or attention.

(16) "Special Rate": A supplemental payment for children in foster care that is determined by direct maintenance costs, and/or direct educational costs. Special rates help to maintain the child in foster care by assisting caregivers providing care, supervision and/or other services identified to address the child's extraordinary physical, mental, behavioral and/or emotional needs.

(17) "Special Rate Review Committee": A committee of Department staff representing the District Child Welfare office that may include a registered nurse and foster parents.

(18) "Substitute care": The out-of-home placement of a child or young adult who is in the legal or physical custody of the Department.

(19) "Substitute caregiver": A relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(20) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department and lives in substitute care or lives independently, through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0120

Policy

(1) Children and young adults with special needs have requirements that produce additional costs and services on the part of the substitute caregiver. The substitute caregiver may be reimbursed for extra costs and services.

(2) These additional costs and services make up the special rate or Personal Care payment of the child or young adult. The Department tracks them by three fiscal categories: direct maintenance costs, (Title IV-E); non-Title IV-E eligible expenses, (General Fund, and/or TANF); personal care services, (Title XIX).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0130

Special Rate/Personal Care Eligibility Requirements

To be eligible for a special rate, a child or young adult must meet all the following conditions:

(1) All Department policy related to child or young adult and substitute caregiver eligibility must be met.

(2) All prior resources for achieving objectives, including the child or young adult's own resources, those available from family, friends, community resources, and other Department resources must have been explored by the caseworker and been found insufficient or inappropriate to meet the identified needs.

(3) A determination regarding eligibility for Personal Care Services. This determination includes checking for Supplemental Security Income (SSI) eligibility, and whether the child or young adult has a documented, diagnosed physical or mental impairment.

(a) To be eligible for Personal Care Services, a child or young adult must:

(A) Be eligible for medicaid, either funded from the state general fund or Title XIX; and

(B) Have care needs which exceed the norm for the age of the child or young adult which can be met through the Personal Care Services Program.

(b) To initiate the provision of Personal Care Services, a registered nurse must assess the Personal Care Service needs of the child or young adult, develop a Care Plan based on a documented physical or mental impairment, secure the physician's signed prescription of the Personal Care Services to be provided, evaluate the competency of the substitute caregiver, and recommend the number of hours per month of care required to meet the Care Plan.

(4) The child or young adult must have a basic foster care maintenance payment.

(5) The substitute caregiver of the child or young adult must be certified by the Department or certified or approved by a licensed child caring agency.

(a) If Personal Care services are to be provided, the substitute caregiver of the child or young adult must be evaluated by a registered nurse and have written verification of competency to provide the care authorized in the RN Care Plan of the child or young adult.

(b) If Personal Care Services include RN delegated nursing tasks, the RN will use form CF 172RNT to document the introductory explanation, demonstration, and return demonstration of all delegated nursing tasks. Detailed written instructions, as well as side effects and/or adverse reactions and actions to be instituted should side effects occur, must also be

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outlined during the initial delegation process per Oregon State Board of Nursing (OSBN) Guidelines.

(c) It is the responsibility of the substitute caregiver to select alternate caregivers who are knowledgeable of the specific care needs of the child or young adult and who understand and can follow the care plan of the child or young adult. If alternate caregivers perform delegated nursing tasks for the child, they may receive RN training/written instructions per OSBN guidelines at the same time as the substitute caregiver. If this is not possible, an RN must notify the caseworker that alternate caregivers need delegation training and request authorization to schedule training for the alternate caregivers prior to providing care for the child or young adult. RN delegations are not transferrable.

(6) Each Special Problem Code of the child or young adult must be entered on the Department's Integrated Information System.

(7) The child or young adult must have one or more physical or mental impairments that may include, but are not limited to, the following needs or conditions:

(a) Non-ambulatory inconsistent with their age and need individual care, such as lifting, bathing, toileting, feeding, dressing.

(b) Enuresis or encopresis inconsistent with their age, necessitating extra laundry such as clothing, bed linen (including protective mattress coverings), or diaper changing.

(c) Special diets prescribed in writing by a physician.

(d) Special treatment such as exercise or other physical therapy. Such services must be part of the written prescribed medical treatment plan.

(e) Medical supervision or care.

(f) Twenty-four hour supervision for their own protection or the protection of others.

(g) Aggressive, acting-out behavior which causes excessive damage to their own or their caregiver's property; such as destruction of bed linen, furnishings, furniture, and other household equipment.

(h) Special treatment prescribed by a physician or clinic that can be provided by substitute caregivers with or without supplementary training or supervision.

(i) Extremely withdrawn or depressed behaviors which require frequent reassurance, attention, or stimulation.

(j) Underdeveloped personal habits and growth requiring intensive provision of day-to-day learning experiences by the substitute caregiver in keeping with the abilities of the child or young adult.

(k) Developmental delays requiring skilled care.

(l) Aggressive, acting-out, abusive and disruptive behavior.

(m) Delinquent behavior.

(n) Extreme school problems which require substitute caregiver involvement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0140

Periodic Review of Eligibility Requirements

(1) The eligibility of a child or young adult for a special rate or personal care must be reviewed by the child or young adult's caseworker and supervisor at intervals of six months or less from the effective date of the authorization. With justifying documentation to the District Manager or designee, the child or young adult's caseworker and supervisor must make recommendations to continue, change, or terminate the special rate or personal care payment. The Special Rate or Personal Care review requirement is to assure the Care Plan is appropriate and meets the needs of the child or young adult. A caseworker may consult with the RN or request the RN to complete a new assessment for this review.

(2) A re-assessment for a Special Rate or Personal Care may occur at any time if the behavioral or medical conditions of the child or young adult change enough to warrant such re-assessment. The re-assessment must be authorized by the caseworker or supervisor for the child or young adult.

(3) An Annual Review should be completed for every child or young adult receiving a Special Rate or Personal Care service. This review will be completed by the caseworker or RN depending on the type of assessment necessary. Physician's Order. At least annually, the child or young adult's physician prescribing the continuation or revision of Personal Care Services must evaluate the care need of the child or young adult and have face-to-face contact with the child or young adult.

(4) Substitute caregivers must be notified by the Department of any intended rate changes prior to agency authorization of the Special Rate or Personal Care Services Foster Care Authorization form. The agreement

shall be forwarded to the substitute caregiver within 30 days of authorization.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0150

Cost Determination

(1) Special maintenance costs will be determined by the caseworker based on direct costs to maintain the child or young adult in the home.

(a) Direct maintenance costs (Title IV-E eligible) are:

(A) Diet — specify type (cost above regular diet).

(B) Laundry services — launder clothing, bedding for the child or young adult due to his or her special needs, (a service beyond typical needs of a child or young adult this age) (cost per load times the number of loads).

(C) Transportation — cost associated with transporting the child or young adult for parental visitation.

(D) Supervision — cost not eligible for Personal Care services to maintain the child or young adult in the home, documented on the 172 (NPC) Part A.

(E) Other - payment to cover the cost of (and cost of providing) clothing, school supplies, or a child or young adult's personal incidentals, that occur on an ongoing basis. The Department also provides Title IV-E foster care maintenance payments to cover the necessary costs incurred on behalf of a child or young adult who resides with his or her minor parent in substitute care. That payment will be based on the current basic foster care maintenance rate. This is not to be used to reimburse one-time payments.

(b) Direct costs (non Title IV-E eligible expenses) eligible are:

(A) Education services provided by a private resource and necessary to the maintenance of the child or young adult in the home, (allowed only if not eligible to be paid by the local school district).

(B) Transportation related to education services which has been excluded as a part of the cost of the child's Individual Education Plan.

(C) Medical-related transportation that has been verified by the Division of Medical Assistance Programs (DMAP) of the Department of Human Services as not qualifying for payment according to its medical policy (**DMAP Medical Transportation Services Guide**; Case Workers Guide, Ch. 23).

(D) Planned recreation which is part of the treatment plan for physically or mentally impaired children or young adults.

(E) Relief Care: Based on the special needs of the child or young adult, an alternate caregiver provides temporary care of the child or young adult in substitute care.

(2) Personal Care Services payment amounts will be determined by the Special Rate Review Committee based upon such Personal Care Services to the child or young adult prescribed by a physician and described in the RN Assessment and Care Plan. Personal Care Services (Title XIX eligible) include all of the following:

(a) Basic personal hygiene, including bathing, hair grooming, nail care, foot care, dressing/undressing, and skin care.

(b) Toileting, including bowel and bladder care required for the total toileting process, helping to and from the bathroom, diapering and bedpan routine.

(c) Ambulation and transfer, including repositioning and assistance with or without mechanical aids.

(d) Feeding and eating with or without mechanical aids, including assurance of adequate fluid intake and preparation of special diets.

(e) Behavior management, in conjunction with a diagnosis from a qualified professional contained in the "Diagnostic and Statistical Manual of Mental Disorders. (DSM IV)," including problems related to adaptation, judgment, behavioral demands on others and incomplete socialization.

(f) Administration of prescribed and over-the-counter medications, including dispensing, observing for reactions, and assuring prescriptions are refilled when necessary.

(g) Standby Assistance. Standby assistance is being available to help the child or young adult with personal care tasks that cannot be scheduled for a child or young adult who cannot be left alone.

(h) Nighttime Care Needs. Nighttime Care is the time required to assist a child or young adult to sleep through the night.

(i) Supportive Services. Supportive services are those tasks authorized on the RN Care Plan that are not Activities of Daily Living, but are required to meet the identified goals of the child or young adult, such as: preparation of a special diet, household assistance essential to the child or young adult's health and comfort, travel to medical appointments, and shopping for a child or young adult's health care or nutritional needs.

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(j) Routine and Skilled Nursing Procedures. Nursing procedures are procedures related to Activities of Daily Living which can be delegated by a registered nurse to a person who is not a nurse. Procedures include mobility, care of unstable fracture/new cast; feeding, feeding per nasogastric tube; bladder, catheter care; bowel, care of colostomy or ileostomy; skin and nails, care of non-healing wounds, nail care for diabetics; care for a child or young adult requiring soft restraints due to a diagnosed medical condition; oxygen/ventilator, administration; tracheotomy/suctioning, sterile care of stoma, suctioning; medications, injections, finger stick or other blood sugar tests; heart monitor supervision. A delegated nursing procedure shall be reviewed every 60 days or more frequently based on the RN recommendation.

(k) Development of RN Care Plan. Based on the assessment, the RN will develop a Care Plan which identifies the child or young adult's impairment-related problem(s) and provides instructions for the care required.

(A) The registered nurse will enter on the assessment form a recommendation for the number of hours required monthly to meet the care plan. Any recommended hour change requires registered nurse acknowledgment by initial or signature next to the change.

(B) The caseworker, after discussion with the RN, will recommend to the Special Rate Review Committee a rate based upon the number of hours of Personal Care Services per month recommended by the registered nurse.

(C) The Special Rate Review Committee may add additional hours under Intensive Supervision Services, and Relief Care for the care provided to the child or young adult who requires intensive behavioral supervision beyond the RN assessment. This intensive supervision need must be documented.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0160

Costs Reimbursable by the Department

(1) The Department will reimburse costs by a substitute caregiver for extraordinary services and supplies that are required on a daily, weekly, monthly or other continuing basis. The costs are separated into three areas: Costs which are reimbursable to the state under Title IV-E eligible federal guidelines, (CF 172A, Part A); costs paid with state general funds and TANF (CF 172A, Part B); Title XIX eligible federal guidelines, (CF 172A, Part C).

(2) Supervision costs above standard maintenance costs may be paid according to a combination of Title IV-E and TANF or Title XIX allowable costs.

(3) Supervision costs above standard maintenance costs include one or more of the following:

(a) Supervision Eligible for Title IV-E Funding (Part A-172NPC). Supervision eligible for Title IV-E funding is only for behaviors or direct care needs that are beyond the normal requirements for a child or young adult of a similar age and the child or young adult does not have a documented diagnosis.

(b) Supervision Eligible for Title XIX (Part C-172A). Supervision eligible for Title XIX is for behaviors or direct care needs that are beyond the normal requirements for a child or young adult of a similar age and the child has a documented diagnosis and an RN assessment and Care Plan has been completed.

(c) Relief Care is only for a child or young adult whose documented behavioral supervision needs exceed the normal requirements for a child or young adult of a similar age and additional supervision is necessary to the maintenance of the child or young adult in the home.

(4) The narrative for any supervision costs must:

(a) Document the behaviors and direct care and supervision needs the child or young adult has that are beyond the normal requirements for a child or young adult of a similar age.

(b) Describe the necessary interventions and services the substitute caregiver must provide for each special need, including expected outcome which, if not achieved, would require that the child or young adult would need placement in a higher level of care program.

(c) Describe the substitute caregiver's skill and experience which enable the substitute caregiver to provide appropriate care for the special needs and behaviors of the child or young adult.

(5) Reimbursement rate structure effective April 1, 2006. A rate structure was established to provide rate parity for similar type activities and equitable rates for similar types of special needs of children or young

adults. An exception to policy may be granted through documentation and approval (OAR 413-090-0200).

(a) Hourly Rate for Supervision \$4.60

(b) Transportation Cost — Per Mile \$.36

(c) Laundry — Per Additional Load \$1.00

(d) Relief Care — Hourly Rate \$4.60

(e) Program Educational Expenses Direct Cost Incurred — (Prior Approved)

(f) Diet Cost Direct Cost Incurred — (Prior Approved)

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 28-2003, f. & cert. ef. 7-31-03; CWP 35-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 6-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0170

Costs Not Compensated by the Department

Direct costs not compensated are:

(1) Kindergarten.

(2) Day care.

(3) Clothing.

(4) Regular school transportation unless the substitute caregiver provides transportation for a child who attends the school of origin that he or she attended prior to removal from the parent's home.

(5) Special needs which may be paid for through Department Policy I-E.5.2, "Payments for Special and/or Extraordinary Needs", OAR 413-090-0300 to 413-090-0380.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0180

Reimbursement Requirements

Requirements for Special Rate payment include:

(1) Billing. Billing for the service will be submitted on the Department's approved reimbursement form.

(2) Periods of Absence. The Department will not pay a substitute caregiver for services not provided. (See Department Policy I-E.5.1, OAR 413-090-0030.)

(3) Employer/Employee Relationship. There is not an employer/employee relationship between the Department and the substitute caregiver, or the substitute caregiver's alternate caregiver, authorized to receive reimbursement through the Special Rate Program.

(4) Special Rate/Personal Care Services Foster Care Authorization Form. A substitute caregiver may only be paid an amount above the standard foster care maintenance payment for services authorized on the Special Rate/Personal Care Services Foster Care Authorization form, CF 172A.

(5) Foster Parent Contract. When a provider is under contract with a licensed child caring agency to serve a child or young adult in the provider's home, the Department will not pay for services covered under another contract or maintenance payment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0190

Payment Authorization

(1) Payment of a special rate or for personal care may be made only after:

(a) The Special Rate Review Committee has:

(A) Reviewed the methods used to arrive at the special rate/personal care amount;

(B) Considered the amounts paid for services provided that may apply to more than one child or young adult; such as supervision, relief care, in-home assistance, laundry, transportation; and

(C) Considered the equitability of rates for similar types of children or young adults.

(b) The agreement (CF 172A) is authorized by the signatures of the caseworker, substitute caregiver, and supervisor. Exceptions must additionally be authorized by the Special Rate Committee chairperson and District Manager or designee.

(c) The required payment information has been entered on the Department's integrated information system.

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(2) A change in the substitute caregiver or revision of the special rate which produces a different rate than previously paid is a new special rate and as such requires a new agreement (172A or 172NPC).

(3) Children or young adults placed with a substitute caregiver outside the office having custody and requiring a special rate or Personal Care must have an agreement completed by the office having custody. The office where the child or young adult is placed, if asked, is responsible to participate in assessing the child or young adult's needs and in completing the agreement. Agreement authorization must be completed in the office having custody.

(4) The special rate is effective from the date of local DHS child welfare office authorization. For special rate (172NPC – Non-Personal Care) services provided prior to the date of the authorizing signature, the District Manager or designee may make the effective date of the agreement retroactive up to 90 days prior to the signature date. For Personal Care Rates the above does not apply. The Personal Care Rate is effective on the date the RN does the assessment. This date may be retroactive only to the 1st of the month in which the RN did the assessment.

(5) End Date: The maximum period of time for a special rate or Personal Care Authorization is 12 months. A special rate or Personal Care may be authorized for a lesser period as determined by the District Manager or designee. If a special rate or Personal Care Authorization expires and is not renewed before the next regular scheduled payment date, foster care payment will revert to the basic maintenance rate.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 17-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0200

Exceptions and Variances

(1) Exceptions and variances consist of:

(a) Costs that are not in these rules (OAR 413-090-0100 to 413-090-0220); or

(b) Costs that exceed \$500 per month.

(2) Requests for exceptions and variances must be made in writing by the caseworker to the District Manager or designee. Requests must state the reason(s) specific requirements of these rules cannot be met or met only in modified form, and state the requested additional rates or amount of time needed.

(3) Requests for exceptions and variances must be approved by the District Manager or designee.

(4) The granting of an exception shall not constitute a precedent for any other substitute caregiver, child, or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0210

Termination of Special Rate

The Special Rate or Personal Care must be terminated when the child or young adult no longer meets the Special Rate eligibility requirements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

413-090-0220

Procedure Manual

All procedures and forms for the implementation of the Special Rate/Personal Care Program are contained in each DHS Child Welfare Office.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07

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Department of Human Services, Public Health Chapter 333

Rule Caption: Department of Human Services revisions to Oregon Administrative Rules implementing HB 2800 (2005 Legislative Session).

Adm. Order No.: PH 21-2006

Filed with Sec. of State: 10-6-2006

Certified to be Effective: 10-6-06

Notice Publication Date: 8-1-06

Rules Adopted: 333-510-0002, 333-510-0046, 333-510-0047

Rules Amended: 333-500-0057, 333-510-0030, 333-510-0045

Subject: The Oregon Department of Human Services, Public Health Division is permanently adopting and amending rules in order to implement House Bill 2800 (2005 Legislative Session).

Rules Coordinator: Christina Hartman—(971) 673-1291

333-500-0057

Civil Penalties

(1) For the purposes of this rule, "safe patient care" has the meaning given the term in OAR 333-510-0002.

(2) Following completion of a nurse staffing audit or a nurse staffing complaint investigation, the Department may impose civil penalties in the manner provided in ORS 441.170 for a violation of any provision of ORS 441.162 or 441.166 if there is reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of a nursing staff plan shall be considered a separate violation.

(4) Civil penalties may be imposed for violations of ORS 441.162 and 441.166 in accordance with **Table 1** in this rule.

(5) The Department shall consider all evidence in determining a violation of the hospital nurse staffing rule including but not limited to witness testimony, written documents and observations.

(6) A notice of civil penalty shall include a statement of appeal rights as provided in ORS 441.170 and 183.745.

(7) The Department shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule.

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

Stat. Auth.: ORS 409.050, 441.170

Stats. Implemented: ORS 441.162, 441.166, 441.170

Hist.: OHD 20-2002, f. & cert. ef. 12-10-02; PH 21-2006, f. & cert. ef. 10-6-06

333-510-0002

Definitions

As used in OAR chapter 333, division 510, the following definitions apply:

(1) "Direct Care Nurse" means a nurse who is routinely assigned to a patient care unit, who is replaced for scheduled and unscheduled absences and includes charge nurses if the charge nurse is not management services.

(2) "Evidence Based Standards" means standards that have been scientifically developed, are based on current literature, and are driven by consensus.

(3) "Hospital" has the same meaning given in ORS 442.015.

(4) "Mandatory Overtime" is any time that exceeds those time limits specified in ORS 441.166 unless the registered nurse, licensed practical nurse or certified nursing assistant voluntarily chooses to work overtime.

(5) "Nurse Manager" means a registered nurse who has administrative responsibility 24 hours a day, 7 days a week for a patient care unit, units or hospital and who is not replaced for short-term scheduled or unscheduled absences.

(6) "On Call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(7) "On Call Nursing Staff" means individual nurses and/or nursing service agencies maintained by a hospital that are available and willing to cover nursing staff shortages due to unexpected nursing staff absences or unanticipated increased nursing services needs.

(8) "Potential Harm" or "At Risk of Harm" means that an unstable patient will be left without adequate care for an unacceptable period of time if the registered nurse, licensed practical nurse, or certified nursing assistant leaves the assignment or transfers care to another.

(9) "Safe Patient Care" means nursing care that is provided appropriately, in a timely manner, and meets the patient's health care needs. The following factors may be, but are not in all circumstances, evidence of unsafe patient care.

(a) A failure to implement the written nurse staffing plan;

(b) A failure to comply with the patient care plan;

(c) An error that has a negative impact on the patient;

(d) A patient reports that his/her nursing care needs have not been met;

(e) A medication not given as scheduled;

(f) The nursing preparation for a procedure not accomplished on time;

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(g) Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;

(h) The daily unit-level staffing does not include coverage for all known patients, taking into account the turnover of patients;

(i) The skill mix of employees and the relationship of the skill mix to patient acuity and intensity of the workload is insufficient to meet patient needs; or

(j) An unreasonable delay in responding to a patient's (or a family member's request on behalf of a patient) request for nursing care.

(10) "Standby" means a scheduled state of being ready to be called to work within a hospital-designated timeframe.

Stat. Auth.: ORS 409.050, 441.170
Stats. Implemented: ORS 441.160 - 441.192
Hist.: PH 21-2006, f. & cert. ef. 10-6-06

333-510-0030

Nursing Services

(1) The hospital shall provide a nursing service department, which provides 24-hour onsite registered nursing care, 7 days per week.

(2) The nursing services department shall be under the direction of a nurse executive who is a registered nurse, licensed to practice in Oregon.

(3) All nursing personnel shall maintain current certification in cardiopulmonary resuscitation.

(4) For the purposes of these rules, "circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of the operating room team members during surgery.

(5) The duties of a circulating nurse performed in an operating room of a hospital shall be performed by a registered nurse licensed under ORS 678.010 to 678.410. In all cases requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(6) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

Stat. Auth.: ORS 409.050, 441.170
Stats. Implemented: ORS 441.160 - 441.192
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11-1980, f. & ef. 9-10-80; HD 5-1981, f. & ef. 3-30-81; Renumbered from 333-023-0172; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-072-0015(2); HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 21-2006, f. & cert. ef. 10-6-06

333-510-0045

Nursing Services Staffing

(1) Each hospital must be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The nurse staffing plan must be developed, monitored, evaluated and modified by a hospital nurse staffing plan committee except as provided in section 6 of this rule. To the extent possible, the committee must:

(a) Be comprised solely of equal numbers of hospital nurse managers and direct care registered nurses as its exclusive membership for decision making;

(b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit as the specialty or unit as defined by the hospital; and

(c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to ORS 441.

(2) The hospital nurse staffing committee must document:

(a) How its members were chosen to reflect fair and knowledgeable representation;

(b) How the input of each member in decision making is assured;

(c) The committee process and procedures, including how and when meetings are scheduled, how committee members are notified of meetings, how the meetings are conducted, how unit staff input is acquired, who may participate in the decision making and how decisions are made;

(d) Plans for how it will monitor, evaluate and modify the nurse staffing plan over time; and

(e) Meeting proceedings (meeting minutes).

(3) The written staffing plan must:

(a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care;

(b) Include at least an annual quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time;

(c) Be based on the specialized qualifications and competencies of the nursing staff;

(d) Ensure that the skill mix and the competency of the staff meet the nursing care needs of the patient;

(e) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations, such as, but not limited to, The American Association of Critical Care Nurses, American Operating Room Nurses (AORN), or American Society of Peri-Anesthesia Nurses (ASPAN);

(f) Recognize differences in patient acuteness;

(g) Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients; and

(h) Establish minimum numbers of nursing staff personnel including licensed nurses and certified nursing assistants on specified shifts, with no fewer than one registered nurse and one other nursing care staff member on duty in a unit when a patient is present.

(4) On January 2, 2007, any hospital that has not implemented a nurse staffing plan developed by its hospital nurse staffing committee must request from the Department a sixty (60) day Planning Process Extension or be found in violation of this law and subject to civil penalty per OAR 333-500-0057. To be granted the Extension, a hospital must:

(a) Provide written documentation describing those portions of the nurse staffing plan that have been developed and approved by the nurse staffing committee;

(b) Present a written plan for assisting the hospital nurse staffing committee in resolving outstanding differences or in establishment of a functional committee, including efforts to encourage participation in the committee, scheduling of timely meetings, arranging for meeting facilitation and setting timelines; and

(c) Implement a temporary nurse staffing plan that incorporates the portions of the nurse staffing plan that have been accepted by the nurse staffing committee, and is consistent with subsections (3)(a) through (h) of this rule.

(5) A hospital may request from the Department a second sixty (60) day Planning Process Extension. To be granted this second Extension, in addition to subsections (4)(a) through (c) of this rule, the hospital must:

(a) Employ a mediator within thirty (30) days to establish a functional nurse staffing committee and/or assist in working out a compromise on issues of disagreement; and

(b) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.

(6) The hospital must evaluate and monitor the staffing plan for effectiveness and revise the staffing plan as necessary to improve patient care as part of the hospital's quality assurance process. The hospital shall document these quality assurance activities. When the hospital revises the staffing plan pursuant to this section, the hospital shall advise the hospital nurse staffing plan committee of the revision and the reasons the revision is necessary.

(7)(a) The hospital nurse staffing committee must monitor, evaluate, modify, and re-approve the nurse staffing plan according to the schedule described in the nurse staffing plan.

(b) If the hospital nurse staffing committee is unable to reach agreement on a re-approval of the nurse staffing plan, any nurse on the committee may request the Department to assist in resolving the impasse.

(c) The Department may require a hospital to:

(A) Provide written documentation describing those portions of the modified nurse staffing plan that have been developed and approved by the nurse staffing committee;

(B) Present a written plan for assisting the hospital nurse staffing committee in resolving outstanding differences including the scheduling of timely meetings, arranging for meeting facilitation and setting timelines; and

(C) Implement those modifications to the nurse staffing plan that have been approved by the nurse staffing committee.

(d) If a hospital is unable to resolve differences and adopt a modified plan within sixty (60) days from the time the Department is notified of the impasse, it may request a sixty (60) day Planning Process Extension.

(e) To be granted the extension, a hospital must:

(A) Employ a mediator within thirty (30) days to assist in working out a compromise; and

(B) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.

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(8) The hospital must maintain and post a list of on-call nursing staff or staffing agencies that may be called to provide qualified replacement or additional staff in the event of emergencies, sickness, vacations, vacancies and other absences of the nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis. The list must be available to the individual responsible for obtaining replacement staff.

(9) When developing the on-call list, the hospital must explore all reasonable options for identifying local replacement staff. These efforts must be documented.

(10) When a hospital learns about the need for replacement staff, the hospital must make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse, or certified nursing assistant to work overtime. Reasonable effort includes the hospital seeking replacement at the time the vacancy is known and contacting all available resources as described in section (8) of this rule. Such efforts must be documented.

(11) A hospital may not require a registered nurse, licensed practical nurse, or certified nursing assistant to work:

- (a) Beyond the agreed-upon shift;
- (b) More than 48 hours in any hospital-defined work week; or
- (c) More than 12 consecutive hours in a 24-hour period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or

(B) There is a risk of harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(12) Each hospital must have a system to document mandatory overtime. The procedure must be clearly written, provided to all new nursing staff, and be posted in a conspicuous place. The procedure must ensure that both the employee and management are involved.

(13)(a) Time spent attending hospital-mandated meetings, and hospital-mandated education and/or training must be included as hours worked for purposes of section (11) of this rule.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of section (11) of this rule.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer must be included as hours worked for purposes of section (11) of this rule.

(14) The provisions of sections (10) to (13) of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a hospital disaster plan;

(b) In emergency circumstances, such as but not limited to:

(A) Sudden unforeseen adverse weather conditions;

(B) An infectious disease epidemic of staff; or

(C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in section (8) of this rule and is unable to obtain replacement staff in a timely manner.

(15) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon scheduled shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules 851-045-0015S(1)(j) and (5).

(16) A hospital must post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, and 441.192, in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(17) Upon request of a hospital, the Department may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. Such request for a variance must be in writing and must state the reason for seeking a variance, verification that the nurse staffing plan committee has reviewed the request for variance, and how granting the variance will meet patient needs or the nursing practices of the hospital. A variance must be posted along with the notice required in ORS 441.180.

(18) Nothing in sections (4) to (7) of this rule relieves a hospital from complying with ORS 441.162 or 441.166.

Stat. Auth.: ORS 409.050, 441.170

Stats. Implemented: ORS 441.160 - 441.192

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; OHD 20-2002, f. & cert. ef. 12-10-02; PH 22-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; PH 21-2006, f. & cert. ef. 10-6-06

333-510-0046

Audit Procedure

(1) The Department shall annually conduct random audits of not less than seven percent of all hospitals, to determine compliance with the requirements of ORS 441.162, 441.166 and 441.192.

(2) During an audit, the Department shall review:

(a) The hospital's written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-510-0045(3);

(b) The job descriptions and personnel files of the nursing staff, which includes the documentation of required licensure and indicates the specialized qualifications and competencies of the nursing staff;

(c) The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;

(d) The hospital's process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;

(e) Documentation described in OAR 333-510-0045(2) and (4) to (7);

(f) The hospital's process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;

(g) The hospital's policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0045(12);

(h) The hospital's policy regarding education and training to ensure that hospital-mandated hours are included in time worked;

(i) The hospital's policy on maintenance, use and access to the on-call list for seeking replacement staff; and

(j) Documentation of the hospital's efforts to seek replacement staff when needed.

(3) In conducting an audit, the Department may interview:

(A) Appropriate hospital staff regarding:

(A) Implementation and effectiveness of the nurse staffing plan for nursing services;

(B) Input, if any that was provided to the nurse staffing plan committee;

(C) Whether the hospital has a formal procedure for admission and diversion of patients to another acute care facility when, in the judgment of the direct care registered nurses, there is an inability to meet patient care needs or a risk of harm to existing and new patients; or

(D) Any other subject or fact relating to hospital nursing services that is subject to the review of the Department under this rule.

(b) Hospital staff that does not voluntarily come forward for an interview during an audit; and

(c) Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.

(4) Following an audit, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-500-0057.

(5) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

(6) The names of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law.

Stat. Auth.: ORS 409.050, 441.170

Stats. Implemented: ORS 441.160 - 441.192

Hist.: PH 21-2006, f. & cert. ef. 10-6-06

333-510-0047

Investigation Procedures for Investigation of Nurse Staffing Complaints

(1) As soon as possible after receiving a nurse staffing complaint, the Department shall interview the complainant and gather as much information as possible about the allegations.

(2) Following the review of the complaint and interview of the complainant, the Department will determine whether the allegations, if true, would constitute a violation of ORS 441.162 to 441.168. If the allegations constitute a violation of ORS 441.162 to 441.168, the Department will proceed with an on site complaint investigation.

(3) During an onsite complaint investigation, the Department may, as appropriate:

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(a) Review any documentation described in OAR 333-510-0046(2) or any other documentation that may be relevant to the complaint, including a review of patient files;

(b) Interview any person described in OAR 333-510-0046(3) or any other person who may have information relevant to the type of complaint received; and

(c) Review any current waivers of the nurse staffing rules that the hospital has been granted.

(4) In conducting interviews during a complaint investigation under section (3) of this rule, the Department shall interview both direct care nurses and nurse managers and hospital staff that did not come forward voluntarily for an interview during an investigation, but who may have information relevant to the complaint.

(5) The Department shall determine whether the notice required under ORS 441.180 is posted in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(6) In deciding whether there is a violation of ORS 441.162 to 441.168, the Department shall consider:

(a) Whether there is objective evidence discovered during the investigation to substantiate a complaint;

(b) The number of witnesses, and the credibility of the witnesses who will attest to an alleged violation of ORS 441.162 to 441.168; and

(c) Whether witness statements are corroborated or refuted by other evidence.

(7) Nothing in section (6) of this rule requires that witness statements be corroborated in order for the Department to find a violation of ORS 441.162 or 441.166.

(8) Following an investigation, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-500-0057.

(9) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

(10) The identity of witnesses providing statements to the Department during an investigation will be kept confidential to the extent permitted by law. However, in the event witness testimony is needed in a hearing concerning a violation of ORS 441.162 to 441.168, the identity of a witness may be required to be disclosed.

(11) If during a complaint investigation, the Department has evidence that a hospital has engaged in a retaliatory act prohibited by ORS 441.174, the Department will advise the registered nurse, licensed practical nurse or certified nursing assistant to contact the Bureau of Labor and Industries regarding the concern.

Stat. Auth.: ORS 409.050, 441.170

Stats. Implemented: ORS 441.160 - 441.192

Hist.: PH 21-2006, f. & cert. ef. 10-6-06

Rule Caption: Reconsideration process for Certificate of Need decisions.

Adm. Order No.: PH 22-2006

Filed with Sec. of State: 10-6-2006

Certified to be Effective: 10-6-06

Notice Publication Date: 9-1-06

Rules Adopted: 333-670-0145

Rules Amended: 333-670-0140

Rules Repealed: 333-670-0000, 333-670-0010, 333-670-0020, 333-670-0030, 333-670-0040, 333-670-0050, 333-670-0060, 333-670-0070, 333-670-0080, 333-670-0090, 333-670-0100, 333-670-0110, 333-670-0120, 333-670-0130, 333-670-0150, 333-670-0160, 333-670-0170, 333-670-0180, 333-670-0190, 333-670-0200, 333-670-0210, 333-670-0220, 333-670-0230, 333-670-0240, 333-670-0250, 333-670-0260, 333-670-0270, 333-670-0280

Subject: The Oregon Department of Human Services (DHS), Public Health Division (Division) is permanently adopting, amending and repealing Oregon Administrative Rules (OAR's) related to the reconsideration process for appealing a final order on a Certificate of Need application.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-670-0140

Burden of Proof

Petitioners shall have the burden of proving by a preponderance of the evidence all adjudicative facts necessary to establish entitlement to reconsideration, or to the relief it seeks.

Stat. Auth.: ORS 431.120(6) & 442.315

Stats. Implemented: ORS 431.120(6) & 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; Suspended by PH 8-2006(Temp), f. & cert. ef. 4-17-06 thru 10-11-06; PH 22-2006, f. & cert. ef. 10-6-06

333-670-0145

Applicability of OAR 333-670-0140

OAR 333-670-0140 shall apply to reconsideration hearings requested or held on or after the effective date of this rule.

Stat. Auth.: ORS 431.120(6) & 442.315

Stats. Implemented: ORS 431.120(6) & 442.315

Hist.: PH 22-2006, f. & cert. ef. 10-6-06

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 13-2006(Temp)

Filed with Sec. of State: 9-25-2006

Certified to be Effective: 9-25-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 461-115-0705

Rules Suspended: 461-115-0705(T)

Subject: A temporary amendment to OAR 461-115-0705 about required verification, effective September 1, 2006 through December 31, 2006, was filed to add the citizenship verification requirements of the Deficit Reduction Act of 2005 into the verification requirements for Breast and Cervical Cancer Medical (BCCM), Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Substitute Adoptive Care (SAC) programs. The Oregon Health Plan Children's Health Insurance Program (OHP-CHP) was erroneously included as one of the programs subject to the verification requirements of the Deficit Reduction Act of 2005. This temporary amendment removes OHP-CHP program as one of the programs subject to these requirements.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0705

Required Verification; BCCM, MAA, MAF, EXT, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, EXT, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except for clients who receive Medicare, clients who are assumed eligible in accordance with OAR 461-135-0010, OHP-CHP clients, and clients who are presumptively eligible for BCCM, each client declaring U.S. citizenship must provide *acceptable documentation* of citizenship and identity. For purposes of this rule, *acceptable documentation* consists of any of the documents permitted under section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171).

(a) A new applicant must provide *acceptable documentation* as a condition of eligibility.

(b) A current recipient who has not already provided *acceptable documentation* must provide documentation at the next redetermination of eligibility.

(c) A client who has already provided *acceptable documentation* of U.S. citizenship is not required to provide additional evidence during subsequent application for benefits or redeterminations of eligibility.

(3) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security account number.

(B) Alien status for applicants who indicate they are not U.S. citizens.

(C) The premium exemption allowed because a client is —

(i) A member of a federally recognized Indian tribe, band or group;

(ii) An Eskimo, Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

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(iii) A person eligible for benefits through an Indian Health Program.
(D) Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled *full time* in *higher education* must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification to support a request for waiver of a premium arrearage (*see* OAR 461-135-1130).

(f) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; 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 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06

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

Adm. Order No.: SSP 14-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 8-1-06

Rules Adopted: 461-135-0560, 461-180-0044

Rules Amended: 461-001-0000, 461-025-0300, 461-025-0305, 461-025-0310, 461-025-0311, 461-025-0316, 461-025-0350, 461-025-0371, 461-110-0370, 461-110-0630, 461-115-0030, 461-115-0530, 461-120-0125, 461-135-0570, 461-135-0580, 461-135-0844, 461-135-0850, 461-135-1175, 461-140-0010, 461-140-0020, 461-140-0070, 461-140-0110, 461-140-0120, 461-140-0250, 461-140-0260, 461-140-0270, 461-140-0296, 461-145-0040, 461-145-0090, 461-145-0120, 461-145-0150, 461-145-0170, 461-145-0190, 461-145-0250, 461-145-0320, 461-145-0330, 461-145-0360, 461-145-0380, 461-145-0420, 461-145-0433, 461-145-0540, 461-145-0590, 461-145-0910, 461-155-0190, 461-155-0250, 461-160-0030, 461-160-0055, 461-160-0120, 461-160-0420, 461-160-0430, 461-160-0610, 461-160-0620, 461-170-0130, 461-175-0220, 461-175-0310, 461-180-0085, 461-185-0050, 461-195-0611, 461-195-0621

Rules Repealed: 461-007-0124, 461-135-0710, 461-140-0050, 461-140-0100, 461-140-0123, 461-140-0430, 461-140-0440, 461-145-0350

Rules Ren. & Amend: 461-140-0410 to 461-135-0708, 461-140-0420 to 461-145-0405

Subject: OAR 461-001-0000 is being amended to include in one rule and update several definitions currently located in separate rules in other parts of Chapter 461. The definition of "countable" is being moved from OAR 461-140-0010(2). The definition of "equity value" is being moved from OAR 461-140-0050(1)(a). The definition of "fair market value" is being moved from OAR 461-140-0050(1)(b). The definitions of "lump sum income" and "periodic income" are being moved from OAR 461-140-0100. The definition of "real property" is being moved from OAR 461-145-0420.

OAR 461-007-0124 which covers the payment of attorney fees on SSI appeals is being repealed because the rule is obsolete. These fees are now paid by the federal government. This repeal makes perma-

nent a temporary rule suspension which was effective on July 1, 2006.

OAR 461-025-0300 regarding contested case hearings is being amended to clarify the contested cases covered by the rules in division 461-025 and to correct a cross-reference to a rule whose sections were renumbered.

OAR 461-025-0305, 461-025-0310, 461-025-0350, and 461-025-0371 are being amended to reference the Office of Administrative Hearings and remove outdated references to hearings officers and the Hearings Officer Panel.

OAR 461-025-0311 — which sets out whether a client is entitled to continuing benefits for public assistance, medical assistance, and food stamps while a hearing is pending — is being amended to include some mass change notices.

OAR 461-025-0316 about Intentional Program Violation hearings in the Food Stamp program is being amended to use terms consistently within the rule, to cross-reference other rules, to indicate that the Department initiates the hearing, and to update terminology. OAR 461-195-0611 and 461-195-0621 about Intentional Program Violations are being amended to indicate that the Department initiates the hearing, clarify references to the ERDC and child care programs, and resolve an inconsistency between the two rules about the notice process requirements.

OAR 461-110-0370, 461-155-0190 and 461-160-0430 are being amended to reflect the annual increase in the standards for the Food Stamp Program as published by the Food and Nutrition Service in July or August. In addition, OAR 461-160-0420 is being amended to reflect the annual change in the Standard Utility Allowances. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the Food Stamp Program State Plan. There are three utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is for those households with more than one non-heating/cooling utility cost. The Single utility allowance (TUA) is for those households with only one utility non-heat/cooling cost. This is most commonly a telephone.

OAR 461-110-0630 being amended and OAR 461-135-0560 is being adopted to identify in one rule the federal law requiring persons who are fleeing felons or are in violation of parole, probation, or post-prison supervision to be ineligible for certain benefits and to re-organize OAR 461-110-0630 so it is easier to follow. OAR 461-175-0220 is being amended to describe the due process notices sent to fleeing felons and persons disqualified due to being in violation of parole, probation or post-prison supervision.

OAR 461-115-0030 about the date of request to start the application process is being amended so that the title of the rule is a closer match to its content. This rule is also being amended to indicate that the section about contacting the Department applies in the Food Stamp program.

OAR 461-115-0530 is being amended to state that the certification period for the Children's Health Insurance Program (CHIP or OHP-CHP) is 12 months. The certification period is the period for which a client is certified eligible for the program. Previously, the certification period was set at 6 months. This amendment makes permanent a temporary rule adopted on June 1, 2006.

OAR 461-120-0125 is being amended to make permanent a temporary rule adopted on July 1, 2006 that adds the Medicare Savings Programs — QMB, SMB and SMF — to programs that evaluate citizenship and legal alien status when determining eligibility. Under this amendment, the Department will use the same criteria as it does for the Oregon Supplementary Income Program (OSIPM) when doing this evaluation.

OAR 461-135-0570 is being amended to facilitate eligibility for higher education students by allowing them to qualify for the Food

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Stamp program when working an average of 20 hours per week, rather than requiring at least 20 actual hours of work in each work.

OAR 461-135-0580 is being amended to update its language about individuals with disabilities. No policy changes are included in this amendment.

OAR 461-135-0708, which is currently OAR 461-140-0410 and concerns the criteria for a Department-approved Plan for Self Support, is being amended and renumbered to incorporate requirements related to segregated resources in a Plan for Self Support from OAR 461-140-0420, requirements for cooperation with the Plan for Self Support from OAR 461-140-0430 and requirements for a new or revised Plan for Self Support from OAR 461-140-0440. OAR 461-140-0430 and 461-140-0440 are being repealed. OAR 461-135-0708 is also being amended to make it more concise and to improve clarity. These rules affect clients in the General Assistance (GA—currently closed), GA Medical (GAM—currently closed), Oregon Supplemental Income Program (OSIP, providing cash and medical to the elderly and people with disabilities), OSIP Medical (OSIPM, providing medical to the elderly and people with disabilities) and Qualified Medicare Beneficiary (QMB) programs.

OAR 461-135-0710 about specific eligibility requirements in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program – Medical) programs is being repealed. These topics are covered in other rules.

OAR 461-135-0844 is being amended to clarify that the rule applies to hardship waivers under OAR 461-135-0841, reference the Office of Administrative Hearings, and remove outdated references to hearings officers, AFSD, and a repealed rule.

OAR 461-135-0850 about the Repatriate Program is being amended so that the rule is consistent with the Oregon State Emergency Repatriation Plan. This amendment updates the eligibility requirements, benefit levels, and terminology for individuals with disabilities.

OAR 461-135-1175 which concerns the Senior Farm Direct Nutrition Program is being amended so that this rule cross-references the rule which states that these benefits do not affect other benefits, instead of repeating that rule. OAR 461-145-0190 is being amended to update the name of one of the food programs to the new name chosen by DHS and to add a cross reference to that new rule.

OAR 461-140-0010 regarding the availability of assets is being amended to cross-reference other pertinent rules and to clarify the rule and the terms used. This rule affects all Department clients whose eligibility is determined under the rules in chapter 461.

OAR 461-140-0020 about the availability of resources for consideration in the eligibility process for public assistance, medical assistance, and food stamp programs is being amended to clarify when jointly owned resources are considered available and to incorporate language from other rules that belongs in this rule and to remove language that belongs in other rules.

OAR 461-140-0050 about determining the value of a resource for consideration in the eligibility process for public assistance, medical assistance, and food stamps is being repealed. The subsections about equity and fair market value are being moved to OAR 461-001-0000. The subsection about life insurance is being moved to OAR 461-145-0320. The section about vehicles is being moved to OAR 461-145-0360. The section about real property is being moved to OAR 461-145-0420.

OAR 461-140-0070 about the treatment of excluded income as part of the eligibility process for food stamps, public assistance, and medical assistance is being amended to remove items that are covered in other administrative rules (OAR 461-145-0140 and 461-145-0460).

OAR 461-140-0100 is being repealed. This rule concerns definitions of periodic and lump-sum income for consideration in the

eligibility process for public assistance, medical assistance, and food stamps. These definitions are being moved to OAR 461-001-0000.

OAR 461-140-0110 about periodic income is being amended to move the definition of periodic income from this rule to OAR 461-001-0000 and then cross-reference this new definition.

OAR 461-140-0120 about the treatment of lump-sum income in the eligibility process for food stamps, public assistance and medical assistance is being amended to clarify the rule, update cross-references to other rules, incorporate language from OAR 461-140-0123 which is being repealed, and update state policy on the treatment of lump sum income for the food stamp program by complying with federal regulations that count lump-sum income under \$30 as a resource. OAR 461-140-0123 is being repealed and its topics consolidated into OAR 461-140-0120.

OAR 461-140-0250 — which concerns the determination of uncompensated value upon which a disqualification period is based for clients of food stamps, public assistance, and medical assistance — was amended by temporary rule effective July 1, 2006 to clarify the rule and to make the rule consistent with other rules amended due to implementation of the Deficit Reduction Act of 2005 that apply to 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. The rule was amended to cover the calculation of uncompensated value for any asset, regardless of whether the asset is income or a resource (currently the rule only mentions transfers of resources). This rule also was amended to allow for exclusion in the calculation of the client's resource limit amount and to clarify what constitutes the fair market value of an annuity. This rule amendment would make the temporary changes permanent.

OAR 461-140-0260 which concerns disqualification of Food Stamp clients due to resource transfers is being amended to cross-reference other rules, clarify the date the disqualification starts, and clarify to whom the disqualification applies.

OAR 461-140-0270 about disqualification due to a resource transfer in the MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), REF (Refugee Assistance), REFM (Refugee Assistance Medical), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF (Temporary Assistance to Needy Families) programs is being amended to cross-reference other rules and update terminology.

OAR 461-140-0296 is being amended update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets 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 amount is calculated by using the average monthly cost to a private patient of nursing facility services in the State.

OAR 461-145-0040 is being amended to clarify how burial funds and burial arrangements are treated in the eligibility process for food stamps, public assistance, and medical assistance, state that only one burial arrangement per filing group member is excluded in some programs, and align food stamp policy with TANF policy on this topic.

OAR 461-145-0090 about the treatment of disability benefits in the eligibility process for public assistance, medical assistance, and food stamps is being amended to identify the public and private disability benefits that are covered by other rules instead of this rule. This rule is also being amended to remove a reference to OAR 461-145-0120 regarding the treatment of temporary employer-sponsored disability payments received monthly or more frequently and to state how employer-sponsored disability payments (the reference to “temporary” has been removed as there is no distinction between “temporary” employer-sponsored disability payments and employ-

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er-sponsored disability payments for the purposes of this rule) payments are treated in the ERDC (Employment or Education-Related Day Care), FS (Food Stamps), OHP (Oregon Health Plan), REF (Refugee Assistance), REFM (Refugee Assistance Medical), and SAC (Medical Coverage for Children in Substitute or Adoptive Care) programs.

OAR 461-145-0120 about what is considered earned income in the eligibility process for food stamps, public assistance, and medical assistance, is being amended to update cross-references to other rules and to remove the reference about temporary income from employer-funded disability insurance and worker's compensation which is addressed in another rule.

OAR 461-145-0150 — which concerns the treatment of educational income as part of the eligibility process for food stamps, public assistance, and medical assistance — is being amended to align food stamp policy with TANF. This amendment allows Food Stamp clients to exclude all educational loans as well as all educational income authorized by the Carl D Perkins Vocational and Applied Technology Education Act.

OAR 461-145-0170 is being amended to clarify the rule and to exclude from consideration in the eligibility process for the Food Stamp program all energy assistance payments made under any federal, state or local law except those issued in the TANF program.

OAR 461-145-0250, which concerns the treatment of income-producing property for clients of public assistance, medical assistance, and food stamps, is being amended to cross-reference the definition of equity value being added to OAR 461-001-0000. OAR 461-145-0910, which concerns whether clients of public assistance, medical assistance, and food stamps are considered self-employed, is being amended to resolve an apparent conflict with OAR 461-145-0250 about clients receiving income from income-producing property.

OAR 461-145-0320 about the treatment of life insurance as part of the eligibility process for clients of food stamps, public assistance, and medical assistance, is being amended to incorporate language about the value of a life insurance policy that is currently part of OAR 461-140-0050. This rule is also being amended to make the rule consistent with OAR 461-145-0040 about the treatment of life insurance for grandfathered OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical) clients.

OAR 461-145-0330, about the treatment of loan income in the eligibility process for food stamps, public assistance, and medical assistance is being amended to clarify how loan income will be counted for food stamps.

OAR 461-145-0350 is being repealed and its text is being moved to OAR 461-145-0360 to use a single rule to cover the treatment of motor vehicles in determining eligibility for food stamps, public assistance, and medical assistance. OAR 461-145-0360 is being amended to incorporate language from OAR 461-140-0050(3) and 461-145-0350, revise the description of how fair market value for a motor vehicle is determined, change the treatment of motor vehicles by the Food Stamp program to align with the TANF program, comply with ORS 411.700, and cross-reference other rules that define terms used in this rule.

OAR 461-145-0380 is being amended to indicate that if funds from specific retirement plans authorized under the Internal Revenue Service Code of 1986 are used to purchase trusts or annuities, the trusts and annuities are treated as retirement plans under this rule in the determination of eligibility for public assistance, medical assistance, and food stamp benefits. The Department has been treating these assets as retirement plans and excluding them from treatment as annuities by providing staff guidance in a policy manual. The Department is now filing a rule to formalize the existing policy.

OAR 461-145-0405 regarding the treatment of assets under a Plan for Self Support is being renumbered (from OAR 461-140-0420) and amended to clarify that this rule applies to both Department-approved plans and to plans developed by the Social Security Administration. This is not a change in policy, but has not previously been clear in

the rule. This rule is also being amended to remove the requirements for segregated resources, which are being moved to OAR 461-135-0708 (renumbered from OAR 461-140-0410). This rule affects clients with a Plan for Self-Support, who are primarily located in the General Assistance (GA—currently closed), GA Medical (GAM—currently closed), Oregon Supplemental Income Program (OSIP, providing cash and medical to the elderly and people with disabilities), OSIP Medical (OSIPM, providing medical to the elderly and people with disabilities) and Qualified Medicare Beneficiary (QMB) programs.

OAR 461-145-0420 regarding the treatment of real property, mobile and manufactured homes as part of the eligibility process for public assistance, medical assistance, and food stamps is being amended to clarify that mobile and manufactured homes are treated in the same manner as real property, remove the definition of “real property” which will be adopted in another rule, cross-reference definitions of “fair market value”, “equity value”, and “real property”, clarify how to determine the value of real property, incorporate one provision for excluding real property in the Food Stamp program which is currently part of OAR 461-140-0020, and cross-reference other pertinent rules when the real property is income-producing or a home of the financial group. This rule is also being amended to make permanent a temporary rule change adopted on July 1, 2006 that makes this rule consistent with the requirement in the Deficit Reduction Act of 2005 (DRA) for 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 which requires that certain clients who have equity value in excess of \$500,000 in their homes are no longer eligible for long-term care and in-home and community-based services.

OAR 461-145-0433 about the treatment of recreational vehicles in the eligibility process for food stamps, public assistance, and medical assistance is being amended to clarify the rule by describing a recreational vehicle in more detail, adding cross-references, and incorporating some language currently in other rules.

OAR 461-145-0540 and 461-160-0620 are being amended to cross-reference OAR 461-160-0030 because these are the pertinent rules that use the deductions in OAR 461-160-0030 to specify the allowable deductions when calculating the amount of an OSIPM client's liability payment in order for the client to receive long-term care or home- or community-based care services. OAR 461-160-0030 which covers medical costs that can be deducted is being amended for the OSIPM program (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) to no longer allow a medical deduction when the cost was incurred while a client was serving a disqualification from Medicaid eligibility due to a transfer of assets for less than fair market value.

OAR 461-145-0590 about the treatment of worker's compensation payments in the eligibility process for food stamps, public assistance, and medical assistance is being amended to include the treatment of worker's compensation paid to a client who is still employed while recuperating from an illness or injury. Treatment of this income was previously addressed in OAR 461-145-0120, but was referenced as “temporary” worker's compensation (the reference to “temporary” has been removed as there is no distinction between “temporary” worker's compensation and worker's compensation for the purposes of this rule). This rule is also being amended to state how worker's compensation payments received monthly or more frequently are treated in the ERDC (Employment or Education-Related Day Care), FS (Food Stamps), OHP (Oregon Health Plan), REF (Refugee Assistance), REFM (Refugee Assistance Medical), and SAC (Medical Coverage for Children in Substitute or Adoptive Care) programs.

OAR 461-155-0250 about income and payment standards in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon

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Supplemental Income Program – Medical) programs is being amended to clarify that cash payments are not made to bring non-SSI clients up to the OSIPM income standard, to clarify the countable income limit for clients in long-term care and waived nonstandard living arrangements. This rule is also being amended to clarify the non-SSI adjusted income limit for OSIP and OSIPM, and remove a confusing reference to the calculation of cash benefits. This rule is also being amended to state certain OSIP eligibility requirements which are now stated in OAR 461-135-0710 (which is being repealed).

OAR 461-160-0055 is being amended to adjust the medical costs are deductible from income in the eligibility process for the Food Stamp and OSIPM (Oregon Supplemental Income Medical) programs. The rule is being amended to allow deduction long-term care insurance premiums and adjust the circumstances in which a deduction is allowed for nursing care, nursing home care, and hospitalization payments.

OAR 461-160-0120 is being amended to clarify current policy regarding the treatment of income of an ineligible non-citizen and a father of an unborn in the Medical Assistance to Families (MAF) program. In MAF program, when an ineligible non-citizen or a father of an unborn is excluded from the need group, the income of the excluded person is 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 461-160-0610 is being amended to clarify which clients are exempt clients from this rule about client liability for clients in long-term care or receiving waived services.

OAR 461-170-0130 is being amended to add clients of the Oregon Health Plan (OHP) to the programs covered by this rule. For programs covered by this rule, when a client, who is required to report a change in circumstances, makes a timely report of change that could reduce or end medical benefits, the Department must review each individual in the filing group for eligibility for other medical programs prior to reducing or ending medical benefits. If additional information is needed to act on the reported change by the client, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with application processing time frames.

OAR 461-175-0220 is also being amended and 461-175-0310 is being amended to move information that was added to OAR 461-175-0220, a rule about notices required in certain disqualification situations, in error, to OAR 461-175-0310. The relevant information is what must be included in a notice of disqualification when clients transfer assets for less than fair market value 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. The requirement for what the notice must contain is not changing; it is simply being relocated to OAR 461-175-0310 which deals specifically with disqualifications for transfers of assets. OAR 461-175-0220 is also being amended so that its notice requirements for Intentional Program Violations (IPVs) also applies to ERDC (Employment or Education-Related Day Care) IPVs. OAR 461-175-0310 is also being amended so that the title of the rule is not limited to resource transfer disqualifications.

OAR 461-180-0044 is being adopted to specify when income eligibility is met for clients needing long-term care or waived services under the Oregon Supplemental Income Program-Medical (OSIPM— providing medical coverage to the elderly and individuals with disabilities) who have income above the OSIPM income limit. These clients meet the OSIPM income limit, despite the fact

that they have income above the OSIPM standard, by establishing an income cap trust as described at OAR 461-145-0540(10)(c).

OAR 461-180-0085 is being amended to add clients of the Oregon Health Plan (OHP) to the program covered by this rule, which states that when the Department initiates a redetermination of eligibility, each individual in the filing group must be reviewed for eligibility for other medical programs prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with application processing time frames.

OAR 461-185-0050 is being amended to state that clients in the OSIP-IC (Oregon Supplemental Income Program — Independent Choices) and OSIPM-IC (Oregon Supplemental Income Program Medical — Independent Choices) programs are not exempt from a service liability.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions

In divisions 005, 006, 007, 012, 025, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 193, and 195 of this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) “Countable” means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(4) “Department” means the Department of Human Services (DHS).

(5) “Equity value” means fair market value minus encumbrances.

(6) “Fair market value” means the amount an item is worth on the open market.

(7) “Lump-sum income” means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(8) “Periodic income” means income received on a regular basis less often than monthly.

(9) “Real property” means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.060, 411.816 & 418.100

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0300

Contested Case Hearings

(1) The rules in Division 025 of this chapter of rules apply to contested case hearings of the Department authorized by OAR 461-025-0310(1). The hearings are conducted in accordance with the Attorney General’s model rules at OAR 137-003-0501 and following. The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in this division of rules.

(2) Department employees are authorized to appear on behalf of the Department in the following types of hearings:

(a) Public assistance.

(b) Employment-Related Day Care.

(c) Food Stamp.

(3) The Department’s contested case hearings governed by this division of rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the party’s consent.

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 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-

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00, cert. ef. 7-1-00; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0305

Definitions

For the purposes of this division of rules, the following definitions apply unless the context clearly indicates otherwise:

(1) "Claimant" means a person who has requested a hearing or who is scheduled for an IPV hearing.

(2) "Department representative" or "Division representative" means a person authorized by OAR 461-025-0300 to represent the Department in the hearing.

(3) "Good cause" means a circumstance beyond the control of the claimant and claimant's representative.

(4) A "request for hearing" is a clear expression, oral or written, by an individual or representative that the person wishes to appeal a Department decision or action or, in the Food Stamp program, wishes to have the decision considered by a higher authority.

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 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0310

Hearing Requests

(1) A claimant (defined at OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) The Department has not acted on a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for food stamps within 30 days of the filing date.

(B) An application for a JOBS support service payment within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend food stamp benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously underissued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

(g) The filing group is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Assessment program, the Department denies payment for a basic living expense (see OAR 461-135-0475).

(k) The right to a hearing is provided for the TA-DVS program (see OAR 461-135-1235).

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of Nursing Home services, Home and Community Based Waivered Services (defined at OAR 411-015-0005), Spousal Pay services (see OAR 411-030-0080), or Independent Choices services (see OAR division 411-036).

(m) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's conciliation process (see OAR 461-190-0231).

(3) There is no right to a hearing to dispute a program requirement established by law. Examples are the closure of a program or a change to a payment standard.

(4) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (form DHS 443) is completed and

signed by the claimant or the claimant's representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(5) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(6) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(7) To be timely, a completed hearing request must be received by the Department not later than:

(a) The 45th day following the date of the decision notice in public assistance and medical programs.

(b) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if less than one year has expired since the loss of benefits.

(c) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(d) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(8) In determining timeliness under section (7) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(9) In computing the time periods provided by this rule, if the last day of the time period falls on a Saturday, Sunday, or legal holiday, the period is extended until the next working day.

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.816, 414.055, 418.100, 418.125

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0311

Continuation of Benefits

(1) This rule explains who may receive continuing benefits while a contested case pends.

(2) A client who is entitled to either a continuing benefit decision notice under a rule in division 175 of this chapter of rules or a mass change notice that provides an option for continuing benefits may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

(a) The tenth day following the date of the notice; and

(b) The effective date of the action proposed in the notice.

(3) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.

(4) In determining timeliness under section (2) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 28-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0316

Intentional Program Violation (IPV) Hearings; Food Stamp Program

Notwithstanding the other rules in this division of rules and the rules at OAR 137-003-0501 and following, this rule governs intentional program

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violation hearings for the Food Stamp program. This rule reflects the requirements of the U.S. Department of Agriculture for the Food Stamp program.

(1) An individual accused of an Intentional Program Violation may waive the right to an IPV hearing by signing a waiver on a form prescribed by the Department. There is no further administrative appeal after the individual signs the waiver unless the individual asserts that the waiver was signed under duress and, within 90 days from the date the waiver was signed, requests a hearing (see OAR 461-025-0310) to prove this. The individual has the burden of proving duress. If an Administrative Law Judge determines that the waiver was signed under duress, the waiver may be nullified and the Department may thereafter initiate an Intentional Program Violation hearing.

(2) If an IPV is not established by waiver or in court, the Department may initiate the IPV hearing. The individual is entitled to an Advanced Notice of Intentional Program Violation Hearing at least 30 days in advance of the scheduled hearing. The notice includes the specific charge(s) alleged by the Department.

(3) Within 90 days of the date the individual is notified in writing of the disqualification hearing, the Office of Administrative Hearings will conduct the hearing and serve a final order on the individual.

(4) The individual is entitled to a postponement of the scheduled hearing, if the request for postponement is made at least 10 days before the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days, and the Office of Administrative Hearings may limit the postponements to one.

(5) If the individual fails to appear for the scheduled IPV hearing after refusing the notice of hearing, refusing to claim the notice, or receiving the notice, the hearing may be conducted without the individual. The individual has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. Good cause will be determined on the record by the Office of Administrative Hearings. If the individual shows good cause, the Office of Administrative Hearings will schedule another IPV hearing for the individual. If the individual never receives the notice of hearing, the 10-day time limit to show good cause does not apply.

(6) The Administrative Law Judge must advise the individual that he or she may refuse to answer questions during the hearing.

(7) The standard for proving that an individual has committed an Intentional Program Violation is clear and convincing evidence.

(8) There is no administrative appeal of a final order, except as provided in section (5) of this rule.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.095
Hist.: AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0350

Withdrawals

A claimant may withdraw a hearing request orally or in writing at any time. The withdrawal is effective on the date it is received by the Department or the Office of Administrative Hearings. The Department or the Office of Administrative Hearings will send a Final Order confirming the withdrawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth work day following the date such an order is served.

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 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-025-0371

Proposed and Final Orders

(1) In a contested case, except one authorized by ORS 181.537 or OAR 461-165-0430, the Office of Administrative Hearings is authorized to enter a final order on behalf of the Department without first issuing a proposed order unless the Department has specifically revoked the authority.

(2) In a contested case authorized by OAR 461-165-0430, the proposed order issued by the Office of Administrative Hearings becomes the final order if the party files no timely written exceptions with the Administrator, unless the Department notifies the party and the hearing officer that it will issue the final order.

(3) If in a contested case the Office of Administrative Hearings does not have authority to enter a final order, the Office of Administrative Hearings will prepare and serve a proposed order in accordance with OAR 137-003-0645. The claimant may file written exceptions and argument to be considered by the Administrator. The exceptions must reach the

Administrator not later than the tenth day after service of the proposed order. Written argument may be submitted to the Administrator not later than the twentieth day after service of the proposed order or by such time established by the Administrator. Additional evidence may be submitted only upon prior approval of the Administrator.

(4) If in a contested case hearing the Office of Administrative Hearings is authorized to issue a final order on behalf of the Department, the Department may issue the final order in the case of default.

(5) A petition by a party for reconsideration or rehearing must be filed with the person who signed the final order.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.095
Hist.: AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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), (6), and (7) and subsection (5)(b) 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 along with his or her spouse and each child under age 22 living with them.

(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.

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- (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; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-110-0630 Need Group

(1) 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.

(2) In the ERDC program, the need group consists of each member of the financial group.

(3) In the EXT program, the need group consists of each member of the financial group.

(4) 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 fleeing felon under OAR 461-135-0560.
- (c) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(5) 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 fleeing felon under OAR 461-135-0560.
- (b) A person in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, 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:

(i) A person who cannot be in the need group because of a disqualification penalty.

(ii) A fleeing felon under OAR 461-135-0560.

(iii) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(7) 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.

(8) 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.

(9) In the OSIP and OSIPM programs, the need group consists of each member of the financial group.

(10) 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).

(11) In the SAC program, the need group consists of the person in the financial group.

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; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-115-0030

Initiating the Application Process; Not FS

(1) For all programs covered by chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the *date of request* is the day the request for benefits is received by the Department.

(b) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of the right to apply, along with an application.

(c) In the FS program, this section does not apply. See OAR 461-115-0040.

(d) In the GAM, MAA, MAF, OSIPM, and SAC programs, the date of request is the day the medical care began, if the actual request is made no later than the next working day. If the request is received later than the next working day, the date of request is the day the request is received by the Department.

(e) In the OHP and REFM programs, the date of request is the earlier of the following dates:

(A) The date the completed written application is received by the Department.

(B) The date stamped on the OHP application by an OHP outreach worker, toll-free operator or Department employee, if the completed written application is received by the Department within 30 days thereafter.

(C) The date the client receives medical care if the date identified under paragraph (A) or (B) of this subsection is the next working day.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 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 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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 an OHP applicant (except OHP-CHP) 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 (except OHP-CHP) are for six months.

(3) For an OHP-CHP applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP-CHP certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. All other OHP-CHP certification periods are for twelve months.

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(4) 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.

(5) To establish a new certification period, an OHP benefit group must complete a redetermination of eligibility and be found eligible.

(6) 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.

(7) 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.

(8) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(9) 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 409.050, 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; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-120-0125

Alien Status; Not REF or REF M

(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, QMB, 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 non-citizen 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 C under section 207 of the INA.

(B) Asylum C 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, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A 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 C under section 207 of the INA.

(B) Asylum C 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 non-citizen who physically entered the United States on or after August 22, 1996, has had the qualified non-citizen 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 C under section 207 of the INA.

(B) Asylum C 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, QMB, 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 C under section 207 of the INA.

(B) Asylum C 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; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-0560

Fleeing Felon and Violators of Parole, Probation, and Post-Prison Supervision; FS, GA, GAM, and TANF

(1) A person is ineligible for the FS, GA, GAM, and TANF programs if he or she is a fleeing felon or in violation of parole, probation, or post-prison supervision.

(2) A fleeing felon is a person who knowingly flees to avoid either of the following:

(a) Prosecution or custody for a crime or attempt to commit a crime that is classified as a felony.

(b) Confinement following conviction of a felony.

(3) For purposes of this rule, the crime must be considered a felony under the laws of the place from which the person is fleeing or, in the case of New Jersey, a high misdemeanor under the law of New Jersey.

(4) A person is in violation of parole, probation, or post-prison supervision if the Department receives a report of this violation from a local, state, or federal corrections agency or court responsible for supervision of the person. The violation continues until the Department receives a report from the corrections agency or court that the person is no longer in violation.

(5) If there is a pending arrest warrant for a person for a felony, a high misdemeanor under the law of New Jersey, or a violation of parole, probation, or post-prison supervision, the person is ineligible under this rule if the person is aware of the arrest warrant and has not provided the Department with evidence on request that the person made a substantial effort within his or her ability to resolve the warrant.

(6) A person is no longer considered a fleeing felon if the arrest warrant is no longer pending or the person provides the Department with evidence that the person made a substantial effort within his or her ability to resolve the warrant.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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

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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 an average of 20 hours or more 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 disenrolling), 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; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-0580

Prepared Meals; FS

The following FS recipients and their spouses may use FS benefits to purchase meals prepared for them and delivered to them by a nonprofit meal-delivery service authorized by the United States Department of Agriculture:

(1) People age 60 or over.

(2) Housebound people.

(3) People who have physical or other disabilities which prevent them from adequately preparing their meals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-0708

Criteria for Developing a Plan for Self-support; GA, GAM, OSIP, OSIPM and QMB

(1) A client and the Department may develop a plan for self-support in the GA, GAM, OSIP, OSIPM and QMB programs for a client who:

(a) Meets the applicable disability or impairment criteria; and

(b) Is not eligible for SSI.

(2) A plan for self-support allows a client to retain a portion of his or her nonexcluded assets for a specific period of time to meet a specific occupational goal. The plan may provide for specialized or advanced education or training for clients with a severe disability.

(3) To be approved, a plan for self-support must meet all of the following criteria:

(a) The plan must be in writing and approved by the Department.

(b) The plan must identify a realistic occupational goal, considering the client's physical limitations and capabilities.

(c) The goal of the plan must be to provide the client with income necessary to meet his or her needs, not just for improving potential earning capability or increasing self-sufficiency within the home.

(d) Resources designated to support the plan must be kept in a separate bank account with a specific savings or planned disbursement goal for using the resources. Previously commingled funds must be put in a separate bank account in order for them to be considered designated for the plan.

(e) The duration of the plan must be limited to the time necessary to complete the plan but cannot exceed thirty-six months plus an additional 12 months if necessary for completion of education or training.

(4) A client must do all of the following to comply with a plan for self-support:

(a) Report any changes in circumstances that require a change to the current plan.

(b) Follow through with the plan without any break in excess of the longer of:

(A) Normal vacations from school or training.

(B) Three months, unless the reasons are beyond his or her control.

(5) If a client fails to comply with the requirements of section (4) of this rule, program eligibility is redetermined without the resource exclusions allowed by OAR 461-140-0420.

(6) The client and the Department may revise a plan for self-support or may agree to a new plan. To be new, the plan must not have any relationship to the old plan. When a plan is revised or a new plan established:

(a) Resources designated to support the old plan may become a part of the revised or new plan.

(b) If changes are made in the amount of resources to support the plan, eligibility and the payment amount for program benefits are redetermined.

(c) If the duration of the revised plan in addition to the months the old plan was in effect exceeds the time limits in subsection (3)(e) of this rule, approval is limited to the remainder of the maximum period only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; Renumbered from 461-140-0410, SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-0844

Procedures for Applying for Undue Hardship Waiver

In connection with a request for an undue hardship waiver under OAR 461-135-0841:

(1) The Department will provide written notice of the hardship waiver rules to:

(a) The personal representative or other person handling the deceased client's estate, if that person is known to the Department at the time the Department files its claim with the probate court. If the person handling the deceased client's estate is not known to the Department, the Department will file the written notice with the claim that it files with the probate court; or

(b) Any beneficiary, heir or family member of the deceased client who contacts the Department asserting a right superior to that of the Department to receive property or other assets of the deceased client unless the Department agrees that the beneficiary, heir or family member's claim is superior; or

(c) Any beneficiary, heir or family member of the deceased client who held an asset jointly with the deceased client at the time of death, if that person is known to the Department unless the Department determines that it has no right to the jointly held asset.

(2) Any beneficiary, heir, or family member claiming entitlement to receive the assets of the deceased client may apply for a hardship waiver

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under this rule by submitting a written request for a waiver to the Department within 45 days of the date the notice was sent to the person or to the probate court. The Department may, in its discretion, consider waiver applications filed after the 45-day period if the waiver applicant demonstrates that there was good cause for the delay.

(3) The written request shall include all the following information:

(a) The relationship of the waiver applicant to the decedent.

(b) The nature of the applicant's right to receive the property of the decedent if the waiver is granted.

(c) The applicant's financial situation or other facts that support the applicant's claim that an undue hardship exists.

(d) A statement of the type of waiver that is being requested.

(e) Documentation establishing or demonstrating any of the information submitted.

(f) Any other information or documentation that the applicant believes should be considered by the Department in determining whether an undue hardship exists.

(4) The Department may request additional information or documentation from the applicant. If the additional information or documentation is not provided within 30 days of the Department's request for additional information or documentation, the hardship waiver application will be considered by the Department on the basis of the information and documentation provided.

(5) Within 90 days of receipt of the hardship waiver application, the Department will issue a written decision granting or denying, in whole or in part, the applicant's request for an undue hardship waiver.

(6) If the decision is adverse to the hardship waiver applicant, the Department's written decision shall include information regarding the applicant's right to a contested case hearing before the Office of Administrative Hearings.

(7) The rules and procedures adopted by the Department in chapters 137 and 411 of the Oregon Administrative Rules shall apply to hearings challenging the denial of a hardship waiver application.

(8) The issue for the hearing will be whether the Department's decision was correct based on the information available to the Department at the time the written decision was issued, unless the applicant can show good cause for failing to submit relevant information or documentation to the Department prior to the date the written decision was issued.

(9) Receipt of a timely request for waiver or request for hearing shall not prevent or delay the Department's pursuit of its estate recovery claim pending issuance of a final order at the conclusion of the hearing. The Department shall return any funds it collected if it is ultimately decided that the waiver should have been granted.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.795

Hist.: AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-0850

Specific Requirements; Repatriate Program

(1) To be eligible for the Repatriate Program, a person must meet all of the following criteria:

(a) Be a United States citizen or the dependent of a United States citizen. Dependents include spouse, parents, unmarried minor children, and unmarried adult children with disabilities.

(b) Be identified by the Department of State as having returned from a foreign country because of destitution, illness (including mental illness), war, threat of war, invasion, or a similar crisis.

(c) Be without immediately available resources adequate to meet his or her needs.

(d) Certification by the United States Department of State as eligible for repatriation services.

(2) An eligible repatriate may receive aid under the Repatriate Program for up to 90 days from the date of arrival in the United States, unless approval for an extension has been granted through the United States Department of State, Office of International Social Services.

(a) For the first 30 days, there is a one-time payment of up to \$560 per person depending on need.

(b) After the first 30 days, the type and amount of assistance is provided according to the TANF standard.

(3) An individual who has received Repatriate benefits is required to repay all of the cost to the federal government unless the individual has a certificate from International Social Services (ISS-USA) that the individual has been determined mentally incompetent. Any claim the repatriate has against any individual, trust, estate, partnership, corporation, or government must be assigned to the federal government toward repayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides food vouchers for low income seniors.

(2) An individual age 60 or over is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has income at or below 135% of the Federal Poverty Level as described in OAR 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Resides in their own home or rental property.

(3) This program is funded by a grant from the United States Department of Agriculture. The voucher amount will be determined on a year-to-year basis, based on the grant allocation received and the number of eligible seniors.

(4) The program begins June 1 each year and ends on October 31 each year.

(5) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070

Stats. Implemented: ORS 410.070, 411.060, 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0010

Assets; Income and Resources

(1) An available asset, either income or a resource, is categorized as either excluded or countable (defined in OAR 461-001-0000).

(2) The availability of resources is covered in OAR 461-140-0020.

(3) The availability of income is covered in OAR 461-140-0040.

(4) Excluded assets are identified in the rules in this chapter (see divisions 140 and 145 in particular) and are not considered when a client's eligibility and benefit level are determined.

(5) An available asset not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of a client.

(6) An asset may not be counted as a resource and as income in the same month.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0020

Availability of Resources

(1) Except as provided in sections (2) to (4) of this rule,

(a) In the Food Stamp program, a resource owned jointly by a client and another person is available in its entirety to the client.

(b) In all other programs, jointly owned resources are available to members of a financial group only to the extent they own the resource.

(2) A resource is not available to a client in each of the following situations:

(a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it.

(b) The resource is jointly owned with others not in the financial group who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.

(c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.

(d) The client is a victim of domestic violence and:

(A) Attempting to use the resource would subject the client to risk of domestic violence; or

(B) The client is using the resource to avoid the abusive situation.

(e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and cannot be used to meet the basic monthly needs of the financial group.

(3) A resource is not considered available during the time the owner does not know he or she owns the resource.

(4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

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 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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461-140-0070

Treatment of Excluded Assets

Unless stated otherwise in another rule in this chapter of rules:

(1) Excluded income remains excluded as long as it is kept in a separate account and not commingled with other funds.

(2) Excluded income that is commingled in an account with funds not excluded remains excluded for six months from the date it is commingled, after which it is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0110

Treatment of Periodic Income

(1) For FS and TANF clients in a filing group that includes at least one member who is working under a TANF JOBS Plus agreement, *periodic income* (defined in OAR 461-001-0000) is excluded.

(2) For FS clients not covered under section (1) of this rule and for ERDC clients, periodic income is counted in one of two ways. The client is given a choice either to average the income over the applicable period or to have the income counted in the month it is expected to be received.

(3) For OSIP-EPD and OSIPM-EPD clients, *periodic income* received during a certification period is averaged among the months in the certification period.

(4) In all other programs, *periodic income* is counted in the month received.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0120

Availability and Treatment of Lump-Sum Income

(1) *Lump-sum income* (defined in OAR 461-001-0000) is treated as follows if it is received by a member of a financial group.

(2) In the EA, FS, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) *Lump-sum income* is a resource.

(b) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs:

(A) *Lump-sum income* is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) *Lump-sum income* is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an emergency, such as a natural disaster or the serious injury or death of a household member.

(3) In the ERDC and EXT programs, *lump-sum income* is excluded.

(4) In the OHP program:

(a) If the *lump-sum income* is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the *lump-sum income* exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(5) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) *Lump-sum income* not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource.

(b) The following *lump-sum income* is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(6) For OSIP-EPD and OSIPM-EPD, lump-sum income is a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-

92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0250

Determining The Uncompensated Value of a Transferred Asset

(1) The *uncompensated value* of a disqualifying transfer of an asset is used in OAR 461-140-0260 to 461-140-0300 to calculate the ineligibility period of the financial group.

(2) To determine *uncompensated value*:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The value of the compensation received for the asset is subtracted from the fair market value of the asset. This result is the *uncompensated value*, unless the financial group had countable resources of less than the resource limit at the time of the first transfer. If the financial group had countable resources of less than the resource limit at the time of the first transfer, the remainder is then added to other countable resources, and the amount by which the sum exceeds the resource limit in OAR 461-160-0015 is the *uncompensated value*.

(B) For an annuity, unless the client verifies a lesser amount, the fair market value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(b) In all other programs, the value of the compensation received for the resource is subtracted from the fair market value of the resource. The remainder is added to the other countable resources at the time of the transfer. The amount by which the sum exceeds the resource limit is the uncompensated value.

(c) The compensation received for a transferred asset includes:

(A) Encumbrances assumed by the buyer; and

(B) Goods or services provided to the client, limited to their true value, if there was a prior agreement to exchange the asset for the goods or services.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.632, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0260

Disqualification Due to a Resource Transfer; FS

In the Food Stamp Program:

(1) A financial group disqualified due to the transfer of a resource (described in OAR 461-140-0210 or 461-140-0220) is disqualified from receiving benefits starting on the date of the denial of benefits or on the effective date of the closure. The disqualification applies to each individual in the financial group during the month that the disqualifying transfer of resources occurred.

(2) The duration of the disqualification is based on the amount of *uncompensated value* (see OAR 461-140-0250) as provided in the following chart: [Table not included. See ED. NOTE.]

[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 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-140-0270

Disqualification Due to a Resource Transfer; MAA, MAF, REF, REFM, SAC, TANF

(1) Financial groups in the MAA, MAF, REF, REFM, SAC and TANF programs, in which a member is disqualified due to the transfer of a resource, are disqualified for the number of months equal to the *uncompensated value* (see OAR 461-140-0250) divided by the TANF payment standard (see OAR 461-155-0030).

(2) The disqualification period starts the date the Department imposes the disqualification by terminating benefits for the period calculated above or, in the case of an applicant, by denying benefits for the same period of time measured from the date of application.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.632 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

ADMINISTRATIVE RULES

461-140-0296

Length of Disqualification Due to An Asset Transfer; GA, GAM, OSIP, OSIPM or QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs:

(1) A financial group containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the *initial month* (defined in OAR 461-150-0010) is on or after October 1, 1993 and prior to October 1, 1998 — \$2,595.

(b) If the *initial month* is on or after October 1, 1998 and prior to October 1, 2000 — \$3,320.

(c) If the *initial month* is on or after October 1, 2000 and prior to October 1, 2002 — \$3,750.

(d) If the *initial month* is on or after October 1, 2002 and prior to October 1, 2004 — \$4,300.

(e) If the *initial month* is on or after October 1, 2004 and prior to October 1, 2006 — \$4,700.

(f) If the *initial month* is on or after October 1, 2006 — \$5,360.

(2) For transfers by a client and the spouse of a client that occurred before July 1, 2006:

(a) Add together the uncompensated value of all transfers made in one calendar month, and treat this total as one transfer.

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, there is no disqualification.

(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, each disqualification period is calculated separately.

(d) The number of months resulting from the calculation in section (1) of this rule is rounded down to the next whole number.

(e) Except as provided in subsection (2)(f) of this rule, the first month of the disqualification is the month the asset was transferred.

(f) If disqualification periods calculated in accordance with this section overlap, the periods are applied sequentially so that no two penalty periods overlap.

(3) For transfers by a client and the spouse of a client that occurred on or after July 1, 2006:

(a) If there are multiple transfers by the client and the spouse of the client, including any transfer less than the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (1)(a) to (1)(e) of this rule.

(b) The quotient resulting from the calculation in section (1) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period. If this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) For a client in a *standard living arrangement* (defined in OAR 461-110-0110), the first month of the disqualification is the month following the month of the first asset transfer.

(d) If a client is in a *nonstandard living arrangement* (defined in OAR 461-110-0110), the first month of the disqualification is the later of:

(A) The month following the month the asset was transferred.

(B) The *date of request* (as defined in OAR 461-115-0030) for medical benefits as long as the client submits an application, and would otherwise be eligible but for this disqualification period.

(4) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the client is considered transferred when any action is taken either by the client or any other person that reduces or eliminates the client's control or ownership in the client's share of the asset.

(5) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the *uncompensated value* as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (6) of this rule.

(6) A disqualification period is assessed for the value of an annuity beyond the actuarial life expectancy of the annuitant if subsections (a) and (b) of this section both apply:

(a) Either:

(A) A client or the spouse of a client purchase an annuity on or before December 31, 2005; or

(B) An OSIPM client who is in a *nonstandard living arrangement* purchases an annuity on or after July 1, 2006.

(b) If the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(B), a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(7) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; 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 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0040

Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) A *burial arrangement* is an agreement with an entity — such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary — that makes allowance for burial costs. A burial arrangement does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund.

(b) A *burial fund* is an identifiable fund set aside for a client's burial costs. A burial fund does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement.

(2) A burial arrangement is treated as follows:

(a) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the equity value (defined in OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over \$1,000 is counted as a resource.

(c) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(3) A burial fund is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to \$1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

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(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In all programs not listed in subsection (a) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client ---

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91;

AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-

1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, 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

10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru

3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0090

Disability Benefit

(1) This rule covers public and private disability benefits, except the following:

(a) Agent Orange disability benefits (covered in OAR 461-145-0005).

(b) Radiation Exposure Compensation Act payments (covered in OAR 461-145-0415).

(c) Social security based on disability or SSI (covered in OAR 461-145-0490 and 461-145-0510).

(d) Veterans benefits (covered in OAR 461-145-0580).

(e) Workers compensation (covered in OAR 461-145-0590).

(2) For each disability payment covered under this rule:

(a) If received monthly or more frequently:

(A) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, income from employer-sponsored disability insurance is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(B) Except as provided in paragraph (A) of this subsection, the payment is counted as unearned income.

(b) All payments other than those in subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 183, 411, 414, 416 & 418

Stats. Implemented: ORS 411.700 & 411.816, ACF-AT-94-12

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;

SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0120

Earned Income; Defined

Earned income is income received in exchange for a person's physical or mental labor. Earned income includes all of the following:

(1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when a client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) Flexible (cafeteria plan) benefits that an employee takes as cash.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) In the OHP program, an expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 409.050, 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 20-1990, f. 8-17-90, cert. ef. 9-1-90;

AFS 28-1992, f. & cert. ef. 10-1-92; 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 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert.

ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-

2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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.

(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 — ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that 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) 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.

(4) The cost of the following items from remaining educational funds (including non-Title IV work study) is excluded:

(a) 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 all programs except ERDC — dependent care.

(5) 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) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section 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; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0170

Energy Assistance Payments

(1) In the Food Stamp program, energy assistance payments issued through the TANF program are considered unearned income.

(2) All energy assistance payments or allowances made under any federal, state, or local law not covered under section (1) — including one-time payments for weatherization, emergency repair, or replacement of heating or cooling devices — are excluded.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

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Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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 seniors in the Senior Farm Direct Nutrition Program (see OAR 461-135-1175) 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; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0250

Income-Producing Property

(1) Income-producing property is any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(2) Income from income producing property is counted as follows:

(a) If a financial group member actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).

(b) If a financial group member does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

(3) The *equity value* (defined in OAR 461-001-0000) of income-producing property is treated as follows:

(a) In the EA, ERDC, and OHP programs, it is excluded.

(b) In the FS program, it is counted as a resource except to the extent described in each of the following situations:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the *equity value* of the property is excluded.

(B) The *equity value* of income-producing livestock, poultry, and other animals is excluded.

(C) If selling the resource would produce a net gain to the financial group of less than \$1,500, the equity value is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the property produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.

(B) The total equity value is excluded if all the following are true:

(i) The property is used in a trade or business.

(ii) The property is essential to the client's self-support.

(iii) The property produces an annual countable income of at least six percent of its *equity value*.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, it is counted as a resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

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 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 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0320

Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income. A deduction is allowed, not to exceed \$1,500, for the cost of the deceased person's last illness and burial if these costs were not otherwise insured.

(2) The value of a life insurance policy is treated as follows:

(a) All term insurance is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the cash surrender value of the life insurance policy is excluded.

(c) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), the total exclusion available for life insurance and burial arrangements is limited as provided in OAR 461-145-0040(2)(b).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) Except as provided in subsection (c) of this section, the total cash surrender value of life insurance policies owned by the client or the client's spouse is excluded if the total face value of all policies is less than or equal to \$1,500. If the total face value of all policies is more than \$1,500, the entire cash surrender value is counted as a resource.

(B) The cash surrender value of a policy acquired through a *viatical settlement* is excluded. A *viatical settlement* allows a third party to acquire the life insurance policy from a terminally ill person at an agreed upon percentage of the life insurance policy face value.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0330

Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule, "reverse-annuity mortgage" means an arrangement in which a homeowner borrows against the equity in the home and receives regular monthly tax-free payments from the lender. A "reverse-annuity mortgage" is sometimes referred to in the private sector as a reverse mortgage or a home equity conversion mortgage.

(3) The proceeds of a home equity loan or *reverse-annuity mortgage* are considered loans under this rule.

(4) For payments that a member of the financial group receives as a borrower to be treated as a loan:

(a) In the FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In all other programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(5) When a member of a financial group receives cash proceeds from a loan:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the loan is excluded. If retained after the month of receipt, the loan is treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM and QMB programs, a loan is excluded as income. The loan is a resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(6) Except as provided in section (7) of this rule, if a member of a financial group has made a loan and is receiving return payments as a result:

(a) The interest payment is unearned income.

(b) The payment of principal is excluded.

(7) In the GA, GAM, OSIP, OSIPM and QMB programs, if a client or a spouse of a client uses funds to purchase a promissory note, loan, or mortgage in a transaction occurring on or after July 1, 2006, the balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value, unless all of the following requirements are met:

(a) The total value of the transaction is being repaid to the client or spouse of the client within that person's actuarial life expectancy as estab-

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lished by the life expectancy table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9B.

(b) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(c) The contract is not cancelled upon the death of the client or the spouse of the client (who made the transaction).

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0360 Motor Vehicle

(1) The value of disability-related apparatus, optional equipment, or low mileage is not considered in determining the fair market value (defined in OAR 461-001-0000) of an automobile, truck, or van. The fair market value of an automobile, truck, or van is presumed to be the "average trade-in value" established in the National Automobile Dealers Association's (NADA) Used Car Guide. If the vehicle is not listed in the NADA Used Car Guide, the "average trade-in value" established in the Kelley Blue Book is used. If the vehicle is not listed in the NADA Used Car Guide and Kelley Blue Book, the "average trade-in value" established in a similar publication is used. A client may rebut the presumption with a statement from a car dealer, mechanic, or other reliable source. If the vehicle is not listed in the NADA Used Car Guide, Kelley Blue Book, and a similar publication, the estimate of the value by the client may be accepted unless it appears questionable, in which case additional evidence of the value is required.

(2) Some programs permit an exclusion for a portion of the equity value (defined in OAR 461-001-0000) for any licensed and unlicensed motor vehicles owned by the financial group:

(a) In the FS, MAA, MAF, REF, SAC, and TANF programs, this exclusion is up to \$10,000.

(b) In the GA and GAM programs, this exclusion is up to \$4,500.

(c) Any remaining equity in that vehicle and the total equity value of all other vehicles is counted as a resource.

(3) In the EA, ERDC, and OHP programs, all motor vehicles are excluded.

(4) For grandfathered financial groups in the OSIP and OSIPM programs, one motor vehicle in operating condition is excluded, and the equity value of any other motor vehicles is counted as a resource.

(5) In the OSIP, OSIPM, and QMB programs:

(a) The total value of a vehicle selected by the financial group is excluded if it is used for employment or necessary and continuing medical treatment. If it is not, the first \$4,500 of the *fair market value* is excluded. The amount above \$4,500 is counted as a resource.

(b) The total *equity value* of all other vehicles is counted as a resource.

(6) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an *employment* and *independence expense* (defined in OAR 461-110-0115) or with moneys from an *approved account* (defined in 461-110-0115), the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060 & 418.100
Stats. Implemented: ORS 411.060, 411.117 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 19-1997, f. & cert. ef. 10-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0380

Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) Annuities or trusts if purchased with funds from any of the following retirement plans (authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p) or (q), or at section 408A):

(A) Individual Retirement Annuity.

(B) Individual Retirement Account.

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Retirement Account.

(2) Benefits the client receives from retirement funds are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All other payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) Pension and retirement plans that allow clients to withdraw funds before retirement are treated as follows:

(a) In all programs except FS and OHP, the *equity value* (defined at OAR 461-001-0000) of the plan, minus any penalty for early withdrawal, is counted as a resource.

(b) In the Food Stamp program, any portion of an individual retirement account (IRA), or a KEOGH plan that is available before, upon, or following retirement, is counted as an available resource, less a penalty for early withdrawal. The value of any other plan is excluded as a resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0405

Plan for Self-support

(1) This rule covers two types of plans for self support.

(a) A plan for self support approved by the Social Security Administration.

(b) A plan for self support approved by the Department (see OAR 461-135-0708).

(2) Assets listed in an approved plan for self-support are treated as follows:

(a) In the Food Stamp program, assets designated for use in an approved plan for self-support are excluded.

(b) In all programs except FS, if assets are identified to meet a specific cost directly related to the occupational goal:

(A) Resources identified to meet costs, such as purchase of equipment for a trade or business, transportation, books and maintenance costs at school, are excluded.

(B) An income deduction is allowed for the amount identified to meet allowable costs necessary for complying with the plan for self support, including:

(i) Room and board, and other maintenance requirements, if the client must be away from home; and

(ii) Above-normal expenses, if the client remains at home but must buy meals or incur other known expenses while away from home during the day.

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 8-1992, f. & cert. ef. 4-1-92; AFS 10-2002, f. & cert. ef. 7-1-02; Renumbered from 461-140-0420, SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0420

Real Property

(1) For purposes of this rule, manufactured and mobile homes are treated in the same manner as *real property*.

(2) The *fair market value* (notwithstanding its definition in OAR 461-001-0000) of *real property* (defined in OAR 461-001-0000) is the amount described in subsection (2)(a) of this rule, unless a real estate appraisal is submitted in which case this value is the lesser of the following amounts:

(a) The highest value identified by the county assessor on the most recent property tax statement.

(b) The value established by an appraisal as the current amount the real property would sell for on the open market.

(3) *Real property* that is not income-producing or the financial group's home is treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the *equity value* (defined in OAR 461-001-0000) of all *real property* that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(b) In the EA, ERDC, and OHP programs, *real property* is excluded.

(c) In the FS program, real property is treated as follows:

(A) The *equity value* of real property is excluded if the financial group is making a good-faith effort to sell the real property at a fair market price.

(B) The *equity value* of the real property is counted as a resource if the financial group refuses to make a good-faith effort to sell.

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(C) The resource is excluded if selling the resource would produce a net gain to the financial group of less than \$1,500.

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The *equity value of real property* that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price, unless the equity value in the home makes the client ineligible under OAR 461-145-0220(2)(a).

(B) The *equity value of all other real property* is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price. The equity value is counted after the real property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

(4) The treatment of real property that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the financial group is covered in OAR 461-145-0220.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; 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 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0433

Recreational Vehicles

(1) For purposes of this rule, a *recreational vehicle* includes both of the following subsections:

(a) A vehicle (a means for carrying or transporting something) if:

(A) The vehicle is used primarily for amusement and not for day-to-day transportation; and

(B) The vehicle cannot be licensed as a motor vehicle for use on a public highway (even if the vehicle is registered or licensed as a non-motor vehicle).

(b) An ATV, boat, camper, dune buggy, plane, snowmobile, and trailer, unless the item qualifies as a capital asset under OAR 461-145-0055 or as work-related equipment under OAR 461-145-0600.

(2) Except as provided in section (4) of this rule, for all programs except ERDC and OHP, the *equity value* (defined in OAR 461-001-0000) of a *recreational vehicle* is counted as a resource.

(3) In the ERDC and OHP programs, the value of a *recreational vehicle* is excluded.

(4) In the Food Stamp program only, the equity value of a *recreational vehicle* is excluded if selling the vehicle would produce a net gain to the financial group of less than \$1,500.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 418.100

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0540

Trusts

(1) Trust funds are money, securities, or similar property held by a person or institution for the benefit of another person.

(2) This section applies to all trust funds in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group for items covered by program benefits. For OSIP, OSIPM, and QMB, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(3) In the ERDC program, all trust funds are excluded.

(4) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (9) of this rule.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting in the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined disabled by SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all the client's income. The income deposited into the trust is distributed monthly in the following order

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with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility services.

(d) A trust containing the resources or income of a client who is disabled as defined by SSI criteria and created before the client reached age 65, meeting the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(1) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; 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 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 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 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0590

Worker's Compensation

(1) For workers compensation payments received monthly or more frequently:

(a) Except as provided in subsection (b) of this section, these payments are counted as unearned income.

(b) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, income from workers compensation is counted as earned income (see OAR 461-145-0130) if paid to a client who is still employed while recuperating from an illness or injury.

(2) All workers compensation payments other than those in section (1) are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-145-0910

Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a specified salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) and (3) of this rule. If a client has more than one

self-employment business, trade, or profession, the income from each is determined separately.

(2) In all programs except FS, a shareholder in a corporation is not self-employed by virtue of the ownership interest in the corporation but only by meeting the requirements of section (3) of this rule. In the FS program, a shareholder in an incorporated business cannot be self-employed in that business.

(3) Except as provided in OAR 461-145-0250(2), a person is self-employed for the purposes of this division of rules if he or she meets at least five of the following criteria:

(a) Is engaged in an enterprise for the purpose of producing income.

(b) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(c) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(d) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(e) Is not covered under an employer's liability or workers' compensation insurance policy.

(f) Contracts for a site or works out of another's business location.

(4) Notwithstanding sections (2) and (3) of this rule:

(a) Home care providers paid by the Department are not self-employed.

(b) Child care providers paid by the Department, adult foster care providers paid by the Department, realty agents, and clients who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(c) A newspaper carrier is self-employed if the business through whom the carrier obtains the newspapers treats the carrier as an independent contractor.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is treated as anticipated income when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(6) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered *available* upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-155-0190

Income and Payment Standards; FS

(1) The FS Countable and Adjusted Income Limits are as follows: [Table not included. See ED. NOTE.]

(2) The FS Payment Standard (Thrifty Food Plan) is: [Table not included. See ED. NOTE.]

[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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; 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 34-1996, f. 9-26-96, cert. ef. 10-1-96; 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 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 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

ADMINISTRATIVE RULES

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived *nonstandard living arrangement* (defined in OAR 461-110-0110), the countable income limit standard is 300 percent of the full SSI standard for a single individual. 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 standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. 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.]

(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, \$970 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; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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.

(e) In the OSIPM program, a cost that the client incurred while the client was serving a disqualification from Medicaid under OAR 461-140-0210 to 461-140-0300 for a transfer of assets for less than fair market value.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 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; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0055

Medical Costs That are Deductible

(1) For FS clients who are elderly (defined in OAR 461-110-0110) or persons with a disability (defined in OAR 461-110-0110), and for clients in the GA, GAM, OSIP and OSIPM programs, medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(2) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(3) In the FS and OSIPM programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while a person is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(4) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(5) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for a person who was a member of the household group immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for a person who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed, companion animals and assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey), including the cost of acquiring the animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0120

Income of Eligible Non-Citizens and Father of an Unborn; MAF

(1) A need group ineligible for MAA that includes an ineligible non-citizen or a father of an unborn is evaluated for the MAF program by deeming the non-excluded income of the father or the ineligible non-citizens as

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provided in sections (2) and (3) of this rule. The amount deemed is counted as unearned income to the MAF financial group.

(2) If a person in the MAF financial group is excluded from the need group because he is the father of an unborn, the amount of the income deemed from the father is determined by deducting from his non-excluded income:

(a) The payment standard in OAR 461-155-0030(2) for one person; and

(b) The first \$90 of earned income.

(3) If one or more people in the MAF financial group are excluded from the need group for failure to meet the requirements of OAR 461-120-0125 (regarding citizenship and alien status), the amount of the income deemed from the ineligible non-citizens is determined by deducting from their non-excluded income:

(a) The payment standard in OAR 461-155-0030(2) for the number of people who do not meet the citizenship or alien status requirements; and

(b) The first \$90 of earned income for each ineligible non-citizen.

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 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0420

Shelter Cost; FS

(1) This rule explains how to calculate the client's shelter cost. The shelter cost is used to determine the shelter deduction (see OAR 461-160-0430). The shelter cost is the sum of the client's cost of housing plus an allowance for utilities, if the client incurs a utility cost. The shelter deduction is based on the shelter cost but is subject to a limitation described in OAR 461-160-0430.

(2) Cost of housing:

(a) The following comprise the cost of housing if they are incurred with respect to the client's current residence or the home described in section (5) of this rule:

(A) Regular, periodic charges for the financial group's shelter, such as rent, mortgage payments, and condominium or association fees. Late fees charged because a mortgage or rent payment was made late are not deductible.

(B) Property taxes, state and local assessments, and property insurance on the structure.

(C) Costs for repairing a home damaged or destroyed by a natural disaster (such as a fire or flood), if such costs are not reimbursed.

(D) If the need group is homeless and living in a vehicle — vehicle payments and collision and comprehensive insurance premiums for the vehicle.

(b) If housing costs are billed on a weekly or biweekly basis, the monthly cost is the weekly cost multiplied by 4.3 or the biweekly cost multiplied by 2.15.

(c) The financial group has the following choices about housing costs:

(A) The group may choose to apply the cost in the month it is billed or becomes due.

(B) The group may choose to have periodic costs averaged.

(C) For expenses that are billed less often than monthly, the group may choose to have them averaged over the period they are intended to cover.

(3) Shared housing: If the filing group shares housing costs with a person in the dwelling who is not in the filing group, only the housing costs incurred by the filing group are included in the calculation. If the portion paid by a person outside the filing group cannot be ascertained, the cost is apportioned among the people contributing to the cost. The pro rata share of those not in the filing group is deducted from the total, and the balance is considered a housing cost of the filing group.

(4) Cost for utilities:

(a) A filing group has a cost for utilities if it incurs a cost for heating or cooling; cooking fuel; electricity; water and sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; service for a telephone, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes; or initial installation fees charged by a utility provider.

(b) If the group incurs no cost for utilities in either its current home or in the home described in section (5) of this rule, then the shelter cost is calculated without an allowance for utilities.

(c) If a homeless need group uses a vehicle for shelter, the cost of fuel for the vehicle is considered a utility cost.

(d) If a filing group incurs a cost for utilities, then the utility allowance is one of the following:

(A) Allowance with heating or cooling: A full standard utility allowance of \$303 is used if the household group is billed for heating or cooling costs for its dwelling. Charges for any fuel and for electricity are considered heating costs if they are used for heating. A financial group who receives an energy assistance payment for the dwelling provided through the Low-Income Energy Assistance Act of 1981 is eligible for the utility allowance established by this paragraph (A).

(B) Allowance without heating or cooling:

(i) A limited standard utility allowance of \$217 is used if the household group is not billed for heating or cooling costs but is billed for at least two other costs enumerated in section (4)(a) of this rule.

(ii) An individual standard utility allowance of \$37 is used if the household is not billed for heating or cooling costs but is billed for only one of the costs enumerated in section (4)(a) of this rule other than the service cost for a telephone, including the related taxes or fees.

(iii) A telephone standard utility allowance of \$37 is used if the household is not billed for heating or cooling costs but is billed for telephone service, such as basic service fee, wire maintenance, subscriber line charges, relay center surcharges, 911 service, and taxes.

(5) Housing costs for a home not occupied by the household: Housing and utility costs with respect to a home not currently occupied by the household may be considered in calculating the shelter cost if:

(a) The home is temporarily unoccupied because of employment or training away from home, illness, or abandonment caused by casualty or natural disaster;

(b) The financial group intends to return to the home;

(c) No other, current occupant is claiming a deduction for shelter costs in the FS program; and

(d) The home is not leased during the household's absence.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 21-1998(Temp), f. 10-15-98 & cert. ef. 11-1-98 thru 12-31-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; 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 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0430

Income Deductions; FS

(1) Deductions from income are subtracted from countable income in the following order to determine adjusted income for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$134 per month for benefit groups of one, two, or three persons. A standard deduction of \$139 for a benefit group of four persons. A standard deduction of \$162 for a benefit group of five persons. A standard deduction of \$186 for benefit groups of six or more persons.

(c) A dependent care deduction not to exceed \$175 each month for each dependent, or \$200 each month for each child under age 2, for dependent care costs billed to a member of the financial group and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group to:

(A) Accept or continue employment;

(B) Meet the requirements of a case plan (see OAR 461-190-0310 for a definition of case plan); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments a member of the household makes under a legal obligation to a child not a member of the household group, including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

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(A) For FS clients required to pay room and board in nonstandard living arrangements (see OAR 461-110-0110(13)), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly. The limit is \$417.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

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 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; 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 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-0, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0610

Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

(1) The IC service payment of clients in the OSIP-IC and OSIPM-IC programs is reduced by the amount of their liability. Other clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or enter a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule as follows:

(a) Clients who do not receive SSI, but who meet the income requirements, may be eligible for OSIP and OSIPM. These clients must apply their adjusted income to the cost of their care or service. This amount is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(b) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(2) The following clients are exempt from payments required by this rule if they receive waived services (as defined in OAR 461-145-0560):

(a) A disabled adult child under OAR 461-135-0830.

(b) A disabled widow or widower under OAR 461-135-0811.

(c) A widow or widower under OAR 461-135-0820.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in subsection (a) of this section as explained in subsections (a) through (i) of this section. The liability of the client is determined according to subsection (j).

(a) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waived services, except that there is no client liability for:

(A) A client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).

(B) A client in one of the following categories who receives only waived services:

(i) A client in OSIPM-IC.

(ii) An adult disabled child as described at OAR 461-135-0830.

(iii) A disabled widow or widower under OAR 461-135-0811.

(iv) A widow or widower under OAR 461-135-0820.

(b) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(c) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(d) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(e) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waived services through the home- and community-based services program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,650 is added to the amount over \$495 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,488.50, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(f) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,650. To determine the income allowance of the eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,650.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(g) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

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(h) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(i) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(j) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in subsection (1)(a) of this rule), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, an acute hospital, a state hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(2) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-170-0130

Acting on Reported Changes; EXT, GAM, MAA, MAF, OSIPM, SAC

(1) When an EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050, 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-175-0220

Notice Situation; Disqualification

(1) If a benefit group or individual is disqualified for an FS voluntary job quit or for failure to apply for or provide an SSN, pursue assets, cooperate in the JOBS, JOBS Plus, or OFSET program, or assist the state's efforts to collect support, the Department sends the following type of notice:

(a) If benefits are reduced or closed because of the disqualification:

(A) A continuing benefit decision notice is used when changes are reported on the Monthly Change Report, Interim Change Report or Periodic Review forms.

(B) A timely continuing benefit decision notice is used when changes are not reported on the Monthly Change Report, Interim Change Report or Periodic Review forms.

(b) If benefits are opened without the disqualified individual in the benefit group or if the entire benefit group is denied assistance, a basic decision notice is used.

(2) For a JOBS, JOBS Plus, or OFSET disqualification, and for an FS voluntary job quit by a person receiving food stamp benefits, the notice includes the following information:

(a) The client action that resulted in disqualification.

(b) The length of the minimum disqualification period.

(c) The reduced benefit amount.

(d) How the client may end the disqualification after the minimum period.

(3) For a voluntary job quit by a person applying for food stamp benefits, the notice includes the following information:

(a) The action that resulted in the disqualification; and

(b) The length of the disqualification period.

(4) For an IPV disqualification:

(A) A basic decision notice is required if a person in the benefit group is disqualified for an IPV as the result of a court order or a final order from an administrative hearing.

(b) A continuing benefit decision notice is required if a person in the benefit group is disqualified for an IPV based on a signed waiver.

(5) For a disqualification due to being a fleeing felon or in violation of parole, probation or post-prison supervision (under OAR 461-135-0560):

(a) A basic decision notice is required if benefits are opened without the disqualified person in the benefit group or if the entire filing group is denied benefits.

(b) A timely continuing benefit decision notice is required if a person in the benefit group is disqualified.

(6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.816, 418.100

Stats. Implemented: 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 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-175-0310

Notice Situation; Resource Transfer Disqualification

(1) When the Department proposes to disqualify a filing group because of a disqualifying transfer of assets (see OAR 461-140-0210), the following notice is sent:

(a) For new applicants, a basic decision notice.

(b) For ongoing clients, a timely continuing benefit decision notice.

(2) A notice required by this rule includes the amount of uncompensated value used in the eligibility determination and the period of ineligibility caused by the transfer.

(3) In the GA, GAM, OSIP, OSIPM and QMB programs, the notice must also include:

(a) The action that resulted in the disqualification, and

(b) Information that the client, or the facility in which the client resides (on behalf of the client), may apply for a waiver of the disqualification on the basis of undue hardship.

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 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-180-0044

Effective Dates; Income Cap Trust

The effective date for an income cap trust that makes a client income-eligible for long term care or waived services under OAR 461-135-0750 and 461-145-0540(10)(c) is the first day of the month in which the trust document is signed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-180-0085

Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, SAC

In the EXT, GAM, MAA, MAF, OHP, OSIPM, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group remain eligible from the date the review is initiated until the

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Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060
Stats. Implemented: ORS 409.050 & 411.060
Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-185-0050

Client Pay-In System

(1) Except as provided in sections (2) and (3) of this rule, a client who receives waived in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for waived in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group.

(b) The actual cost of the waived service.

(2) The service liability of clients in the OSIP-IC and OSIPM-IC programs is calculated in accordance with section (1) of this rule. Clients in the OSIP-IC and OSIPM-IC programs do not pay the Department directly. The IC service payment of these clients will be reduced by the amount of their liability.

(3) The following clients are exempt from the payment required by this rule:

(a) Adult disabled children as described at OAR 461-135-0830.

(b) Disabled widows and widowers under OAR 461-135-0811.

(c) Widows and widowers under OAR 461-135-0820.

(4) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(5) Payments must be received by the Department in the month of service.

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042
Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06

461-195-0611

Intentional Program Violations; Establishment and Appeal

(1) In the ERDC, Food Stamp, and TANF programs, an IPV is established by a state or federal court, by an administrative agency in a contested case, or by a person signing the designated form for acknowledging the IPV and waiving the right to an administrative hearing. If the IPV will be established in a contested case, the Department initiates the IPV hearing.

(2) There is no administrative appeal after a person waives the right to an IPV hearing, and the penalty cannot be changed by subsequent administrative action. However, the person is entitled to seek relief in court or to request a hearing on the sole issue of whether the waiver was signed under duress (see OAR 461-025-0310).

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.095, 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 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

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) 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 Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.

(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; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06

ADMINISTRATIVE RULES

Department of Justice Chapter 137

Rule Caption: Amends Child Support Program rules to bring into line with current practice and for clarification.

Adm. Order No.: DOJ 6-2006

Filed with Sec. of State: 10-2-2006

Certified to be Effective: 10-2-06

Notice Publication Date: 8-1-06

Rules Amended: 137-055-1090, 137-055-1100, 137-055-2160, 137-055-2165, 137-055-4060, 137-055-4540, 137-055-5110, 137-055-5520, 137-055-6023, 137-055-6200, 137-055-6220, 137-055-6260

Subject: Amendment to OAR 137-055-1090 provides process for the Program when a case has not had a “good cause” determination and benefits are being provided by partner agencies; amendment to OAR 137-055-1100 brings rule into line with current practice to show that the Program will not satisfy arrears assigned to the Oregon Youth Authority when a “good cause” determination is made on a case; amendment to OAR 137-055-2160 clarifies when a party will need to send in another request for hearing after the order was amended; amendment to OAR 137-055-2165 changes process to reflect that a request to reschedule a hearing is not late until after the final order has been entered in the circuit court; amendment to OAR 137-055-4060 provides an example of a “periodic recurring income” which is not monthly; amendments to OAR 137-055-4540 reflect the change in federal law that lowers the threshold for passport restriction to \$2500 in arrears and clarifies when an obligor does not qualify for a modification and has requested a hardship exception that the exception will terminate after three-months; amendments to OAR 137-055-5520 clarify that a lump sum payment may be the result of a culmination of monthly payments, clarify that the obligor’s request for credit must be in writing, extends the time frame for requesting credit to two years from the time the obligor receives notice and makes it permissive that the request may be made in conjunction with a request for a modification; amendments to OAR 137-055-6023 and 137-055-6260 clarify that support payments received as a result of a judgment lien or as overcollected support may be applied to parentage test judgments or genetic test fees; amendment to OAR 137-055-6200 clarifies that the Program will not open a closed case for an adult child until the child qualifies as a child attending school; amendment to OAR 137-055-6220 brings rule into line with practice to allow threshold of reference to be permissive instead of mandatory.

Rules Coordinator: Carol Riches—(503) 986-6240

137-055-1090

Good Cause

(1) For the purposes of OAR chapter 137, division 055, “good cause” means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. This definition specifically excludes good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060 and good cause found for distribution of support to other than a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF, Title IV-E or Medicaid benefits are being provided;

(b) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA’s custody;

(c) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(d) The administrator when the provisions of subsections (a) through (c) of this section do not apply.

(3) When the provisions of subsection (2)(d) apply, the administrator will make a finding and determination of good cause when it is determined that provision of services is not in the best interest of the child and:

(a) The obligee makes a verbal or written claim that the provision of services may result in emotional or physical harm to the child or obligee; or

(b) The obligee completes and returns the good cause document contained in the Client Safety Packet.

(4) In determining whether providing services is in the best interest of the child, the administrator will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(5) A finding and determination by the Administrator that good cause does not apply, may be appealed as provided in ORS 183.484.

(6) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(7) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA’s custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(8) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA’s custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(9)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA’s custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet;

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide an address of record as provided in OAR 137-055-1180.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(10)(a) If a request for services under ORS chapter 110 is received from another state and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA’s custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring state of the finding and determination of good cause and request that the state consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring state and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

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(D) Allow the obligee 30 days to provide an address of record as provided in OAR 137-055-1180.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring state advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(11) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(12) When the provisions of section (11) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(13) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS or OYA.

(14) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(15) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-1100

Continuation of Services

(1) When a family's assistance grant is closed, support enforcement services will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, in writing, of the services to be provided. DCS will notify the obligee, and the child attending school that subject to the obligor's right to request services:

(a) An obligee may at any time request that support enforcement services no longer be provided. If the obligee so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee will be discontinued. However, except as provided in section (2) of this rule, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under section (2) of this rule that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school may request that support enforcement services no longer be provided. If the child attending school so requests, all support enforcement services on behalf of the child attending school will be discontinued.

(2) If an obligee believes that physical or emotional harm to the family may result if support enforcement services are provided, the obligee may request that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will immediately

suspend all activity on the case, add good cause case coding and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(a) If the obligee returns the completed and signed Good Cause portion of the Client Safety Packet on Good Cause, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(k), and, except for arrears assigned to the Oregon Youth Authority, DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(7)(a) and (b).

(b) If the obligee returns the completed and signed Claim of Risk portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and make a finding and order for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(c) If the obligee returns the completed and signed Address of Record portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and update the child support case record appropriately.

(d) If the obligee does not send a reply to the Client Safety Packet on Good Cause within 30 days, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(k), and DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(7)(a) and (b).

(e) If the obligee claims good cause, the child attending school may apply for services pursuant to OAR 137-055-1090 and 137-055-5110.

(3) If a case has been closed pursuant to this rule, an obligee or a child attending school may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services, except as provided in OAR 137-055-5120.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 18.400, 25.020 & 25.080

Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-2160

Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP) and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice.

(4) A new or amended request for hearing is not required from the requesting party if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) When a party requests a hearing after the time specified by the administrator, the administrator shall handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to OAR 137-055-3020(7)(b) which includes the man as the biological father of the child; and

(b) A request for hearing has been received from a party within 14 days from the date of service of the Notice of Intent to Enter Order/Judgment and the notice of parentage testing results.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

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Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-2165

Requests to Reschedule Hearing

(1) When a party fails to appear for a hearing, the party may request that the hearing be rescheduled. A request to reschedule a hearing must be submitted in writing to the Child Support Program (CSP).

(2) When the CSP receives a written request to reschedule a hearing, the CSP will review its record to determine whether a final order has been entered in the circuit court. After this review, the CSP will:

(a) Deny the request to reschedule if a final order has been entered in the circuit court; or

(b) Forward the request to the Office of Administrative Hearings (OAH) if no final order has been entered in the circuit court.

(3) When OAH receives the written request to reschedule, OAH will notify the parties that the request has been received and allow the parties 10 days to submit written testimony on whether or why the reschedule request should be accepted.

(4) Parties who submit written testimony to OAH must provide copies of the testimony to the other parties.

(5) After the time for response has expired, and after reviewing the request and any additional testimony received, OAH will make a determination whether the reschedule request should be allowed or denied.

(a) If the request is allowed, OAH will issue a final order allowing the request and scheduling the case for hearing; or

(b) If the request is denied, OAH will issue a final order denying the request.

(6) When the CSP receives an order from OAH which denies a rehearing request, the CSP may issue a final order by default on the underlying support issue.

(7) OAH will include notice of the process set out in this rule in its order dismissing a hearing when a party fails to appear.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 180.345

Hist.: DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-4060

Income Withholding — General Provisions, Requirements and Definitions

(1) OARs 137-055-4060 through 137-055-4180 provide for collection of support by means of income withholding, in accordance with ORS 25.372 through 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OARs 137-055-4060 through 137-055-4180 and as used in ORS 25.372 through 25.427, the following definitions apply:

(a) "Alternative payment method" means the methods of paying support that are described in OAR 137-055-4120;

(b) "Best interests of the child" means the method of payment likely to produce consistent support which will reach the child(ren) in the most expedient manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in paragraphs (B) or (C) of this subsection.

(A) Amounts required to be withheld by law includes, but is not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and DCS will not refund to the obligor, on the basis of such claims, any amounts withheld that DCS has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110;

(d) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(e) "Periodic recurring income" as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is intended as a monthly or more frequent payment notwithstanding its distribution that includes, but is not limited to, a teacher's lump sum payment for summer months.

(3) All support orders issued or modified by the administrator will include a provision requiring the obligor to keep the administrator informed of:

(a) The name and address of the obligor's current employer;

(b) Whether or not the obligor has access to health insurance coverage at reasonable cost, and if so, the health insurance policy information

Stat. Auth.: ORS 25.396; 25.427, 180.345

Stats. Implemented: ORS 25.372 - 25.427, 656.234, 657.780 & 657.855

Hist.: AFS 4-1990, f. 1-18-90, cert. ef. 2-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 29-1992, f. 10-8-92, cert. ef. 11-1-92; AFS 7-1994, f. & cert. ef. 4-1-94; AFS 12-1994, f. 6-28-94, cert. ef. 7-1-94; AFS 20-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0175; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4060; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-4540

Restriction of Passports

(1) When the Division of Child Support submits delinquent child support accounts for IRS tax refund offset pursuant to OAR 137-055-4340, the federal Department of Health and Human Services (DHHS) will select cases in which the delinquency is \$2,500 or more for passport restriction.

(2) Passport restriction means the United States Secretary of State will refuse to issue a passport or may revoke, restrict or limit a passport which was previously issued.

(3) The parties will receive notice of passport restriction with the notice of tax refund offset specified in OAR 137-055-4340. The notice will advise the parties of the right to an administrative review regarding this action:

(A) A party may request an administrative review as specified in the notice;

(b) The only issues that may be considered in the review are:

(A) Whether the obligor is the person who owes the support balance as indicated by the case record; or

(B) Whether the support balance indicated by the official case record is correct.

(4) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review. The decision made in the review and the basis for this decision will be recorded in writing and mailed to the parties.

(5) Passport restriction may continue when the delinquency is reduced to less than \$2,500.

(6) Where a passport has been restricted and the obligor has either paid the delinquency in full or entered into and shown compliance with an agreement pursuant to this rule, the CSP will give notice to the State Department to release the passport restriction. Notice will be by the process specified by DHHS.

(7) An agreement is either payments made by income withholding, an agreement pursuant to section (8), or an agreement for a hardship exception pursuant to section (10) of this rule.

(8) Any agreement under this section must:

(a) Be in writing and signed by the obligor;

(b) Specify the due date for payments. The administrator may negotiate a due date other than the due date on the case record;

(c) Assume Oregon minimum wage for the obligor in determining income level if the obligor claims income in an amount less than minimum wage and no evidence is found that the obligor has income in an amount greater than Oregon minimum wage;

(d) State the amount of the payment. When feasible, there must be a lump sum payment to pay the delinquency in full or an initial lump sum payment to significantly reduce the delinquency. The amount of any ongoing payments must be the amount that could be obtained from an income withholding order pursuant to ORS 25.414;

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(e) State that the agreement may be amended if there is a change in the amount of current child support;

(f) State that the agreement may be amended if there is a change in income which would change the agreement amount per the calculations in subsection (8)(d) of this rule;

(g) State that the agreement is terminated if the obligor fails to comply with the terms of the agreement;

(h) State that failure to comply with terms of the agreement will result in notification to the State Department to restrict the passport;

(i) State that the agreement does not preclude other enforcement actions to collect current child support and arrears, including, but not limited, to income withholding, and state and federal income tax offset;

(j) Include a statement that the obligor is required to notify the administrator within 10 days when there is a change in employment;

(k) State that information voluntarily provided may be used in other enforcement actions, including contempt actions.

(9) Any agreement made pursuant to this rule may be voided by the administrator if either subsections (9)(a) or (b) of this rule apply.

(a) The income of the holder of the passport/obligor changes; or

(b) The holder of the passport/obligor has under reported income in establishment of the agreement.

(10) When ongoing monthly support is owed, under the following circumstances, an exception to the requirements in subsection (8)(d) of this rule may be made if the obligor claims a hardship. If an obligor claims a hardship and all of the conditions are met for this exception, the enforcement entity will make an exception and limit the maximum amount of the agreement to 100 percent of the current support amount for the case. If the obligor has multiple child support cases, the administrator may limit the amount of the agreement to the lesser of 100% of the current support amount or the case's pro rata share of 50 percent of disposable earnings based on amounts of monthly support obligations per case. The conditions and time frames for exceptions are:

(a) The obligor requests a periodic review and modification or a substantial change in circumstance modification under the provisions of OAR 137-055-3420 or requests such a review and modification and is referred to the appropriate enforcement entity office to make the request. This exception will terminate after the administrator finishes the review and modification process. If the exception is granted pending the obligor's request for a periodic or substantial change in circumstances review and modification and the obligor has not made such a request to the appropriate administrator within ten days, the exception may be terminated. If the obligor must ask another state for a review and modification, the obligor must furnish verification to the administrator within 30 days that such a request was made to the other state. If such verification is not provided, this exception may be terminated.

(b) If the obligor requests a periodic review and modification or a substantial change in circumstance modification and is found to not qualify for a modification the hardship exception will terminate after a three-month period. A hardship exception under this rule may be granted for temporary conditions that limit an obligor's ability to make support payments.

(11) The administrator will provide notice to the other parties of any agreement entered into by sending the parties a copy of the agreement.

Stat. Auth.: ORS 25.625 & 180.345

Stats. Implemented: ORS 25.625

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-9; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4540; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-5110

Child Attending School

The purpose of this rule is to provide additional information as to how the Child Support Program (CSP) will apply the provisions of ORS 107.108 when the order or modification provides for support until the child is age 21, so long as the child is a child attending school in accordance with ORS 107.108.

(1) In addition to the definitions found in ORS 107.108, as used in OAR chapter 137, division 55, the following terms have the meanings given below:

(a) "Active member of the military" means:

(A) A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard (collectively known as the "armed forces"), who is serving on active duty; or

(B) A member of the National Guard who is serving full-time National Guard state or federal active duty; or

(C) A cadet at a federal service academy.

(b) "Adult child" means a child over the age of 18 and under the age of 21, who is not married or otherwise emancipated, and is not currently a child attending school.

(c) "Child attending school" has the meaning given in ORS 107.108, except a child attending school does not include an active member of the military.

(d) "Satisfactory academic progress" means:

(A) For a child attending high school who is over age 18 but under age 21, enrollment in school and meeting attendance requirements or as defined by the school; or

(B) For a child attending post high school classes, as defined by the higher educational institution.

(2) If the obligor has not provided the child attending school with an address to send the documents required by ORS 107.108 to, the administrator, pursuant to OAR 137-055-1140(8), may release the address of record of the obligor to the child attending school. If the obligor does not provide an address to the CSP or to the child, the obligor's failure to receive required documents is not a basis for objecting that a child does not qualify as a child attending school.

(3) If there has been a finding and order of nondisclosure on behalf of the child attending school pursuant to ORS 25.020;

(a) The child may send the obligor's copy of the initial notice of intent to attend or continue to attend school to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the administrator within the time periods set out in ORS 107.108. The administrator will redact the following information prior to sending a copy of the documents otherwise required to be provided to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) The child attending school must contact the school each term or semester and submit to the administrator the information that the obligor could obtain from the school if there wasn't a finding and order of nondisclosure on the case. The administrator will redact the information set out in subsection (a) of this section prior to sending a copy of the documents to the obligor.

(4) If a child attending school is in the care of the Oregon Youth Authority (OYA), any and all reporting duties of the child attending school will be the duty of OYA.

(5) DOJ will distribute support directly to the child attending school, unless good cause is found to distribute support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of OYA;

(b) The child provides written notarized authorization for distribution to the obligee;

(c) The court, administrative law judge or administrator orders otherwise; or

(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute support directly to the child.

(6)(a) If the administrator makes a finding that the support payment should be distributed to the obligee under subsection (5)(b), the administrator will send a notice of redirection of support to the parties.

(b) A party may contest the administrator's finding as provided in ORS 183.484.

(7) An objection based on the requirements of ORS 107.108 may be made by any party to the support order.

(a) Unless new supporting documentation can be provided, an objection can only be made once per semester or term as defined by the school, or three months from the date of a previous objection if the school does not have semesters or terms.

(b) A party may contest the administrator's finding from the objection as provided in ORS 183.484.

(8) When support has been suspended under ORS 107.108 and the adult child subsequently complies with the requirements for reinstatement, the written confirmation and proof of written consent will be considered as an application for services if the case has been closed pursuant to OAR 137-055-1120.

(9) When the administrator has suspended or reinstated a support obligation pursuant to ORS 107.108, a party may request an administrative

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review of the action within 30 days after the date of the notice of suspension or reinstatement.

(a) The only issues which may be considered in the review are whether:

(A) The child meets the requirements of a child attending school;

(B) The written notice of the child's intent to attend or continue to attend school was sent to the parent ordered to pay support;

(C) The written consent was sent or proof of written consent was received.

(b) The burden of proof for the administrative review is on the requesting party to provide documentation supporting the allegation(s).

(10) When support has been suspended under ORS 107.108, the adult child may request to receive notice of future modifications and may request to be a party to the modification as outlined in ORS 107.108 and OAR 137-055-3430. The adult child does not have any party status on the case until the request has been received by the administrator.

(11) In addition to the rights afforded under ORS 107.108, if the obligee claims good cause under OAR 137-055-1090, the child attending school may apply for services to enforce the existing support obligation on behalf of the child attending school only.

(a) The application will be handled in the same manner as outlined in OAR 137-055-1090(9)(a)-(c).

(b) If the child attending school applies for services, and services are provided under ORS 25.080, all arrears for that child will accrue to the child attending school as provided for in OAR 137-055-6021, until the child's 21st birthday or is otherwise emancipated and then will be file credited off the case.

(12) If a court orders payment from a higher education savings plan in lieu of support under ORS 107.108;

(a) The administrator will cease collection and billing actions on behalf of that child at age 18. If the support order is for a single or last remaining child the department will close the case unless there are arrears on the case.

(b) If payments are ordered from a higher education savings plan and the court has not provided for a modification of the support amount for any remaining children of the order, this is a substantial change of circumstances for purposes of modifying the support order.

(c) If payment from a higher education savings plan has been ordered, the administrator will not take action to subsequently modify the support order to include child attending school support provisions for that child.

(13) Except for support orders originally issued by a state other than Oregon and being enforced under the provisions of ORS 110.303 to 110.452, if the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020, 107.108 & 180.345
Stats. Implemented: ORS 25.020, 25.080, 107.108 & 416.407
Hist.: AFS 23-2001, f. 10-2-01, cert. 10-6-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-5520

Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135 and 416.425, the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit.

(2) A request for credit against arrears under this rule may be for:

(a) A lump sum; or

(b) Monthly amounts which, when added together, equal a lump sum.

(3) As used in this rule, Social Security benefits are as defined in OAR 137-050-0320.

(4) As used in this rule, Veterans' benefits include both apportioned Veterans' benefits and Survivors and Dependents Educational Assistance, as defined in OAR 137-050-0320.

(5) The request for credit against arrears will be considered if submitted in writing within two years of the date the obligor receives notice or the determination letter from the Social Security Administration (SSA) or the Department of Veterans' Affairs (DVA) regarding a retroactive payment on behalf of the child.

(6) A request for credit against a child support arrears for Social Security or Veterans' benefits paid retroactively on behalf of the child may be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if the order has already been modified to reflect that the obligor receives Social Security or Veterans' benefits or there is no longer a current support obligation for the child.

(7) A party must provide documentation of the SSA or DVA retroactive payment paid on behalf of the child.

(8)(a) The credit for Survivors and Dependents Educational Assistance will be a dollar for dollar credit against the child support arrears; and

(b) The credit for Social Security and apportioned Veterans' benefits may be a dollar for dollar credit against the child support arrears.

(9) Notwithstanding subsections (8)(a) and (b), the maximum credit allowed will be limited to the amount of the child support arrears. In no circumstances will the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(10) The administrator will send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice will advise the parties of the right to an administrative hearing regarding this action:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The lump sum payment was not received; or

(B) The lump sum payment amount used in the calculation is not correct.

(d) Any appeal of the decision made by an administrative law judge will be to the circuit court for a hearing de novo.

(11) If no timely written request for hearing is received, the order will be filed in circuit court.

(12) If the credit determined in subsections (8)(a) and (b), is less than the amount of arrears owed per section (9), the file credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020 & 107.135

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0159; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5520; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-6023

Exceptions to Distribution

(1) Notwithstanding the provisions of OAR 137-055-6021 to 137-055-6024, support payments received as a result of a personal or real property judgment lien may be allocated to pay a parentage test judgment.

(2) Notwithstanding OAR 137-055-6024, DOJ may allocate support payments to multiple cases as directed when the obligor or a responding

ADMINISTRATIVE RULES

jurisdiction designates in writing the amounts to be allocated to each case, if the designation is made at the time of payment.

(3) Notwithstanding OAR 137-055-6024, DOJ will allocate support payments to one case, rather than proportionately, when:

(a) The support payment resulted from a garnishment, issued pursuant to ORS chapter 18, on a particular case;

(b) The support payment resulted from the sale or disposition of a specific piece of property against which a court awarded a specific obligee a judgment lien for child support;

(c) The support payment resulted from a contempt order in a particular case; or

(d) Any other judicial order requires distribution to a particular case.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-6200

Adjusting Case Arrears When an Error is Identified

The purpose of this rule is to set out what the administrator will do when an error is identified which requires adjusting the arrears of a case.

(1) "Complete payment record" means that the Division of Child Support (DCS) has kept the payment record for the support judgment from the date of the first support payment required under the judgment, or the obligee or the administrator established arrears for the time period when DCS did not keep the payment record on the case.

(2) A notice will only be sent as provided for in this rule when the amount of arrears to be adjusted is at least \$5.

(3) If the error occurred within the current billing cycle, the administrator will adjust the arrears on the case record.

(4) If DCS has a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, the administrator will adjust the arrears on the case record and send a notice to the parties advising of the change in the case arrears.

(5) If DCS does not have a complete payment record for the support payment judgment and the error occurred prior to the current billing cycle, but within the previous 180 days, the administrator will:

(a) Send a notice to the parties that the administrator will adjust the arrears on the case record as indicated in the notice if none of the parties object within a 30-day period following the date of the notice;

(b) If none of the parties object within 30 days of the notice, the administrator will adjust the arrears on the case record as indicated in the notice;

(c) If any party objects within 30 days of the notice, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(6) If DCS does not have a complete payment record for the support payment judgment and the error occurred over 180 days ago, the administrator will establish the arrears under the process found in ORS 25.167 or 416.429.

(7) Notwithstanding any other provision of this rule, if under a contingency order the error is due to a failure to accurately reflect on the case record the periods of residence of the child in state care, the administrator will adjust the arrears on the case record and notify the obligor unless the Department of Human Services or Oregon Youth Authority directs otherwise.

(8) On a closed case:

(a) If all the arrears to be added to the case are assigned to the state, the administrator will not open the case if it is for a period of less than four months of accrual or less than \$500;

(b) If all the arrears to be added to the case are assigned to the state and the arrears are for a period of a least four months or \$500, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(c) If any of the arrears to be added to the case are owed to the obligee, the administrator will send a notice to the obligee and, if the arrears are for at least \$25, ask if the obligee wants enforcement of the arrears. If the obligee requests enforcement, the administrator will open the case and establish the arrears under the process found in ORS 25.167 or 416.429;

(d) If any of the arrears to be added to the case are owed to an adult child as defined in OAR 137-055-5110, the administrator will send a notice to the adult child but will not open the case for the adult child until the adult child qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110;

(e) Except as otherwise provided in OAR 137-055-6110, if the error was due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will return the excess

amount to the obligor if the amount is at least \$5 and pursue an overpayment as appropriate; or

(f) If the error was not due to an accounting error of the administrator and the adjustment to arrears will cause a credit balance, the administrator will send an informational notice to the parties.

(9) Notwithstanding section (5) or section (8), on any case in which the applicant for services has requested non-enforcement and the error only affects the amount of arrears owed to the obligee, the administrator will update the case record appropriately.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-6220

Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error or is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under OAR 137-055-6021(10); or

(b) DOJ receives a check from an obligor, other payor on behalf of the obligor, or withholder, transmits the appropriate amount from that check to the payee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 14 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 14 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 14 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ may refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor or withholder under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must respond within 14 days of the date of the notice and request an administrative review.

(10) If the obligor or withholder requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor or withholder may appeal the result of the administrative review as provided in ORS 183.484.

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(12) If the obligor or withholder fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ may refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345 & 293
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

137-055-6260

Return of Overcollected Support Amounts

(1) When the Division of Child Support (DCS) receives a support payment on an account for which no current order exists for ongoing support, DCS will apply the payment to any arrears the obligor may owe on the account. If any excess funds remain from the payment after any arrears are paid in full, and DCS has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor within 30 days of discovering the overcollection.

(2) On any account for which an ongoing support obligation exists, and DCS receives a payment that exceeds the total amount due for current support and arrears and has not forwarded the excess amount to the payee, DCS will return the excess amount to the obligor under the following circumstances:

(a) When an income withholding order exists and the withholder does not receive or implement a notice from the administrator to reduce withholding to the amount of the current ongoing support obligation in a timely manner, such as may occur after all arrears are collected or after the ongoing support obligation is modified downward;

(b) When a state or federal tax refund is intercepted in an amount exceeding the amount owed for arrears; or

(c) When TANF cash assistance is being granted to the obligee or children on the support case, unless the obligor and the administrator agree otherwise.

(3) Notwithstanding section (1), on any account for which no current order exists for ongoing support, when a withholder sends a payment that exceeds the total amount that should have been withheld under ORS 25.414(1)(d), there is no order for expanded withholding under ORS 25.387, and DCS has not forwarded the excess amount to the obligee, DCS will return the excess amount to the obligor.

(4) When DCS receives a payment that exceeds the total amount due for current support and arrears and has forwarded the excess amount to the payee, DCS will notify the parties in writing within 30 days of discovering the overcollection that:

(a) A credit balance in the obligor's favor has resulted from the overcollection; and

(b) The obligee or child attending school under ORS 107.108 and OAR 137-055-5110 may, within 14 days of the date of the notice from DCS, submit a written request to DCS for an administrative review to determine if DCS's record-keeping and accounting related to calculation of the credit balance is correct.

(5) DCS will conduct the administrative review within 30 days of receiving the party's written request, and will send written notification to the parties of the results of the review.

(6) In any case where DCS is required to return overcollected funds to an obligor under section (2) of this rule, the obligor may elect to forego the return of some or all of the overcollected funds and to instead use any credit balance amount thus established under this rule to offset the obligor's future ongoing support obligation, genetic test fees or arrears. An obligor wishing to elect this option must notify DCS in writing before DCS has returned such funds to the obligor.

Stat. Auth.: ORS 25.020, 25.125, 180.345
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0272; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6260; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6260; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Define "Recall" and Clarify Time for Submitting Employment Related Fingerprints.

Adm. Order No.: DPSST 12-2006
Filed with Sec. of State: 10-13-2006
Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06
Rules Amended: 259-008-0005, 259-008-0010

Subject: Establishes rule defining the administrative action the Department will take when a police officer's mandatory maintenance training requirements are deficient.

Amends rule relating to the date a public safety professional must submit employment related fingerprints.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, and is primarily responsible for supervision of middle managers and/or supervisors.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Casual employment" means employment that is occasional, irregular, or incidental and the employee does not receive seniority rights nor fringe benefits.

(4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(5) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; and any full-time employee of the Board who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under 259-008-0025.

(12) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person who has the responsibilities as defined in ORS 181.610(3), (5), (9), (13), (14), (18) of this rule, who has the responsibility for, and is paid to perform the duties described in the above statute and administrative rule for more than 80 hours per month for a period of more than 90 consecutive calendar days.

(15) "High School" is a school accredited as a high school by the Oregon Department of Education, or a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

ADMINISTRATIVE RULES

(16) "Law Enforcement Officers" as used throughout this manual collectively means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610, and 181.651.

(17)(a) "Law Enforcement Unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad whose primary duty, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means a police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff.

(18) "Leave of absence" means a leave granted by the employing agency from the public safety officer's certifiable position as defined in ORS 181.610(3), (5), (9), (13), (14), (18), for more than 90 days but less than two and one-half years,

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties described in statutes and administrative rules for public safety personnel for 80 hours per month, or less, for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means

(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers, or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(22) "Police Officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, or the Governor, or a member of the Department of State Police who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security; and any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(23) "Public or private safety agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, police, ambulance or emergency medical services.

(24) "Public safety personnel" and "Public safety professional" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, and telecommunicators.

(25) "Recall" means the administrative inactivation of a certificate issued by the Department until maintenance requirements are met and certification is restored.

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police;

(b) Who is armed with a firearm; and

(c) Who is responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year.

(30) "Special assignment leave" is leave from the law enforcement officer's certifiable position, as defined in ORS 181.610(3), (5), (9), (13), (14), (18), for more than 90 days but less than two and one-half years, for such duties as determined by the law enforcement unit administrator. Examples of such leave include, but are not limited to, strategic planning, budget preparation, special task force, or other similar duties.

(31) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(32) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 401.720.

(33) "Temporary employment" means employment that lasts for a limited time, not of long duration and is not permanent.

(34) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(35) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

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(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness as determined by a thorough background investigation.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language. The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training. Implementation of this rule will take effect within one year from September 1, 2001.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(f) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(g) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(h) If amplification device(s) is (are) necessary to meet the criteria in (f) or (g) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

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(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(i) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(j) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (j), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (j), it will be at the expense of the applicant or hiring authority.

(k) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(l) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(m) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(n) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(o) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be

considered void. If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

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

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06

Rule Caption: Police Maintenance Training Requirements for Officers Returning from Leave or whose Certification has Lapsed.

Adm. Order No.: DPSST 13-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Amended: 259-008-0065

Subject: Establishes minimum maintenance requirements for police officers who have been on leave of absence and return to work.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0065

Maintenance of Certification For Active Police Officers

(1)(a) The Board is responsible for setting the standards for active police officer training and the maintenance of certification. The Department is required to uphold those standards, while each agency determines what training will be provided to meet the standards.

(b) It is recommended that agencies provide training time and training opportunities to enable the active police officer to meet the required maintenance training hours.

(2) In order to maintain certification:

(a) All active police officers must maintain current First Aid/CPR certification.

(b) All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years. The eighty-four (84) hours will include:

(A)(i) Eight (8) CORE hours of training annually, from either the "Firearms" or "Use of Force" subject areas:

(ii) This training must be reported to the Department as twenty-four (24) hours of CORE training, once every three years.

(B)(i) Active police officers who hold a Supervision, Mid-Management or Executive certification, must complete at least twenty-four (24) hours of agency approved Leadership/Professional training, every three years:

(ii) This training must be reported to the Department as twenty-four (24) hours of agency approved Leadership/Professional training, once every three (3) years.

(C)(i) In addition to the CORE (A)(i) (required of all officers) and Leadership/Professional (B)(i) training hours (only required of officers with Supervision Certification and above), the remaining hours must be completed from the category of "General Law Enforcement" training in the recommended, but not limited to, subject areas of Law and Legal, Ethics and Communication, Investigations, Survival Skills, Child Abuse, Sex Abuse, and Elder Abuse:

(ii) These remaining training hours must be reported to the Department as "General Law Enforcement" training, once every three (3) years.

(3) Beginning on the date a police officer returns to work from any leave of absence, the following requirements must be met:

(a) Maintenance Training Requirements as described in section (7) or (8) of this section;

(b) Proof of current First Aid and CPR cards;

(c) Any other applicable requirement for employment, training or certification as specified in OAR 259-008-0010, 259-008-0025 or 259-008-0060.

(4)(a) The employing agency must maintain documentation of required training on each law enforcement officer;

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(b) Any training submitted to the Department on an F-6 Course Roster will be entered into each officer's DPSST training record.

(c) Maintenance training submitted on an F-6 will be credited towards the number of hours required for each maintenance training category in section (2) above.

(d) On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training according to Department records and provide notification to the officer and his/her employing agency.

(e) Within 60 days of receipt of the notification in (d) above, the agency must notify the Department of the training status of all police officers identified as deficient in maintenance training by submitting a Form F-15M-Police to the Department, identifying the training completed during the previous three (3) year reporting period.

(A) Maintenance training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Failure to notify the Department of completion of the required training for officers with identified training deficiencies will result in a warning notification letter being sent to the agency head and the officer.

(C) A six (6) month extension to complete maintenance training requirements or submit an F-15M-Police will be automatically authorized for officers reporting maintenance requirements due on December 31, 2006.

(5) Failure to complete the training or submit the completed Form F-15M-Police, after the warning notification letter and before the six (6) month extension has expired, will result in the recall of the active police officer's certification.

(a) A police officer with a recalled certification cannot work in a certified position.

(b) Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) The employing agency head request certification, along with an explanation of why the training was not completed; and

(B) Verification that the missed training was completed.

(c) After 2 1/2 years in a recalled status the police officer will be required to complete an Career Officer Development Course before s/he can be recertified.

(d) After over 5 years in a recalled status the police officer will be required to complete basic training in the appropriate discipline.

(6) Agency heads of the employing agency may document "excused leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(7) Maintenance Training Requirements for Police Officers on Leave of Absence.

(a) A police officer who is on leave of absence for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave of absence date.

(b) A police officer who is on leave of absence for more than 180 days, but less than one year will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave of absence for more than one year, but less than 2 1/2 years will receive an extension of up to three years from the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a warning notification or recall of a police officer's certification as described in subsection (4) or (5) of this section.

(8) Maintenance Training Requirements for Previously Certified Police Officers.

(a) Any police officer who has not been employed as a police officer for between one year and five years, or whose certification has lapsed following 2 1/2 years in a leave status, must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

Stat. Auth.: ORS 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.652, 181.653 & 181.667

Hist.: PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02; BPSST 9-2003, f. & cert. ef. 4-22-03; DPSST 11-2006(Temp), f. & cert. ef. 8-15-06 thru 2-1-07; DPSST 13-2006, f. & cert. ef. 10-13-06

Rule Caption: Eliminate Bridging Process for Juvenile Fire Setter Intervention Specialist.

Adm. Order No.: DPSST 14-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Amended: 259-009-0062

Subject: Establishes rule defining the administrative action the Department will take when a police officer's mandatory maintenance training requirements are deficient.

Amends rule relating to the date a public safety professional must submit employment related fingerprints.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance evaluations if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2002 Edition, entitled "Fire Fighter Professional Qualifications;

(A) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1 (Note: this references NFPA 1500).

(C) Delete section 2.2 (Note: this references NFPA 1500 and 1582).

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 1997 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard No. 1002, Edition of 1998, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) Delete Section 1-3.2.

(B) 3-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 3-1 through 3-2, shall be met prior to certification as a fire service agency driver/operator-pumper.

(C) 4-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 4-1 through 4-2, shall be met prior to certification as a fire service agency driver/operator-aerial.

(D) 5-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Chapter 4 and Section 5-2, shall be met prior to certification as a fire service agency driver/operator-tiller.

(E) 6-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance

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requirements defined in Sections 6-1 through 6-2, shall be met prior to certification as a fire service agency driver/operator-wildland fire apparatus.

(F) 7-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 7-1 through 7-2, shall be met prior to certification as a fire service agency driver/operator-aircraft rescue and fire-fighting apparatus (ARFF).

(G) 8-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 8-1 through 8-2, shall be met prior to certification as a fire service agency driver/operator-mobile water supply apparatus.

(H) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program, Section 4-2" from Sections 2-3.1, 3-1.3, 4-1.3, 5-2.2, 6-1.3, 6-1.4-1.3, and 8-1.3.

(I) Either a Task Performance Evaluation must be completed or a Task Book for Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator must be completed and signed off by the Agency head or Training Officer before an applicant can qualify for certification as a Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator.

(J) An individual who completes the requirements of Chapter 2 and meets the requirements of Entry Level Fire Fighter, may be certified as a Driver.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications."

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through January 1, 2005, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as an NFPA Fire Inspector I shall:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(C) All applicants for certification as an NFPA Fire Inspector II shall:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(D) All applicants for certification as an NFPA Fire Inspector III shall:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(E) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(e) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033.

(ii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after January 1, 2005.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after January 1, 2005.

(iv) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department approved Task Book prior to passing a written certification exam administered by the Department. Exception: Anyone holding a valid IAAI Fire Investigator Certification is exempt from taking the Department's Fire Investigator written exam.

(C) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years fire investigation experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(f) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services&"

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "&using state-approved prepared forms and guidelines&"

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(g) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II.

(i) This requirement is effective for any application for certification after January 4, 2002.

(h) The provisions of the NFPA Standard 1021, 2003 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

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(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.2 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Written Communication, Advanced Speech, Technical Writing/Business Writing, Math, and Physics or Chemistry.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification..

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.2 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.2 through 6.7 of the Standard.

(i) Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.2 through 7.7 of the Standard.

(i) 5-1.2 General requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(i) Hazardous Materials Responder (DPSST-P-12 1/96).

(j) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in seven areas:

(i) Fire Resistive Building Construction;

(ii) Ordinary Building Construction;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Water Supplies;

(v) Strategy and Tactics I, II, and III;

(vi) Incident Command System;

(vii) Fire Investigation.

(D) A task book shall be completed before certification is awarded.

(k) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).

(l) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

(m) Certification guide for Wildland Fire Investigator (August, 2005).

(n) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(o) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06

Rule Caption: Rescind Adoption of agency forms in administrative rules.

Adm. Order No.: DPSST 15-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 9-1-06

Rules Amended: 259-060-0600

Subject: Agency is revising administrative rule language to eliminate the reference which adopts the forms by rule.

Rules Coordinator: Bonnie Salle—(503) 378-2431

ADMINISTRATIVE RULES

259-060-0600

Forms

The Department utilizes the following forms:

(1) PS-1 — Application for Licensure or Certification of Private Security Services Provider.

(2) PS-3 — Private Security Order Forms Sheet.

(3) PS-4 — Affidavit of Person Rolling Fingerprints.

(4) PS-6 — (Affidavit of Instructor and Private Security Provider Testing Results).

(5) PS-7 — Private Security Instructor Evaluation.

(6) PS-8 — Private Security Instructor Proof of Skills Improvement.

(7) PS-9 — Private Security Waiver for Reciprocity.

(8) PS-20 — Private Security Services Provider Temporary Work Permit.

(9) PS-21 — Renewal of Private Security Services Licensure or Certification.

(10) PS-23 — Private Security Services Provider Change of Information.

(11) PS-27 — Private Security Code of Ethics.

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

Stat. Auth.: ORS 181.878

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 15-2006, f. & cert. ef. 10-13-06

Department of Revenue Chapter 150

Rule Caption: Definition of terms related to tax credit for moving a mobile home under ORS 316.153.

Adm. Order No.: REV 6-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 9-29-06 thru 12-31-06

Notice Publication Date:

Rules Adopted: 150-316.153

Subject: 150-316.153 defines the term “eligible expenses” for purposes of claiming a tax credit for moving a manufactured home due to the closure of a manufactured home park in Oregon.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-316.153

Credit for Involuntary Move of a Mobile Home

(1) Definitions. For purposes of this rule: “MH” means “mobile home,” “manufactured home,” or “manufactured dwelling.”

(2) “Actual costs of moving and setting up a mobile home” are reasonable and prudent expenses incurred by a qualified individual that include, but are not limited to:

(a) Costs to disassemble the MH and prepare it for moving;

(b) Costs of removing and reinstalling foundations, tie-downs, stairs, decks, awnings, skirting, carports or garages, storage units;

(c) Costs for disconnecting and reconnecting utilities, including related fees;

(d) Municipal fees or charges such as trip permit fees, public inspection fees, system development charges at the new site, building inspection fees, or installation permit fees;

(e) Costs to transport the MH including any wheels needed to go beneath the MH to make it movable on the road;

(f) Costs of storing the MH while preparing a space for the relocation of the MH;

(g) Costs for MH improvements required to meet destination space standards such as the foundation, drains, driveways, decks, landscaping, carports or garages, stairways, or to existing siding or skirting;

(h) Costs to reassemble the MH at the destination space including repairing carpet, drywall or walls, ceilings, touch-up paint, floors and roofs, and sealing the sections; or

(i) Costs to clean up the old site as required by the closing landlord.

(3) “Actual costs of moving and setting up a mobile home” do not include:

(a) The purchase of land or the fees associated with the purchase of land;

(b) Costs for capital improvements to the property other than those listed in section (2) of this rule; or

(c) Amounts that are otherwise deductible under the Internal Revenue Code, such as interest expense, personal property taxes, or real property taxes.

(d) Costs for packing, transporting, storing, and unpacking contents of the mobile home and other personal belongings.

(e) Costs for temporary housing and meals.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.153

Hist.: REV 6-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06

Rule Caption: Requirement that certain substitute tax forms contain scannable “2D barcode”.

Adm. Order No.: REV 7-2006(Temp)

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 9-29-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 150-314.385(3)

Subject: 150-314.385 requires that certain computer-generated tax returns must contain a scannable 2D barcode beginning with filings for tax year 2006. The requirement applies only to the Form 40, 40S and Schedule WFC.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-314.385(3)

Standards for Substitute Tax Forms; Treatment of Forms Not Meeting the Standards; Treatment of Payments Received With Forms Not Meeting the Standards

(1) Definitions. For purposes of this rule:

(a) Official form. An official form is any payroll, income, or excise tax form prepared, printed, and distributed by or on behalf of the department pursuant to Oregon Revised Statutes (ORS) Chapters 310, 314, 315, 316, 317, 318, Lane Transit District (LTD) Ordinance 38, and Tri-County Metropolitan Transportation District (TRIMET) Ordinance 92.

(b) Substitute form. A substitute form is any payroll, income, or excise tax form authorized under ORS Chapters 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92 that is intended to replace the official form.

(c) Tax Return. A tax return is a payroll, income, or excise tax form filed with the department by or on behalf of a taxpayer under the provisions of ORS Chapter 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92.

(2) A tax return must be made on the department-prescribed forms, which may be obtained upon request from the department. Such forms are widely distributed, but a failure to receive any forms does not relieve the taxpayer from the responsibility to file any return required by statute.

(3) The department may accept a substitute form filed in lieu of an official form if the substitute form meets the standards set forth in this rule. It is the intent of the department to follow the National Association of Computerized Tax Processors (NACTP) standards as closely as is practical.

(4) Substitute form standards. A substitute form with or without optical character readable (OCR) scan lines must be a duplicate of the official form unless the variation is within the exceptions listed in section (5) of this rule. The overall format of substitute forms must match the format of official forms. Overall format includes graphics, location of lines, boxes, data entry symbols, spacing, 2-D barcode placement, and OCR scan line.

(a) A substitute form must be on paper of the same overall dimension (size) and weight and of a quality equal to or better than that used for the official form.

(b) Substitute forms and the filled-in data must be legible and must not have extra text or marks that do not appear on the official forms.

(c) The social security number on substitute forms must be separated by hyphens after the third and fifth digits.

(d) If the substitute form has OCR scan lines, black nonreflective ink in OCR-A font must be used for printing the scan line.

(e) Substitute forms must contain a 2-D barcode for tax years beginning on or after January 1, 2006 if the substitute form is:

(A) Software generated; and

(B) Used for personal income tax purposes under ORS Chapters 314, 315, or 316.

(5) Exceptions. The substitute form may differ from the official form with respect to the exceptions listed in this section. However, the difference may delay processing of the tax return.

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(a) Official forms that are printed on colored paper may be reproduced in black ink on white paper.

(b) Official forms that use both sides of the paper may be reproduced on one side only of two successive pages.

(c) Reproductions of the data entry symbols may vary in size from that of the data entry symbols on the official form if the symbols conform to the following specifications:

(A) The data entry dot must be a filled circle (•) at least 1/16 inch in diameter and no larger than 1/8 inch in diameter centered vertically on the text line;

(B) The data entry symbols must not obstruct or overlap line numbers or captions; and

(C) The data entry symbols must be printed on the substitute form in the same position relative to the information to be data-entered as on the official form.

(d) All text on the official form that is larger in size than 14 point print may be reproduced on the substitute form in 14 point print.

(e) The boxes (data entry areas) printed on the official form for entry of the filled-in data may be reproduced on the substitute form without a vertical line provided to divide the dollar amount from the cents amount. If rounding an amount to the whole dollar, the amount may be printed without a decimal point and cents.

(f) Substitute forms that the department does not support in 2-D barcode format may be printed without 2-D barcode.

(6) Photocopies of official forms may be filed if the official form does not contain OCR printing.

(7)(a) Substitute forms must be approved by the department prior to use. Substitute forms that do not meet the requirements of this rule may not be filed in lieu of the official forms. The department may reject and return to the taxpayer tax returns using substitute forms that do not meet the requirements of this rule.

(b) A tax return that has been rejected under this rule does not meet the filing requirement of the applicable program. The taxpayer must file a tax return using an official form or a substitute form that meets the requirements of this rule in order to meet the filing requirement under the provisions of the personal income tax, corporate income tax and corporate excise tax programs; the filing requirement under the TRIMET self-employment tax and LTD programs; the filing requirement under ORS 314.724 for partnership returns; or the filing requirement under the Elderly Rental Assistance program. If the return is rejected, the taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 314.400, 314.724 or as otherwise provided under Oregon law.

(8) If the department receives payment with a substitute form that does not meet the requirements of this rule, the department will treat the payment as an estimated tax payment under the provisions of ORS Chapters 314 or 316.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; Renumbered from 150-314.385(1)-(D), Rev 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 7-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06

Department of Transportation, Board of Maritime Pilots Chapter 856

Rule Caption: Provides a blanket exemption from pilotage requirements for certain classes of small vessels.

Adm. Order No.: BMP 2-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 9-1-06

Rules Adopted: 856-010-0060

Subject: Provides for certain classes of small vessels a blanket exemption from compulsory pilotage requirements.

Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0060

Compulsory Pilotage Vessel Exemptions

(1) On the Columbia River Bar, Coos Bay Bar and Yaquina Bay Bar pilotage grounds, the following vessels are exempt from compulsory pilotage:

(a) Foreign fishing vessels not more than 100 feet or 250 gross tons international,

(b) Recreational vessels not more than 100 feet in length.

(2) On the Columbia-Willamette River pilotage grounds, there are no vessel exemptions east (upstream) of longitude 123 degrees, 44 minutes, 00 seconds west.

Stat. Auth.: ORS 776.115(7)

Stats. Implemented: ORS 776.405(1)(C)

Hist.: BMP 2-2006, f. 9-29-06, cert. ef. 10-1-06

Rule Caption: Amends and updates pilot training requirements for the Coos Bay and Yaquina Bay bar pilotage grounds.

Adm. Order No.: BMP 3-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 9-1-06

Rules Amended: 856-010-0010

Subject: Amends and updates requirements for trainee pilots on the Coos Bay and Yaquina Bay bar pilotage grounds to address traffic reductions, night time training, minimum trip requirements, and certification of trainee readiness.

Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0010

Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and 776.325(1)(b). The examination will be scored by the board member from the pilotage ground for which the applicant is seeking a license, and two additional pilots selected by the training course monitor and approved by the board, from the board's licensed training organization for the pilotage ground. The examination will be pass/fail.

(2) Accompany the application with a physical examination form provided by the Board and signed by an Oregon licensed physician verifying that the applicant meets the physical and mental criteria in subsections (a) through and including (l):

(a) Eyesight: Has visual acuity of at least 20/200 in each eye uncorrected and correctable to at least 20/40 in each eye as determined by Snellen test or its equivalent unless applicant qualified for a waiver from the Officer in Charge, Marine Inspection, or the Commandant, U.S. Coast Guard. Vision correctable to 20/40 in each eye is sufficient to satisfy the requirements of this subsection if the applicant carries a spare pair of correcting lenses while performing piloting duties;

(b) Color perception: Has normal color vision per pseudo isochromatic plates, Ishihara or Keystone test. If the applicant fails this test, the Farnsworth or Williams Lantern tests or their equivalent may be used to determine the applicant's ability to distinguish primary colors;

(c) Hearing: An audiometer test is only required if the applicant has, or is suspected to have, impaired hearing. A hearing loss of over 40 decibels is considered impaired hearing;

(d) Heart: Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(e) Blood pressure: Has no current clinical diagnosis of high blood pressure. Blood pressure shall be recorded with either spring or mercury column type of sphygmomanometer. If the blood pressure is consistently above 160/90 mm. Hg, further tests may be necessary to determine whether the applicant is qualified to pilot a vessel;

(f) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(g) Has no established medical history or clinical diagnosis of a respiratory dysfunction;

(h) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic muscular, neuromuscular, or vascular disease;

(i) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness;

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(j) Has no mental, nervous, organic, or functional disease or psychiatric disorder;

(k) Has submitted to a test indicating the applicant is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR sec. 16 (1994). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); and

(l) Has no current clinical diagnosis of alcoholism, unless the applicant has completed an in-patient program of rehabilitation and treatment under the care of a physician;

(m) Based on information on the physical examination form, and any other medical information or opinions provided to the Board by the applicant, the Board will determine whether the applicant's health is satisfactory for performance of the duties of a maritime pilot.

(3) Have actual experience as a pilot handling ships over the pilotage ground for which a state license is sought and state in the application the names of ships piloted, dates, draft, gross tonnage, and length over all, as specified in (but not limited to) (4), (5), (6) and/or (7) in this section, and:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard;

(b) Hold an unlimited federal pilot's endorsement for the ground for which a state license is sought; and

(c) Have served at least two years as Master aboard vessels, or when applying for a license over the Columbia and Willamette River pilotage ground, have completed a program of apprenticeship training which has been approved by the Board.

(4) In addition to the requirements in OAR 856-010-0010(1), (2), (3), when applying for a Grade "C" license over the Columbia and Willamette River pilotage ground, the applicant shall:

(a) Have served at least 730 active working days as captain of towing vessels on the Columbia River and its tributaries, or have completed a program of apprenticeship training which has been approved by the Board, as specified in OAR 856-010-0014;

(b) Have made at least six trips under the supervision of an unlimited state-licensed pilot within six months preceding the application while on the bridge of a ship of not less than 500 feet length over-all (L.O.A.) through the bridges in the upper harbor in Portland, up to and including the Broadway Bridge, which shall be made with and without the aid of a tug or towboat, including at least one trip in each direction, and also including at least six ship turns in the Willamette River;

(c) Have made at least 100 transits while on the bridge of a ship of not less than 500 feet L.O.A. within the six months preceding the application, with at least 70 of these transits made under the supervision of an unlimited state-licensed pilot;

(d) When combining trip segments to establish a transit, each trip segment may be used only once;

(e) Have made at least six trips under the supervision of an unlimited state-licensed pilot within the six months preceding the application while on the bridge of a ship of not less than 500 feet L.O.A. in a combination of the following directions, with at least two trips in each direction:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River.

(f) Present recommendations from the training course monitor and at least ten unlimited state-licensed pilots from the board's licensed training organization, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground, of a size authorized by a "Grade C" license.

(5) When applying for a license on the Coos Bay bar pilotage ground, the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilot's endorsement for the Coos Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Coos Bay bar while under the supervision of an unlimited state-licensed Coos Bay bar pilot, with at least ten crossings with each unlimited state-licensed Coos Bay bar pilot and with at least 25 of the bar crossings completed during hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed pilot;

(e) Make at least 25 trips through each of the bridges; and

(f) Submit letters from each of the Coos Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(6) When applying for a license on the Yaquina Bay bar pilotage ground the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilot's endorsement for the Yaquina Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Yaquina Bay bar while under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing one year of piloting with a state license in Coos Bay, the number of bar crossings at Yaquina Bay may be reduced to 12, with at least one such crossing with each unlimited state-licensed Yaquina Bay bar pilot and with at least twenty-five percent (25%) of the bar crossings completed during the hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing one year of piloting with a state license in Coos Bay, the number of dockings and undockings may be reduced to 12;

(e) Make at least twenty-five (25) trips through the bridge, or after completing one year of piloting with a state license in Coos Bay, the number of trips may be reduced to 12; and

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(7) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as "Unlimited Master any oceans — any tonnage", endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot's endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed Pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(8) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as "Unlimited Master any oceans — any tonnage", endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot's endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed Pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

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

Stat. Auth.: ORS 776.115(7)

Stats. Implemented: ORS 776.115(4)

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06

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Rule Caption: Amends continuing professional development training to include electronic navigation systems.

Adm. Order No.: BMP 4-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-6-06

Notice Publication Date: 8-1-06

Rules Amended: 856-010-0015

Subject: Amends the continuing professional development requirement from a course in automatic radar plotting aids to any course in electronic navigation systems.

Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0015

Renewal of License

(1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by the physical examination form provided by the board and presented to the administrator of the board at least thirty (30) days prior to expiration of license.

(2) All state-licensed pilots shall be required to have an annual physical examination by an Oregon licensed physician within sixty (60) days prior to expiration of their license, the physical requirements for which are the same as for the original license as specified in OAR 856-010-0010(2), except for drug testing.

(3) All state-licensed pilots shall, within six months of renewal, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR sec. 16 (1994). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;

(4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.

(5) Failure of a licensed pilot to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license.

(6) All applications for renewal of unlimited licenses after January 1, 2001, shall certify that during the five years preceding the date of application, the applicant completed a continuing professional development course in bridge resource management for pilots. All applications for renewal of unlimited licenses after January 1, 2005, shall certify that, during the five years preceding the date of application, the applicant completed a continuing professional development course in bridge resources management for pilots, and, in addition, shall certify that, during the five years preceding the date of application, the applicant completed continuing professional development courses in manned model simulated ship handling and electronic navigation systems. An applicant who is unable to complete these requirements within the time allowed due to unexpected, emergency circumstances may request a waiver and the Board may, upon good cause shown, permit a license renewal for one year without these requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.

(7) Each license issued is valid for one year and only the unlimited state license may be renewed.

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

Stat. Auth.: ORS 776

Stats. Implemented: ORS 776.115(4)(a)

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1995, f. & cert. ef. 5-9-96; BMOP 1-2000, f. & cert. ef. 12-6-00; BMP 4-2006, f. 9-29-06, cert. ef. 10-6-06

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

Rule Caption: Establishing standards for protective headgear (helmets) for bicyclists and other non-motorized sports.

Adm. Order No.: DMV 12-2006

Filed with Sec. of State: 9-22-2006

Certified to be Effective: 9-22-06

Notice Publication Date: 8-1-06

Rules Amended: 735-102-0030

Subject: This rule amendment deletes standards for bicycle protective headgear (helmets) that are no longer in effect and inserts the current national standards for protective headgear for people operating bicycles, for passengers on bicycles and for people riding on skateboards or scooters or using in-line skates.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-102-0030

Bicycle, Skateboard, Scooter and In-Line Skate Protective Headgear (Helmets)

(1) The Transportation Safety Division of the Oregon Department of Transportation adopts the mandatory national safety standard for bicycle helmets of the Consumer Product Safety Commission 16 CFR Part 1203, and the voluntary standards and specifications of the Snell Memorial Foundation (SNELL) B-90 and B-95, and the American Society for Testing and Materials (ASTM) F-1447-02, F-1492-00 and F-1898-01 for minimum performance criteria and test procedures for protective headgear for bicyclists, skateboarders, scooter riders and in-line skaters.

(2) The purpose of these standards is to reduce deaths and injuries by providing minimum acceptable levels of head protection.

(3) Protective headgear for bicyclists must be clearly labeled as required by federal law certifying compliance with U.S. CPSC standards. Additional certifications may be included as appropriate for specific headgear use.

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

Stat. Auth.: ORS 184.616, 184.619 & 815.052

Stats. Implemented: ORS 815.052

Hist.: DMV 8-1994, f. & cert. ef. 8-19-94; DMV 13-1994, f. & cert. ef. 10-20-94; DMV 12-2006, f. & cert. ef. 9-22-06

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Rule Caption: Proof of identity required prior to reissuance or reinstatement after cancellation/suspension that involves fraud.

Adm. Order No.: DMV 13-2006

Filed with Sec. of State: 9-22-2006

Certified to be Effective: 10-2-06

Notice Publication Date: 8-1-06

Rules Amended: 735-070-0010

Subject: OAR 735-070-0010 establishes how a person may reinstate or regain driving privileges, a driver license, driver permit or an identification card following a cancellation or specific suspension by DMV. DMV has amended this rule to specify that when a person's driving privileges or identification card are suspended under ORS 809.310(3) indicating a possible fraudulent act regarding the application for or use of a driver permit, driver license or identification card, that the person must submit the same proof of identification required of a first time applicant. This amendment is intended to help make certain that the person is properly identified before being reinstated and being issued a replacement driver license, driver permit or identification card. DMV also amended the rule to allow DMV to rescind a cancellation or suspension under this rule, of no other Oregon requirements exist, when DMV can verify that the person is applying for a driver permit, driver license or identification card in another jurisdiction and is not eligible for driving privileges unless DMV rescinds or reinstates the cancellation or suspension.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-070-0010

Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue a driver permit, driver license or identification card to a person whose driving privileges or identification card is canceled under ORS 809.310(1) because the person is not entitled only if the person corrects the condition that caused the cancellation and otherwise meets all requirements for driving privileges or an identification card.

(2) Notwithstanding section (1) of this rule, when a person whose driving privileges or identification card are canceled under ORS 809.310(1) is not a resident of Oregon, DMV will rescind the cancellation to allow the person to obtain driving privileges or an identification card in another jurisdiction but will not reissue an Oregon driver license, driver permit, or identification card. The person must:

(a) Request that DMV rescind the cancellation;

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(b) Have corrected all applicable conditions that caused the cancellation except for the domicile or residency requirements under ORS 807.062; and

(c) Provide verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction;

(B) The person has surrendered his or her Oregon driver license or identification card to the jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(C) The cancellation must be rescinded in order for the person to qualify for driving privileges or an identification card in the other jurisdiction.

(3) A person described in section (2) of this rule, who returns to Oregon, may be eligible for a driver license, instruction permit or identification card. DMV will issue a driver license, instruction permit or identification card when the person corrects the condition that caused the cancellation and meets all eligibility requirements for driving privileges or an identification card and pays all required fees.

(4) DMV will reinstate the person's driving privileges or right to apply for privileges or identification card or right to apply for a card when DMV suspends a person's driver permit, driver license or identification card for any of the reason cited in ORS 809.310(3)(b)-(h) when:

(a) One year has elapsed since the date the suspension became effective; and

(b) The person pays a reinstatement fee.

(5) When driving privileges or an identification card, including the right to apply, is suspended for any of the reasons listed in ORS 809.310(3)(a), DMV will reinstate the driving privileges or identification card one year from the date the suspension began if the person:

(a) Submits proof of age and identity as described in OAR 735-062-0020(2). For purposes of this rule, primary proof of age and identity does not include an Oregon driver license, instruction permit, identification card or a duplicate photograph retained by Oregon DMV;

(b) Submits proof of residence address as described in OAR 735-062-0030(1); and

(c) Pays a reinstatement fee.

(6) Notwithstanding section (5) of this rule, when a person whose identification card or driving privileges are suspended for any of the reasons listed in ORS 809.310(3)(a) is no longer a resident of Oregon, DMV may reinstate driving privileges or an identification card to allow the person to obtain driving privileges or an identification card in another jurisdiction but will not issue an Oregon driver license, driver permit, or identification card. DMV will reinstate when:

(a) One year has elapsed since the date the suspension began;

(b) The person provides verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction; and

(B) The person has surrendered his or her Oregon driver license or identification card to the jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(c) The person pays the reinstatement fee.

(7) A person described in section (6) of this rule, who returns to Oregon, may be eligible for a driver license, instruction permit or identification card. DMV will issue a driver license, instruction permit or identification card when:

(a) The person submits the proof of age and identification as described in OAR 735-062-0020(2). For purposes of this rule, primary proof of age and identity does not include an Oregon driver license, instruction permit, identification card or a duplicate photograph retained by Oregon DMV;

(b) The person submits proof of residence address as described in OAR 735-062-0030(1); and

(c) The person meets all eligibility requirements for driving privileges or an identification card and pays all required fees.

(8) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is still under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or legal guardian;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(9) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under ORS 807.040, 807.060, 807.062, 807.065, 807.066 and 807.070.

(10) When a person's student or emergency driver permit is canceled, DMV will reissue a new driver permit or driver license only when the person meets the requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310 & 809.320

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 13-2006, f. 9-22-06, cert. ef. 10-2-06

Rule Caption: Requires DMV to check NDR/PDPS and CDLIS when Reinstating Driving Privileges, Exceptions Listed.

Adm. Order No.: DMV 14-2006

Filed with Sec. of State: 9-29-2006

Certified to be Effective: 10-2-06

Notice Publication Date: 7-1-06

Rules Adopted: 735-070-0015

Subject: A 2004 commercial driver license (CDL) compliance review conducted by the Federal Motor Carrier Safety Administration (FMCSA) determined DMV's CDL program procedures were not in compliance with federal regulations requiring submission of an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and the Commercial Driver License Information System (CDLIS) — before reinstating suspended driving privileges. The purpose of this inquiry is to determine if the driving privileges of the person requesting reinstatement in Oregon are suspended, revoked, canceled, or otherwise not valid in any other jurisdiction. The proposed rule requires that DMV check NDR/PDPS and the CDLIS before reinstating suspended driving privileges, unless the person does not have Oregon driving privileges or has been issued driving privileges in another jurisdiction. The proposed rule also prohibits DMV from reinstating Oregon driving privileges until the persons driving privileges are reinstated in all jurisdictions, unless the only reinstatement requirement in the other jurisdiction is proof of financial responsibility. It also authorizes DMV to reinstate Class C driving privileges to a person whose commercial driving privileges are not valid in another jurisdiction if the person's Class C driving privileges are valid in all jurisdictions.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-070-0015

NDR/PDPS and CDLIS Checks at Reinstatement

(1) Before reinstating suspended driving privileges, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and the Commercial Driver License Information System (CDLIS) to determine if the person's driving privileges are suspended, revoked, canceled, or otherwise not valid in any other jurisdiction.

(2) DMV will not reinstate suspended driving privileges until the person's driving privileges are reinstated or otherwise valid in all jurisdictions, unless the only remaining reinstatement requirement in another jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from reinstating a regular Class C driver license to a person whose commercial driving privileges are not valid in all other jurisdictions as long as the person's regular Class C or equivalent driving privileges are valid in all other jurisdictions.

(3) This rule does not apply if:

(a) The person has never been issued Oregon driving privileges;

(b) The person's Oregon-issued driving privileges are expired, revoked or cancelled; or

(c) The person's Oregon-issued driving privileges are suspended but the person has subsequently been issued driving privileges in another jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stat. Imp.: ORS 807.040, 807.060, 807.249, 809.380, 809.390 & 809.400

Hist.: DMV 14-2006, f. 9-29-06, cert. ef. 10-2-06

ADMINISTRATIVE RULES

Rule Caption: Requirements for reinstatement after 10 years of disqualification of Commercial Driver License

Adm. Order No.: DMV 15-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 11-1-06

Notice Publication Date: 9-1-06

Rules Amended: 735-070-0200

Subject: ORS 809.404, passed by the 2005 Legislature, establishes offenses that disqualify a person from holding a commercial driver license (CDL) if the person has multiple offenses. ORS 809.404(4) allows a person to apply for reinstatement of the CDL after 10 years if the person meets all requirements for a CDL, the department finds the person has shown good cause for reinstatement and the person has voluntarily entered and successfully completed rehabilitation as approved by the department. DMV is adopting this rule to establish when a person would be eligible to reapply for commercial driving privileges after disqualification. The rule lists the requirements for reinstatement, the convictions or suspensions which prohibit reinstatement and the National Safety Council courses that DMV approves as rehabilitation.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-070-0200

Reinstatement of CDL Disqualification

(1) A person who is disqualified from holding a commercial driver license under ORS 809.404(2) may apply to DMV for reinstatement 10 years after the disqualification.

(2) To be eligible for reinstatement, the person must:

(a) Meet all requirements for issuance of a commercial driver license;

(b) Provide any information requested sufficient for DMV to find there is good cause for reinstatement; and

(c) Voluntarily and successfully complete rehabilitation as approved by DMV.

(3) In determining whether good cause for reinstatement has been shown, DMV will consider the person's driving record in this state or any other jurisdiction for the 10 years preceding the date of application for reinstatement. DMV will not reinstate commercial driving privileges if any of the following appear on the person's driving record:

(a) A conviction for an offense involving the operation of a commercial motor vehicle.

(b) A conviction, suspension or diversion for an offense involving any vehicle and alcohol, controlled substances or inhalants.

(c) A conviction for failure to perform the duties of a driver (leaving the scene of an accident) in any vehicle.

(d) A felony conviction involving the operation of any motor vehicle.

(e) A revocation of driving privileges as a habitual offender under ORS 809.600.

(f) A conviction for reckless driving in any vehicle.

(g) A conviction for reckless endangering a highway worker in any vehicle.

(h) A conviction for assault in the fourth degree resulting from the operation of any motor vehicle.

(i) A suspension of driving privileges for violating the speed limit driving 100 miles per hour or greater in any vehicle.

(j) A suspension of driving privileges for violating the speed limit by more than 30 miles per hour in any vehicle.

(4) The department will not reinstate commercial driving privileges if a suspension of driving privileges under the Driver Improvement Program appears on the person's driving record, kept in this state or by any other jurisdiction, within the three years preceding the date of application for reinstatement.

(5) The following National Safety Council courses are approved by DMV as meeting the rehabilitation requirement. A person applying for reinstatement must show proof of successful completion of:

(a) DDC Attitudinal Dynamics of Driving; and

(b) DDC Professional Truck Drivers

(6) If a required course listed in section (5) of this rule is not available in Oregon, DMV will accept proof the person has successfully completed the on-line version of the course. If a required course is not available in Oregon and there is no on-line version available, DMV may accept proof of successful completion of an equivalent rehabilitation course or program.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 809.404

Stats. Implemented: ORS 809.404

Hist.: DMV 15-2006, f. 10-13-06, cert. ef. 11-1-06

Economic and Community Development Department Chapter 123

Rule Caption: Provides guidance for awarding and funding of loans and grants for non-Federal Marine Navigation Improvement Fund projects.

Adm. Order No.: EDD 4-2006

Filed with Sec. of State: 9-28-2006

Certified to be Effective: 10-1-06

Notice Publication Date: 9-1-06

Rules Amended: 123-027-0166

Subject: In 2003, the Oregon Ports, with Oregon Economic and Community Development Department support, were successful in securing about \$3.5 million in lottery bond funding for marine navigation (primarily dredging) projects in the state. The funding is provided through the Marine Navigation Improvement Fund (MNIF) as a new classification of projects; the 'non-federal' projects. These are the projects that do not qualify for federal funding, which is the first priority of projects in the MNIF. The revised rule further clarifies and improves administration of this program.

Rules Coordinator: Paulina Layton—(503) 986-0036

123-027-0166

Non-Federal Project Award and Funding

(1) The Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(a) Payments from the fund will be disbursed in accordance with the executed contract.

(b) The Port must provide the Department with written reports, records, and an accounting of detailed costs for a project as described in the contract.

(2) All eligible projects may be awarded loan funding of up to 100% of the total project cost, or for the required local match, under the following terms:

(a) Interest rates will be determined by Department at time of award, according to Department policy; and

(b) The loan term will not exceed 25 years.

(3) If the Department determines 100% loan funding is not feasible due to the financial hardship of the port, grants may be awarded if Department determines at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose any applicable permits and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

(e) The Department's financial analysis determines that the project cannot proceed without a grant.

(4) Projects eligible due to the provisions of subsection 0106 may be awarded grant funding up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The Port must secure, and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 – 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 4-2006, f. 9-28-06, cert. ef. 10-1-06

Employment Department Chapter 471

Rule Caption: Amending rules in OAR 471-040-0010, and 471-040-0040 and adopting OAR 471-040-0041.

Adm. Order No.: ED 10-2006(Temp)

Filed with Sec. of State: 9-27-2006

Certified to be Effective: 9-27-06 thru 3-21-07

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Adopted: 471-040-0041

Rules Amended: 471-040-0010, 471-040-0040

Subject: Amendments for OAR 471-040-0010 adds language for limited English proficient people in a late request for hearing, adds language for OAH to determine good cause on the late request for hearing and adds language for Office of Administrative Hearings to schedule a hearing if it is determined that testimony is required.

Amendments to OAR 471-040-0040 redefines “good cause” and adds language that a party requesting reopening can set forth the reasons for missing the hearing in a written statement, which will allow direct review, upon the determination of the Office of Administrative Hearings.

Adoption of OAR 471-040-0041 sets out language when and how to submit a late request for reopen.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-040-0010

Late Request for Hearing

For the purposes of ORS 657.875:

(1) “Good cause” exists when the appellant provides satisfactory evidence that factors or circumstances beyond the reasonable control of the appellant caused the late filing.

(2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance.

(3) “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.

(5) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.875

Hist.: IDE 150, f. & ef. 2-9-76; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

471-040-0040

Reopening of a Hearing

(1) After service of an administrative law judge’s written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) “Good cause” exists when the party requesting reopening provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the party to miss the hearing.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge’s ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The filing date for a request to reopen shall be determined under OAR 471-010-0040.

(6) The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board’s review of the merits of that decision.

(7) Nothing in subsection (3) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(8) This rule is effective for all requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.280, 657.610 & 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

471-040-0041

Late Request to Reopen

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) “Good cause” exists when the party provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the late filing.

(3) “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The filing date for a late request to reopen shall be determined under OAR 471-010-0040.

(6) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(7) The administrative law judge’s decision on a late request to reopen shall be in writing and mailed to the parties.

(8) This rule is effective for all late requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657.270, 657.875

Stats. Implemented: ORS 657.280, 657.610 & 657.875

Hist.: ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

Land Conservation and Development Department Chapter 660

Rule Caption: Amends a requirement for zoning of exception areas.

Adm. Order No.: LCDD 7-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-23-06

Notice Publication Date: 9-1-06

Rules Amended: 660-004-0018

Subject: Amends the rule requiring a single numeric minimum lot size in zoning of exception areas to make it clear the requirement does not apply to non-residential designations.

Rules Coordinator: Shelia Preston—(503) 373-0050 x 222

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(2) For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

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(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 7-2006, f. 10-13-06, cert. ef. 10-23-06

Oregon Housing and Community Services Chapter 813

Rule Caption: Provides clarification language and amends the limitation on the size of the fund advance.

Adm. Order No.: OHCS 18-2006

Filed with Sec. of State: 10-3-2006

Certified to be Effective: 10-3-06

Notice Publication Date: 9-1-06

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.

The amendments in 813-040-0015 clarify that prospective non-profit 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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 proposed 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 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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. &

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cert. ef. 12-23-91; OHCS 6-2006(Temp), f. & cert. ef. 4-13-06 thru 10-9-06; OHCS 18-2006, f. & cert. ef. 10-3-06

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.: IHD 10-1981(Temp), f. & ef. 8-27-81; IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

813-040-0025

Application Procedure

(1) The prospective Borrower or Nonprofit Borrower may submit to the Department the following:

(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.: IHD 10-1981(Temp), f. & ef. 8-27-81; IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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.: IHD 10-1981(Temp), f. & ef. 8-27-81; IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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.: IHD 10-1981(Temp), f. & ef. 8-27-81; IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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.: IHD 10-1981(Temp), f. & ef. 8-27-81; IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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.: IHD 5-1982, f. & ef. 6-28-82; IHD 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; OHCS 18-2006, f. & cert. ef. 10-3-06

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Oregon Public Employees Retirement System Chapter 459

Hist.: PERS 23-2003(Temp), f. & cert. ef. 9-22-04 thru 3-15-05; PERS 30-2004, f. & cert. ef. 11-23-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 14-2006, f. & cert. ef. 9-26-06

Rule Caption: Repeal transitional rules.

Adm. Order No.: PERS 13-2006

Filed with Sec. of State: 9-26-2006

Certified to be Effective: 9-26-06

Notice Publication Date: 7-1-06

Rules Repealed: 459-070-0900

Subject: OAR 459-070-0900 was adopted to clarify and implement the provisions of House Bill 2020, adopted by the Oregon State Legislature in 2003. House Bill 2020 established OPSRP (chapter 238A), and because the transition from chapter 238 to OPSRP is complete, the transitional rules are no longer needed.

Rules Coordinator: Daniel Rivas—(503) 603-7713

Rule Caption: Amend rule to more adequately reflect administration of IAP benefits.

Adm. Order No.: PERS 14-2006

Filed with Sec. of State: 9-26-2006

Certified to be Effective: 9-26-06

Notice Publication Date: 7-1-06

Rules Amended: 459-080-0250

Subject: Proposes IAP installment payments be adjusted monthly for intervening gains or losses while the account is in payout status. The rule is also being amended to reflect recent statutory changes.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-080-0250

IAP Account Installments

(1) Definitions. "Payout Period" means the span of years over which the member elects to receive installment payments under section (2) of this rule.

(2) Upon retirement, a member of the individual account program who elects to receive the amounts in the member's employee and employer accounts in installments under ORS 238A.400(2) shall designate the number of years over which the installments are to be paid, selecting a period of 5, 10, 15, or 20 years. The member may also request that installments be made on a monthly, quarterly, or annual basis.

(3) Installments will be adjusted at each payment to reflect investment gains and losses on the unpaid balance. The member's adjusted balance will be divided by the number of installment payments left to determine the amount to be paid to that member.

(4) If a member requests installments under section (2) of this rule, but the amount of the requested installment would be less than \$200 as determined at the time of the initial request, the frequency and Payout Period of the installment payment will be modified so that the amount of the installment is at least \$200. If the member's account balance is \$1000 or less at the time of the initial request, the member will not be eligible for installments and the balance will be paid in a lump sum.

(5) Notwithstanding the Payout Period selected by the member under section (2) of this rule, any distribution will be adjusted to comply with the required minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect August 29, 2003.

(6) Members who elect a five year Payout Period or a lump sum payment may elect to directly roll over any portion of their IAP installment or lump sum payment to an eligible retirement plan, subject to the following limitations:

(a) Members will not be permitted to directly roll over any IAP installment payments if the total annual distribution from their IAP account is reasonably expected to total less than \$200.

(b) If members elect to have a portion of their IAP installment or lump sum payment paid directly to them and a portion directly rolled over, the portion to be rolled over cannot be less than \$500 or that portion will be paid directly to the member.

(7) Members who elect a 10, 15, or 20 year Payout Period cannot elect to have any portion of their installment payments rolled over.

(8) Members who are subject to the required minimum distribution requirements referenced in section (5) of this rule may only roll over that portion of their installment or lump sum payments that exceeds required minimum distribution requirements.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.400

Oregon State Marine Board Chapter 250

Rule Caption: Allowing electric motors on Elk Lake and consolidating similar language into one Marion County rule.

Adm. Order No.: OSMB 8-2006

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06

Notice Publication Date: 8-1-06

Rules Amended: 250-020-0280

Subject: The Marine Board received a request seeking an electric-motor-only rule on Elk Lake in Marion County. There is currently no speed limit or motor restriction for boats on this remote lake of approximately 66 acres. Recent park and road improvements have prompted concern that potential increased use and diversity of activity would have very negative impact on the resource. At the meeting on June 27 in Charleston, the Board accepted the petition and directed Staff to initiate rulemaking. Over the course of the summer informational notices were posted at the Elk Lake campground and news releases were mailed statewide. Articles were printed in local newspapers and site visits were conducted on several different occasions. Comments from the Forest Service and members of the public were evaluated by the Board in September and an electric motor only rule was adopted. In addition two other rules were incorporated into the one rule for electric motor operation on several water bodies in Marion County.

Rules Coordinator: Jill E. Andrick—(503) 378-2617

250-020-0280

Boat Operations in Multnomah County

(1) No person shall operate a boat in excess of 5 MPH:

(a) In North Portland Harbor (Oregon Slough):

(A) From the east end of North Portland Harbor (Oregon Slough) to a point 800 yards west of the Burlington Northern Railroad Bridge, as marked;

(B) Within 200 feet of a launching ramp, moorage or houseboat from the east end of North Portland Harbor (Oregon Slough) eastward along the south shore to the Lower Airport wing dike.

(b) Within 300 feet of the entrance to and in Rooster Rock boat channel;

(c) Within 200 feet of west shore, as buoyed, between the southern boundary of Willamette Park Launch Ramp and the northern boundary of the Willamette Sailing Club;

(d) Within Hayden Bay. The Bay is considered to be all waters south and west of a line 200 feet north of the Northeast point of Hayden Island and 200 feet north of the Northwest point of Tomahawk Island as marked;

(e) Within 200 feet of the Oregon Yacht Club floating home moorage as buoyed (a distance of approximately 1,500 feet);

(f) Within 200 feet of houseboat moorages in the Government Island South Channel;

(g) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River south of the buoys along the northern shore of Government Island in the waters adjacent to the I-205 Bridge, commonly referred to as Commodore's Cove, as marked;

(h) Within 100 feet of the Landing Boat Club at RM 15, Willamette River.

(2) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River within 300 feet of shore between the Big Eddy Wing dike and the wing dike east of the entrance to the Chinook Landing boat Basin and within the Chinook Landing Boat Basin, as marked.

(3) A "pass-through" zone is established in the south channel of the Columbia River, adjacent to McGuire Island between the east end of Big Eddy Marina and the west end of McGuire Point Marina as marked.

(a) No person shall operate a motorboat pulling a water skier or towed device in this zone.

(b) No person shall operate a personal watercraft, as defined in OAR 250-21-020, in continuous operation above 5 MPH in this area, except to transit directly through this zone.

ADMINISTRATIVE RULES

(c) No person shall operate any motorboat in excess of slow-no wake maximum 5 MPH speed within 200 feet of any houseboat moorage within the "pass-through" zone.

(4) No person shall operate a boat in excess of 3 MPH in Rooster Rock Boat Basin.

(5) The following locations are designated racing motorboat testing areas:

(a) On the Willamette River in Swan Island Lagoon. Testing is limited to the hours of 3-6 p.m. on Thursdays, Fridays, and Saturdays;

(b) On the Columbia River between the county launching ramp at 43rd Street and Buoy #18 (NOS Chart #18531). Testing is limited to the hours of 8 a.m. – 12 noon, Tuesday through Friday.

(6) No person shall operate a motorboat on Benson Lake.

(7) No person shall operate a boat for any reason within 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.

(8) At Bonneville Dam.

(a) The Waters restricted to only Government vessels are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above and 2,000 feet below the powerhouse. The restricted areas will be designated by signs;

(b) No person shall operate a boat, including a commercial recreational tour boat subject to inspection and licensing by the U.S. Coast Guard, within the Boating Restricted Zone located below Bonneville lock and dam bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the Columbia River and running at a South 65 degrees West direction a distance of approximately 2100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington side of the Columbia River, as marked.

(9) No person shall operate or anchor a boat in the following described zone in Oregon Slough (North Portland Harbor):

(a) Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, Inc., recorded as Document No. 98028586, Multnomah County Deed Records; Thence, along the northeasterly line of said tract, S 47o46' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim; Thence, along the north line of said Claim S 48o30' E, 764.51 feet to the POINT OF BEGINNING of the SITE AREA being described herein; Thence, N 29o58'25" E, 133.84 feet; Thence, S 62o44'22" E, 461.47 feet; Thence, S 29o58'25" W, 227.76 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 61o15' W, 60.85 feet; Thence, along said northeasterly line, N 52o30' W, 115.5 feet; Thence, along said northeasterly line, N 48o30' W, 291.49 feet to the POINT OF BEGINNING as marked.

(b) This area of land contains 2.0 acres (87,008 sq. Ft.), more or less.

(c) The intent of this description is to describe a line that surrounds the limits of the sediment cap location, plus a buffer zone.

(d) Bearings based on Document No. 98028586, Multnomah County Deed Records.

(10) No person shall anchor a boat at approximately River Mile 7 of the Willamette River in Multnomah County described in Department of State Lands Easement No. 31530-EA, Exhibit A — Legal Description — Permanent Easement.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 23, f. 9-24-63; MB 26, f. 7-20-64; MB 51, f. 5-3-73, ef. 5-15-73; MB 61, f. 7-26-74, ef. 7-26-74(Temp) & 8-25-74(Perm); Renumbered from 250-020-0155; MB 10-1982, f. 10-13-82, ef. 10-15-82; MB 12-1982, f. 12-29-82, ef. 12-31-82; MB 6-1983, f. 9-28-83, ef. 10-3-83; MB 17-1984, f. & ef. 12-3-84; MB 6-1985, f. & ef. 2-5-85; MB 10-1985, f. & ef. 4-24-85; MB 15-1985, f. 10-18-85, ef. 10-21-85; MB 20-1987, f. 11-4-87, ef. 11-15-87; MB 5-1990, f. & cert. ef. 7-19-90; MB 11-1992, f. & cert. ef. 9-16-92; MB 2-1993, f. & cert. ef. 2-3-93; MB 13-1996, f. & cert. ef. 12-4-96; OSMB 7-1998(Temp), f. & cert. ef. 5-19-98 thru 11-15-98; OSMB 7-1999, f. & cert. ef. 6-18-99; OSMB 2-2005, f. & cert. ef. 1-20-05; OSMB 8-2006, f. & cert. ef. 10-12-06

Rule Caption: Allowing electric motors on Elk Lake and consolidating similar language into one Marion County rule.

Adm. Order No.: OSMB 9-2006

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06

Notice Publication Date: 8-1-06

Rules Amended: 250-020-0259

Rules Repealed: 250-020-0265, 250-020-0266

Subject: The Marine Board received a request seeking an electric-motor-only rule on Elk Lake in Marion County. There is currently no speed limit or motor restriction for boats on this remote lake of

approximately 66 acres. Recent park and road improvements have prompted concern that potential increased use and diversity of activity would have very negative impact on the resource. At the meeting on June 27 in Charleston, the Board accepted the petition and directed Staff to initiate rulemaking. Over the course of the summer informational notices were posted at the Elk Lake campground and news releases were mailed statewide. Articles were printed in local newspapers and site visits were conducted on several different occasions. Comments from the Forest Service and members of the public were evaluated by the Board in September and an electric motor only rule was adopted. In addition two other rules were incorporated into the one rule for electric motor operation on several water bodies in Marion County.

Rules Coordinator: Jill E. Andrick—(503) 378-2617

250-020-0259

Boat Operations in Marion County

No person shall operate a motorboat except those propelled by electric motors on the following lakes: Mission or Goose Lake; Silverton Reservoir; Walter Wirth Lake; and Elk Lake.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 6-1980, f. & ef. 9-15-80; MB 11-1982, f. 10-13-82, ef. 10-15-82; OSMB 7-2002, f. & cert. ef. 10-15-02; OSMB 9-2006, f. & cert. ef. 10-12-06

Oregon University System Chapter 580

Rule Caption: Rules implementing OUS authority for competitive-ly procuring construction contracts and related services.

Adm. Order No.: OSSHE 6-2006(Temp)

Filed with Sec. of State: 9-20-2006

Certified to be Effective: 9-21-06 thru 3-19-07

Notice Publication Date:

Rules Adopted: 580-050-0003, 580-050-0356, 580-050-0366

Subject: 580-050-0003 — Provides definition of terms used throughout Division 50.

580-050-0356 — Permits negotiation when offer exceeds cost estimates.

580-050-0366 — Permits offers by facsimile and electronic means.

*Originally submitted under 050-0000/0001, 050-0350/355, and 050-0360/0365. Due to administrative oversight caused by extenuating circumstances, these rules were allowed to sunset prior to permanent filing. SOS has permitted the re-filing of the temporary rules.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-050-0003

Definitions

All capitalized terms in chapter 580, division 50 have the meanings set forth below, unless otherwise defined in the chapter 580, division 50 rules.

(1) Construction Trade Services: Construction services that are not personal services on projects that are not Public Improvements.

(2) Consultants: Architects, engineers, planners, land surveyors, appraisers, managers and related professional consultants.

(3) Electronic Offer: An Offer made by an Offeror in response to an Institution's Solicitation Document posted on its procurement website.

(4) Emergency: Circumstances that were not foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a Contract to remedy the condition.

(5) Entity: A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(6) Institution: One of the universities that is part of the Oregon University System, including the Board's Chancellor's Office.

(7) Institution Facilities Planning Official: The Vice Chancellor or, pursuant to OAR 580-050-0032(1) and (2), designee at an Institution with the authority to enter into Contracts.

ADMINISTRATIVE RULES

(8) Invitation to Bid or ITB: A Solicitation Document calling for Bids.

(9) Offer: A Bid or Proposal as applicable.

(10) Offeror: A Bidder or Proposer as applicable.

(11) Proposal: A competitive Offer submitted in response to a Request for Proposals or a request from an Institution Facilities Planning Official to respond to a proposed assignment under OAR 580-050-0020(3)(b) or (c).

(12) Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for an Institution where the Contract Price exceeds \$25,000, other than projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection. "Public Improvement" does not include Emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a Public Improvement or projects where the total Contract Price is less than \$25,000.

(13) Request for Proposals or RFP: A Solicitation Document calling for Proposals.

(14) Request for Qualification or RFQ: A Written document that:

(a) Provides a general description of a proposed project;

(b) Indicates the type of Consultant services needed, including, if deemed necessary or appropriate, a description of the particular services needed for part or all of a proposed project or projects; and

(c) Requests each prospective Offeror to provide a Written response setting forth the Offeror's specific experience and qualifications of performing the type of services required.

(15) Signed, Sign, or Signature: Any mark, word or symbol executed or adopted by a person on behalf of an Entity evidencing an intent to be bound.

(16) Solicitation Document: An Invitation to Bid or Request for Proposals or Request for Qualifications including all documents incorporated by reference.

(17) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(18) Written or Writing: Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS

Hist.: OSSHE 6-2006(Temp), f. 9-20-06 & cert. ef. 9-21-06 thru 3-19-07

580-050-0356

Negotiation When Offers Exceed Cost Estimate

(1) If all Responsive Offers from Responsible Offerors on a competitively bid Project, including Offers received under OAR 580-050-0032(3) and (4), exceed the Institution's Cost Estimate, prior to Contract award the Institution may negotiate Value Engineering and Other Options with the Responsible Offeror submitting the lowest Responsive Bid or the best Responsive Proposal in an attempt to bring the Project within the Institution's Cost Estimate.

(2) The following definitions apply to this administrative rule:

(a) Cost Estimate: The Institution's most recent pre-Offer, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) Other Options: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance, but excluding any material requirements previously announced in the Solicitation Document that would likely affect the field of competition.

(c) Project: A Public Improvement or Construction Trade Services.

(d) Value Engineering: Those proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement or Construction Trade Services. Cost savings include those resulting from life cycle costing, which either may increase or decrease absolute costs over varying time periods.

(3) In determining whether all Responsive Offers from Responsible Offerors exceed the Cost Estimate, only those Offers that have been formally rejected, or Offers from Offerors who have been formally

Disqualified by the Institution, shall be excluded from consideration.

(4) Institutions shall not proceed with Contract award if the scope of the Project is significantly changed from the original Offer. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Offerors would have been expected by the Institution to participate in the solicitation process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit re-solicitation of trade subcontracts.

(5) Negotiations shall be initially undertaken with the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer. If the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the second lowest Responsive, Responsible Bidder or second best Responsive, Responsible Proposer. If that Offeror is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the next lowest Responsive, Responsible Bidders (Each in order of their Bid) or the next best Responsive, Responsible Proposers (Each in order of their Proposal). Records of an Offeror used in Contract negotiations do not become public records unless they are also submitted to the Institution.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS

Hist.: OSSE 6-2006(Temp), f. 9-20-06, cert ef. 9-21-06 thru 3-19-06

580-050-0366

Facsimile and Electronic Offers

(1) Institution Authorization. An Institution may authorize Offerors to submit Facsimile or Electronic Offers when the Institution has the resources available and adequate procedures in place to handle the Offers, reserve the "sealed" requirement of competitive procurement, deliver them timely to the Opening and, if Bid or Proposal security is or will be required, provide an alternative method for receipt of the security.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Institution authorizes a Facsimile or Electronic Offer, the Institution will include in the Solicitation Document provisions substantially similar to the following:

(a) A Facsimile or Electronic Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Institution via a Facsimile machine or the worldwide web.

(b) Offerors may submit Facsimile or Electronic Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.

(c) Offerors must Sign their Facsimile or Electronic Offers.

(d) The Institution reserves the right to award the Contract solely on the Facsimile or Electronic Offer. However, upon the Institution's request, the apparently successful Offeror shall promptly submit its complete original Signed Offer.

(e) If Facsimile Offers are authorized, the data and compatibility characteristics of the Institution's receiving Facsimile machine as follows:

(A) Telephone number;

(B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.

(f) If Electronic Offers are authorized, the e-mail address of the Institution to be used to receive Electronic Offers.

(g) The Institution is not responsible for any failure attributable to the transmission or receipt of the Facsimile or Electronic Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents.

(B) Availability of condition of the receiving Facsimile machine, computer, or computer system.

(C) Incompatibility between the sending and receiving Facsimile machine or between the sending and receiving computers.

(D) Delay in transmission or receipt of documents.

(E) Failure of the Offeror to properly identify the Offer documents.

(F) Illegibility of Offer documents.

(G) Security and confidentiality of data.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS

Hist.: OSSHE 6-2006(Temp), f. 9-20-06, cert. ef. 9-21-06 thru 3-19-07

ADMINISTRATIVE RULES

Oregon Utility Notification Center Chapter 952

Rule Caption: Rulemaking to Amend Rules Relating to the Oregon Utility Notification Center.

Adm. Order No.: OUNC 1-2006

Filed with Sec. of State: 10-13-2006

Certified to be Effective: 10-13-06

Notice Publication Date: 7-1-06

Rules Amended: 952-001-0010, 952-001-0050, 952-001-0070

Subject: These amended rules update and clarify definitions used in the Utility Notification Center Administrative Rules; set forth the requirements of an excavator intending to perform work at multiple sites or over large areas; and modify existing requirements on marking underground facilities and notification procedures.

Rules Coordinator: Thien-Huong Palmer—(503) 378-4372

952-001-0010

Definitions

(1) “Abandoned Facility” means an underground facility that is no longer in service and is physically disconnected from the operating facility that is in service.

(2) “Business day” means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(3) “Damage” means harm to, or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or sub-jacent support; the penetration, impairment or destruction of any coating, housing or other protective device; or the denting of, penetration into or severance of underground facilities.

(4) “Designer” means any person who prepares a drawing for construction or other project which requires excavation or demolition.

(5) “Designated Agent” means a person or entity specifically appointed to act for or serve as a representative for another person or entity.

(6) “Emergency” means an occurrence involving an immediate danger, demanding prompt action to prevent loss of life, or to mitigate damage to property, or to prevent interruption of essential public services (as determined by an emergency response agency or the facility operator) or to prevent a customer service outage (as determined by the facility operator).

(7) “Excavation” means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line. “Excavation” does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities and does not exceed 18 inches in depth.

(8) “Excavator” means any person who engages in excavation.

(9) “Large area” means a proposed excavation requiring more work or time to locate utility facilities than can reasonably be completed within the parameters of section (1) of 952-001-0050.

(10) “Locatable underground facilities” means underground facilities which can be marked with reasonable accuracy.

(11) “Mark” or “marking” means an indication, from the use of stakes, paint or other clearly identifiable material, to show the field location or absence of underground facilities at a proposed work site. A “mark” or “marking” also includes permanent marking devices, such as disks, posts or signs, placed to show the location of underground facilities.

(12) “Notify” means to make known by any reasonable and legal means of communication.

(13) “Operator” means any person, municipal corporation, political subdivision of the state with control over underground facilities. Operator includes any person, as defined in ORS 756.010, having the right to bury underground facilities in any public right-of-way, or in any utility easement.

(14) “Oregon Utility Notification Center” (Center) means the state agency that administers a statewide system through which a person can notify operators of underground facilities of proposed excavations and can request that the underground facilities be marked.

(15) “Out-of-service facility” means an underground facility that has not been declared permanently abandoned and may still be connected to a portion of an operating facility that is in service.

(16) “Project plans” mean any drawings, specifications or any other documents prepared in anticipation of work involving excavation.

(17) “Reasonable accuracy” means location, within twenty-four (24) inches, of the outside lateral dimensions of both sides of an underground facility.

(18) “Response” means action taken by operators of underground facilities to:

(a) Mark or identify by other means the location of its locatable underground facilities in the area of the proposed excavation;

(b) Notify the excavator that there are unlocatable underground facilities in the area of the proposed excavation; or

(c) Notify the excavator that there are no underground facilities in the area of the proposed excavation.

(19) “Underground facilities” means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, man-holes, attachments and those parts of poles or anchors that are underground.

(20) “Unlocatable underground facilities” mean underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires.

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.542

Hist.: OUNC 1-1997, f. & cert. ef. 4-17-97; OUNC 1-2000, f. & cert. ef. 8-28-00; OUNC 1-2006, f. & cert. ef. 10-13-06

952-001-0050

Excavator to Give Notice of Proposed Work; Exemption

(1) Except as provided in section (2) of this rule, at least two (2) business days, but not more than ten (10) business days before commencing an excavation, the excavator shall notify the Oregon Utility Notification Center of the date and location of the proposed excavation, and the type of work to be performed.

(2) The notice requirement of section (1) of this rule shall not apply if the excavation is in response to an emergency, or if all of the following apply:

(a) The excavator is a tenant or an owner of private property;

(b) The excavation is on private property of that owner or tenant;

(c) The excavation is less than twelve (12) inches in depth; and

(d) The excavation is not within an established easement.

(3) An excavator, when giving notice in compliance with section (1) of this rule, shall furnish information as to how the excavator can be contacted.

(4) If an excavator intends to perform work at multiple sites or over a large area, the excavator shall take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of excavation for each phase of the work.

Stat. Auth.: Sect. 1 - 5 & 7, Ch. 691, OL 1995

Stats. Implemented:

Hist.: OUNC 1-1997, f. & cert. ef. 4-17-97; OUNC 1-2006, f. & cert. ef. 10-13-06

952-001-0070

Operators to Mark Underground Facilities or Notify Excavator that None Exist

(1) Except as provided in section (3) of the rule, within two business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent shall:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications are to include locate request call back information and repeat option.

(2) Operators of abandoned facilities shall mark said facilities to the standards of locatable facilities or unlocatable facilities.

(3) An operator shall mark any abandoned underground facility that is known to it with a capital letter “A” inside of a circle, using the appropriate operator color and identification.

ADMINISTRATIVE RULES

(4) An operator of any out-of-service underground facility shall mark such facility in the same way it marks an underground facility that is in service.

(5) If an excavator uses offset marking, the excavator shall correctly measure the amount of offset, so that the excavator can reestablish the location of underground facilities where originally marked.

(6) If the excavator notifies the operator of underground facilities discovered during an excavation in response to an emergency, the operator of underground facilities shall comply with section (1) of this rule as soon as possible.

(7) Underground facilities shall be marked in accordance with the following designated color code:

(a) RED — Electric power lines, cables or conduit, and lighting cables.

(b) YELLOW — Gas, oil, steam, petroleum, or other hazardous liquid or gaseous materials.

(c) ORANGE — Communications, cable TV, alarm or signal lines, cables or conduits.

(d) BLUE — Water, irrigation, and slurry lines.

(e) GREEN — Sewers, drainage facilities or other drain lines.

(f) WHITE — Pre-marking of the outer limits of the proposed excavation or marking the centerline and width of proposed lineal installations of buried facilities.

(g) PINK — Temporary Survey Markings.

(h) PURPLE — Slurry and reclaimed.

(8) In areas of ongoing excavation or construction operators shall mark newly installed underground facilities immediately upon placement.

(9) Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements shall place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.

(10) An operator of underground drainage lines is not required to indicate the presence of those facilities if the existence and route of those facilities can be determined from the presence of other visible facilities, such as manholes, catch basins, inlets, outlets, junction boxes, storm drains or permanent marking devices.

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.552

Hist.: OUNC 1-1997, f. & cert. ef. 4-17-97; Administrative Reformatting 1-19-98; OUNC 1-2000, f. & cert. ef. 8-28-00; OUNC 1-2006, f. & cert. ef. 10-13-06

Oregon Youth Authority Chapter 416

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

Adm. Order No.: OYA 6-2006

Filed with Sec. of State: 10-9-2006

Certified to be Effective: 10-9-06

Notice Publication Date: 5-1-06

Rules Adopted: 416-100-0005

Rules Amended: 416-100-0000, 416-100-0010, 416-100-0050, 416-100-0060, 416-100-0070

Subject: OAR 416-100-0005 is adopted as a “Definitions” rule. OAR 416-100-0000, 416-100-0010, 416-100-0060, and 416-100-0070 are amended to change some grammatical references and OAR 416-100-0050 is 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—(503) 378-3864

416-100-0000

Purpose

(1) It is the public policy of the state of Oregon that children be maintained, as much as possible, by parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through public assistance programs.

(2) When an offender is placed into OYA legal or physical custody, the parent(s) or other legally obligated person(s) will pay support toward the care, education and maintenance of the offender. The OYA will make referrals to the Division of Child Support (DCS) to establish a child support claim.

(3) DCS is the state entity responsible for the collection and enforcement of child support obligations, including the determination of the

amount of support the parent(s) or other legally obligated person(s) is required to pay and enforcement of collection of this support, when support rights are assigned to the state of Oregon.

(4) This rule defines the process by which the OYA will partner with other state agencies to ensure that child support obligations are enforced pursuant to Oregon statute and applicable administrative rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108 & 416.400 - 416.486

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2001, f. & cert. ef. 6-25-01; OYA 9-2002, f. & cert. ef. 3-1-02; OYA 6-2006, f. & cert. ef. 10-9-06

416-100-0005

Definitions

(1) Child: An individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) Child attending school: a child of the parties who is unmarried and unemancipated, is 18 years of age or older and under 21 years of age, is making satisfactory academic progress as defined by the school that the child attends, and has a course load that is no less than one-half of the load that is determined by the school to constitute full time enrollment

(3) Close custody facility: Any of the secure facilities operated by the OYA, including but not limited to: youth correctional facilities (YCF), work/study camps, and transition camps.

(4) Obligor: An individual or the estate of a decedent who owes or is alleged to owe a duty of support; who is alleged but has not been adjudicated to be a parent of a child; or who is liable under a support order.

(5) Offender: A person in the legal and physical custody of the OYA, either in an OYA facility, substitute care placement, or placed in the community under supervision, or a person in the legal custody of the Department of Corrections and the physical custody of the OYA in OYA facilities.

(6) Regularly scheduled break: a summer semester or term; a period of time not exceeding four months between graduation from or completion of school and the beginning of the next regularly scheduled term, semester or course of study at school; a period of time between the end and beginning of regularly scheduled consecutive school semesters, terms or course of study; or any other scheduled break between courses of study that is defined by the school as a regularly scheduled break.

(7) School: An educational facility such as a high school, community college, four-year college or university; a course of professional, vocational, or technical training, including the Job Corps, designed to fit the child for gainful employment, a high school equivalency course, including but not limited to a General Educational Development (GED) program, or an educational program for grade 12 or below and home schooling.

(8) Substitute care: An out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home, or other child caring institution or facility. “Substitute care” does not include care in:

(a) A detention facility, forestry camp, or youth correction facility;

(b) A family home that the court has approved as a ward’s permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward’s care is entirely privately financed.; or

(c) In-home placement subject to conditions or limitations.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108 & 416.400 - 416.486

Hist.: OYA 6-2006, f. & cert. ef. 10-9-06

416-100-0010

Referral Process

(1) In response to court orders, the OYA will send referral information to DCS for all offenders in its legal or physical custody who are placed in state-financed substitute care, or a close custody placement.

(2) The OYA will inform the parent(s) or other legally obligated person(s) that they will be referred to DCS, who will contact them to determine the amount of support they will be required to pay and will enforce collection of the support obligation. When there is no legal father, a referral so stating will be sent to DCS.

(3) At the time an offender is placed within OYA custody, any existing support orders will be electronically linked to that offender.

(4) The OYA will electronically notify DCS when any of the following occur:

(a) The offender enters or leaves paid placement;

(b) The cost of care changes;

(c) The offender’s parent(s) are incarcerated or die; and

(d) When corrections or updates are made to the referral.

Stat. Auth.: ORS 420A.025

ADMINISTRATIVE RULES

Stats. Implemented: ORS 107.108 & 416.400 - 416.486
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2001, f. & cert. ef. 6-25-01; OYA 9-2002, f. & cert. ef. 3-1-02; OYA 6-2006, f. & cert. ef. 10-9-06

Public Utility Commission Chapter 860

416-100-0050

Child Attending School Provisions

(1) Per ORS 107.108, the court may enter an order against either parent, or both, or other obligors to provide for the support or maintenance of an offender who qualifies as a child attending school.

(2) The OYA shall will to DCS and obligors all information necessary to establish eligibility to receive support under this section, including the name of the school and expected graduation date or date the child will stop attending classes.

(3) The OYA will notify DCS when the offender ceases to qualify as a "child attending school."

(a) Support obligation for an offender that qualifies as a "child attending school" in OYA custody does not cease during regularly scheduled breaks in school.

(b) DCS will notify the obligor when the offender in OYA custody ceases to meet the definition of a "child attending school."

(4) Support for an offender who qualifies as a child attending school in OYA care will be distributed to the OYA as provided in ORS 419C.597 and OAR 137-055-05110.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108 & 416.400 - 416.486

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2001, f. & cert. ef. 6-25-01; OYA 9-2002, f. & cert. ef. 3-1-02; OYA 6-2006, f. & cert. ef. 10-9-06

416-100-0060

Constituent Complaints

The OYA has no obligation or responsibility to mediate or resolve constituent complaints with regard to child support issues. If such complaints are received, OYA staff will refer the person to DCS. The OYA will cooperate with DCS if information is necessary to resolve a constituent complaint.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108 & 416.400 - 416.486

Hist.: OYA 6-2001, f. & cert. ef. 6-25-01; OYA 6-2006, f. & cert. ef. 10-9-06

416-100-0070

Exception to Income Withholding

(1) Notwithstanding the provisions of OAR 137-055-4080, 137-055-4110, and 137-055-4120, the state or the obligor may request an exception to income withholding as provided in ORS 25.396(2). DCS shall review the request according to its criteria and forward a recommendation for alternative payment agreement to the OYA for approval or denial.

(2) The OYA Director may approve exceptions from income withholding when it is in the best interest of an offender and the agency to do so.

(3) The OYA will approve or deny the exception within 30 calendar days after receipt of the DCS recommendation, and notify DCS of its decision as soon as practical:

(a) If the OYA approves the exception, DCS will process an alternative payment agreement with the obligor. Such agreement does not take effect until it has been signed by the obligor and returned to DCS.

(b) If the OYA denies the exception, the obligor may file a grievance with the OYA:

(A) Such grievance shall be stated in writing; sent to the attention of the OYA Director; be received by the OYA within 14 calendar days following the date the denial notice was sent by DCS; and state the reason the obligor believes the OYA should reverse its decision.

(B) The OYA Director shall review the grievance and issue a written decision. The decision of the OYA Director is final. DCS shall notify the obligor of the decision.

(4)(a) DCS shall monitor all alternative payment agreements during the effective period.

(b) The agreement will terminate and immediate income withholding for the full amount allowable by law may be reinstated when:

(A) The offender leaves state care;

(B) The obligor is out of compliance with the agreement; or

(C) The time period covered by the agreement has expired.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 107.108, 409.021 & 416.400 - 416.486

Hist.: OYA 9-2002, f. & cert. ef. 3-1-02; OYA 6-2006, f. & cert. ef. 10-9-06

Rule Caption: Annual Tax Reports and Automatic Adjustment Clauses Relating to Public Utility Taxes.

Adm. Order No.: PUC 8-2006

Filed with Sec. of State: 9-18-2006

Certified to be Effective: 9-18-06

Notice Publication Date: 5-1-06

Rules Adopted: 860-022-0041

Subject: This rule implements Senate Bill 408, passed by the 2005 Legislative Assembly and generally codified at ORS 757.268, requiring certain public utilities to file annual tax reports and other information with the Public Utility Commission of Oregon. In this annual filing, the affected utilities must identify the amount of income taxes paid, either by the public utility itself or its consolidated group and properly attributed to the utility, and the amount of taxes authorized to be collected in rates during specified time periods. If amounts collected and amounts paid differ by more than \$100,000 for any utility, SB 408 requires this Commission to direct the public utility to implement a rate schedule with an automatic adjustment clause accounting for the difference. Where taxes are paid on a consolidated basis by a utility parent, this rule necessarily involves an apportionment of the paid taxes to all affiliates within a taxpaying entity, to ensure that ratepayers only pay the utility's share of the taxes paid. This rule establishes the methodology utilities should use to report the amount of taxes paid that are properly attributed to the utility, as well as other procedures necessary for the Commission to implement SB 408.

Rules Coordinator: Diane Davis—(503) 378-4372

860-022-0041

Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a);

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations, as reported in the deferred tax expense accounts as defined by the Federal Energy Regulatory Commission, that relate to the year being reported in the utility's results of operations report or tax returns;

(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations;

(d) "IRC" means Internal Revenue Code;

(e) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers;

(f) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line-item of customers' bills calculated on a separate city or county basis;

(g) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding;

(h) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g) and (4)(h), of this rule;

(i) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, section 168(i)(10);

(j) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c);

(k) "Results of operations report" means the utility's annual results of operations report filed with the Commission;

(l) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule;

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(m) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210;

(n) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense in the manner used by the Commission in establishing rates;

(o) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions, that are subject to rate regulation by any state commission;

(p) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d);

(q) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income;

(B) For purposes of paragraph (2)(q)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues or effective tax rate, the amount of taxes authorized to be collected in rates will be calculated using a weighted average of months in effect;

(r) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f);

(s) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government;

(t) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268;

(u) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return; and

(v) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator;

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group, after making the adjustments in subparagraphs (3)(a)(A)(i) and (ii) of this rule; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the

numerator and amounts for the system regulated operations in the denominator;

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions and state business energy tax credits related to conservation and renewable energy production of the unitary group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator;

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility;

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group after making the adjustment in subparagraph (3)(c)(A)(i) of this rule; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state, after making the adjustment in subparagraph (3)(c)(A)(i) of this rule for each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator;

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

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(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i) and (ii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments for:

(A) The items defined in subsection (2)(r) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(r) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each tax liability or tax adjustment shown on an amended tax return or made as a result of a tax audit, that is filed, paid or received after the date the tax report is due for the applicable tax year, the utility must allocate the tax liability or tax adjustment to the tax year that is recognized by the utility for accounting purposes;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities;

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all workpapers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order;

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule;

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006;

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment;

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule;

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission;

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission;

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year;

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law;

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(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

(10) At any time, a utility may file a claim that a rate adjustment under the automatic adjustment clause violates ORS 756.040 or other applicable law. In making a determination regarding a potential violation of ORS 756.040, the Commission will perform an earnings review using the utility's results of operations report for the applicable tax year.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268
Hist.: PUC 8-2006, f. & cert. ef. 9-18-06

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Rule Caption: Adopts and amends safety rules governing construction and maintenance of utility poses, conduits and facilities.

Adm. Order No.: PUC 9-2006

Filed with Sec. of State: 9-28-2006

Certified to be Effective: 9-28-06

Notice Publication Date: 4-1-06, 8-1-06

Rules Adopted: 860-024-0011, 860-024-0012, 860-024-0016

Rules Amended: 860-024-0001, 860-024-0050

Subject: The newly adopted rules and amended rules establish more comprehensive safety and joint use rules for electric utilities, telecommunications utilities, telecommunications providers, cable television operators and other entities that own or operate power line and communications line facilities. To accommodate competitive changes in the industries and to ensure that Oregon's utility lines and facilities are constructed, operated and maintained in a safe and efficient manner; the new and amended rules focus on inspection and compliance work, vegetation clearance requirements and other safety provisions.

Rules Coordinator: Diane Davis—(503) 378-4372

860-024-0001

Definitions for Safety Standards

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Commission Safety Rules," as used in this section, mean the National Electric Safety Code (NESC), as modified or supplemented by the rules in OAR chapter 860, division 024.

(2) "Facility" means any of the following lines or pipelines including associated plant, systems, supporting and containing structures, equipment, apparatus, or appurtenances:

- (a) A gas pipeline subject to ORS 757.039;
- (b) A power line or electric supply line subject to ORS 757.035; or
- (c) A telegraph, telephone, signal, or communication line subject to ORS 757.035.

(3) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(4) "Material violation" means a violation that:

- (a) Is reasonably expected to endanger life or property; or
- (b) Poses a significant safety risk to any operator's employees or a potential risk to the general public.

(5) "Operator" means every person as defined in ORS 756.010, public utility as defined in ORS 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider as defined in OAR 860-032-0001, consumer-owned utility as defined in ORS 757.270, cable operator as defined in ORS 30.192,

association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.

(6) "Pattern of non-compliance" means a course of behavior that results in frequent, material violations of the Commission Safety Rules.

(7) "Reporting operator" means an operator that:

- (a) Serves 20 customers or more within Oregon; or
- (b) Is an electricity service supplier as defined in OAR 860-038-0005 and serves more than one retail electricity customer.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.039, 757.649, 758.215, 759.005 & 759.045
Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 9-2006, f. & cert. ef. 9-28-06

860-024-0011

Inspections of Electric Supply and Communication Facilities

(1) An operator of electric supply facilities or an operator of communication facilities must:

- (a) Construct, operate, and maintain its facilities in compliance with the Commission Safety Rules; and
- (b) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules.

(A) The maximum interval between detailed inspections is ten years, with a recommended inspection rate of ten percent of overhead facilities per year. During the fifth year of the inspection cycle, the operator must:

- (i) Report to the Commission that 50 percent or more of its total facilities have been inspected pursuant to this rule; or
- (ii) Report to the Commission that less than 50 percent of its total facilities have been inspected pursuant to this rule and provide a plan for Commission approval to inspect the remaining percentage within the next five years. The Commission may modify the plan or impose conditions to ensure sufficient inspection for safety purposes.

(B) Detailed inspections include, but are not limited to, visual checks or practical tests of all facilities, to the extent required to identify violations of Commission Safety Rules. Where facilities are exposed to extraordinary conditions or when an operator has demonstrated a pattern of non-compliance with Commission Safety Rules, the Commission may require a shorter interval between inspections.

(c) Conduct detailed facility inspections of its underground facilities on a ten-year maximum cycle, with a recommended inspection rate of 10 percent of underground facilities per year.

(d) Maintain adequate written records of policies, plans and schedules to show that inspections and corrections are being carried out in compliance with this rule and OAR 860-024-0012. Each operator must make these records available to the Commission upon its request.

(2) Each operator of electric supply facilities must:

(a) Designate an annual geographic area to be inspected pursuant to subsection (1)(b) of this rule within its service territory;

(b) Provide timely notice of the designation of the annual geographic area to all owners and occupants. The annual coverage areas for the entire program must be made available in advance and in sufficient detail to allow all operators with facilities in that service territory to plan needed inspection and correction tasks. Unless the parties otherwise agree, operators must be notified of any changes to the established annual geographic area designation no later than 12 months before the start of the next year's inspection; and

(c) Perform routine safety patrols of overhead electric supply lines and accessible facilities for hazards to the public. The maximum interval between safety patrols is two years, with a recommended rate of 50 percent of lines and facilities per year.

(d) Inspect electric supply stations on a 45 day maximum schedule.

(3) Effective Dates

(a) Subsection (2)(a) of this rule is effective January 1, 2007;

(b) Subsection (1)(b) of this rule is effective January 1, 2008.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.035
Hist.: PUC 9-2006, f. & cert. ef. 9-28-06

860-024-0012

Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities

(1) A violation of the Commission Safety Rules that poses an imminent danger to life or property must be repaired, disconnected, or isolated by the operator immediately after discovery.

(2) Except as otherwise provided by this rule, the operator must correct violations of Commission Safety Rules no later than two years after discovery.

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(3) An operator may elect to defer correction of violations of the Commission Safety Rules that pose little or no foreseeable risk of danger to life or property to correction during the next major work activity.

(a) In no event shall a deferral under this section extend for more than ten years after discovery.

(b) The operator must develop a plan detailing how it will remedy each such violation.

(c) If more than one operator is affected by the deferral, all affected operators must agree to the plan. If any affected operators do not agree to the plan, the correction of violation(s) may not be deferred.

(4) For good cause shown, or where equivalent safety can be achieved, unless otherwise prohibited by law, the Commission may for a specific installation waive the requirements of OAR 860-024-0012.

Stat. Auth.: ORS 183, 756, 757 & 759

Stat. Implemented: ORS 757.035

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06

860-024-0016

Minimum Vegetation Clearance Requirements

(1) For purposes of this rule:

(a) "Readily climbable" means vegetation having both of the following characteristics:

(A) Low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and

(B) A main stem or major branch that would support a child or average person either within arms' reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.

(b) "Vegetation" means trees, shrubs, and any other woody plants.

(c) "Volts" means nominal voltage levels, measured phase-to-phase.

(2) The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention. Each operator of electric supply facilities must have a vegetation management program and keep appropriate records to ensure that timely trimming is accomplished to keep the designated minimum clearances. These records must be made available to the Commission upon request.

(3) Each operator of electric supply facilities must trim or remove vegetation to maintain clearances from electric supply conductors.

(4) Each operator of electric supply facilities must trim or remove readily climbable vegetation as specified in section (5) of this rule to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.

(5) Under reasonably anticipated operational conditions, an operator of electric supply facilities must maintain the following minimum clearances of vegetation from conductors:

(a) Ten feet for conductors energized above 200,000 volts.

(b) Seven and one-half feet for conductors energized at 50,001 through 200,000 volts.

(c) Five feet for conductors energized at 600 through 50,000 volts, except clearances may be reduced to three feet if the vegetation is not readily climbable.

(d) Intrusion of limited small branches and new tree growth into this minimum clearance area is acceptable provided the vegetation does not come closer than six inches to the conductor.

(6) For conductors energized below 600 volts, an operator of electric supply facilities must trim vegetation to prevent it from causing strain or abrasion on electric conductors. Where trimming or removal of vegetation is not practical, the operator of electric supply facilities must install suitable material or devices to avoid insulation damage by abrasion.

(7) In determining the extent of trimming required to maintain the clearances required in section (5) of this rule, the operator of electric supply facilities must consider at minimum the following factors for each conductor:

(a) Voltage;

(b) Location;

(c) Configuration;

(d) Sag of conductors at elevated temperatures and under wind and ice loading; and

(e) Growth habit, strength, and health of vegetation growing adjacent to the conductor, with the combined displacement of the vegetation, supporting structures, and conductors under adverse weather or routine wind conditions.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 757.035 & 758.280 - 758.286

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06

860-024-0050

Incident Reports

(1) As used in this rule:

(a) "Serious injury to person" means, in the case of an employee, an injury which results in hospitalization. In the case of a non-employee, "serious injury" means any contact with an energized high-voltage line, or any incident which results in hospitalization. Treatment in an emergency room is not hospitalization.

(b) "Serious injury to property" means:

(A) Damage to operator and non-operator property exceeding \$100,000; or

(B) In the case of a gas operator, damage to property exceeding \$5,000; or

(C) In the case of an electricity service supplier (ESS) as defined in OAR 860-038-0005, damage to ESS and non-ESS property exceeding \$100,000 or failure of ESS facilities that causes or contributes to a loss of energy to consumers; or

(D) Damage to property which causes a loss of service to over 500 customers (50 customers in the case of a gas operator) for over two hours (five hours for an electric operator serving less than 15,000 customers) except for electric service loss that is restricted to a single feeder line and results in an outage of less than four hours.

(2) Except as provided in section (5) of this rule, every reporting operator must give immediate notice by telephone, by facsimile, by electronic mail, or personally to the Commission, of incidents attended by loss of life or limb, or serious injury to person or property, occurring in Oregon upon the premises of or directly or indirectly arising from or connected with the maintenance or operation of a facility.

(3) Except as provided in section (5) of this rule, every reporting operator must, in addition to the notice given in section (2) of this rule for an incident described in section (2), report in writing to the Commission within 20 days of the occurrence. In the case of injuries to employees, a copy of the incident report form that is submitted to Oregon OSHA, Department of Consumer and Business Services, for reporting incident injuries, will normally suffice for a written report. In the case of a gas operator, copies of incident or leak reports submitted under 49 CFR Part 191 will normally suffice.

(4) An incident report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.

(5) A Peoples Utility District (PUD) is exempt from this rule if the PUD agrees, by signing an agreement, to comply voluntarily with the filing requirements set forth in sections (2) and (3).

(6) Gas operators have additional incident and condition reporting requirements set forth in OARs 860-024-0020 and 860-024-0021.

Stat. Auth.: ORS 183, 654, 756, 757 & 759

Stats. Implemented: ORS 654.715, 756.040, 756.105, 757.035, 757.039, 757.649, 759.030, 759.040 & 759.045

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 21-1985, f. & ef. 11-25-85 (Order No. 85-1130); PUC 12-1989, f. & cert. ef. 8-11-89 (Order No. 89-946); PUC 4-1992, f. & ef. 2-14-92 (Order No. 92-234); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 1-1998, f. & ef. 1-12-98 (Order No. 98-016); PUC 12-1998, f. & cert. ef. 5-7-98; PUC 3-1999, f. & ef. 8-10-99 (Order No. 99-468); PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-028-0005 & 860-034-0570; PUC 9-2006, f. & cert. ef. 9-28-06

Rule Caption: Amend intrastate toll service provider blockage rule — OAR 860-023-0054(3)(b)(B).

Adm. Order No.: PUC 10-2006

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06

Notice Publication Date: 9-1-06

Rules Amended: 860-023-0054

Subject: This rule amendment corrects an inadvertent omission of the work "not" in OAR 860-023-0054 previously adopted by the Commission on December 15, 2005, in its Order No. 05-1259 and filed with the Secretary of State on December 23, 2005. It was intended that the first sentence of paragraph B of OAR 860-023-0054(3)(b) read, "An intrastate toll service provider must maintain its network operation so that 99 percent of its calls do not experience blockage during any normal busy hour." This rulemaking makes that correction.

Rules Coordinator: Diane Davis—(503) 378-4372

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860-023-0054

Retail Intrastate Toll Service Provider Service Standards

Every intrastate toll service provider must adhere to the following standards:

(1) Measurement and Reporting Requirement. Each intrastate toll service provider must take the measurements required by this rule and report them to the Commission as specified.

(2) Additional Reporting Requirements. The Commission may require a telecommunications carrier to provide additional reports on any item covered by this rule.

(3) Blocked Calls. An intrastate toll service provider must engineer and maintain all intraoffice, interoffice, and access trunking and associated switching components to allow completion of all properly dialed calls made during the average busy season busy hour without encountering blockage or equipment irregularities in excess of the Commission-approved service levels listed in subsection (b) of this section, or alternatively, provide the level of service specified by the intrastate toll service provider in accordance with ORS 759.020(6).

(a) Measurement:

(A) An intrastate toll service provider must collect traffic data; that is, peg counts and usage data generated by individual components of equipment or by the wire center as a whole, and calculate blockage levels of the interoffice final trunk groups;

(B) System blockage will be determined by special testing at the wire center. Commission Staff or a carrier technician will place test calls to a predetermined test number, and the total number of attempted calls and the number of completed calls will be counted. The percent of completion of the calls shall be calculated.

(b) Commission-Approved Service Level:

(A) An intrastate toll service provider must maintain interoffice final trunk groups to allow 99 percent completion of calls during the average busy season busy hour without blockage (P01 grade of service);

(B) An intrastate toll service provider must maintain its network operation so that 99 percent of the calls do not experience blockage during any normal busy hour. If a final trunk group provisioned by an intrastate toll service provider exceeds the blockage standard specified herein for four consecutive months, the trunk group will be considered in violation of this standard.

(c) Reporting Requirement: In accordance with ORS 759.020(6), each intrastate toll service provider must inform customers of the service level furnished by the carrier. Each provider must also identify the service level it plans to furnish in its annual report filed with the Commission. An intrastate toll service provider must file a switching system blockage report after a Commission-directed switching-system blockage test is completed.

(d) Retention Requirement: Each intrastate toll service provider must maintain records for one year.

(4) Special Service Lines. All special service access lines must meet the performance requirements specified in applicable intrastate toll service provider tariffs or contracts.

(5) An intrastate toll service provider connected to the facilities of other telecommunications carriers as defined in ORS 759.400(3) shall operate its system in a manner that will not impede a telecommunications carrier's or intrastate toll service provider's ability to meet required standards of service. A telecommunications carrier or intrastate toll service provider shall report interconnection operational problems promptly to the Commission.

(6) Alternatives to These Telecommunications Standards. An intrastate toll service provider whose normal methods of operation do not provide for exact compliance with these rules may file for a variance from, or waiver of, one or more of these rules, if it specifically indicates the alternative standards to be applied, or indicates which standards would be waived.

(7) Remedies for Violation of This Standard:

(a) If a telecommunications carrier subject to this rule violates one or more of its service standards, the Commission must require the intrastate toll service provider to submit a plan for improving performance as provided in ORS 759.450(5). If an intrastate toll carrier does not meet the goals of its improvement plan within six months, or if the plan is disapproved by the Commission, penalties may be assessed in accordance with ORS 759.450(5) through (7).

(b) In addition to the remedy provided under ORS 759.450(5), if the Commission believes that an intrastate toll service provider subject to this rule has violated one or more of its service standards, the Commission shall give the intrastate toll service provider notice and an opportunity to request a hearing. If the Commission finds a violation has occurred, the

Commission may require the intrastate toll service provider to provide the following relief to the affected customers:

(A) Customer billing credits equal to the associated nonrecurring and recurring charges of the intrastate toll service provider for the affected service for the period of the violation; or

(B) Other relief authorized by Oregon law.

(8) Exemption from these rules:

(a) An intrastate toll service provider may petition the Commission for an exemption, in whole or in part, from these rules.

(b) The Commission may grant an exemption including, but not limited to, the following circumstance: If the Commission determines that effective competition exists in one or more exchange, it may exempt all telecommunications carriers providing telecommunications services in those exchanges from the requirements of this rule, in whole or in part. In making this determination, the Commission must consider:

(A) The extent to which the service is available from alternative providers in the relevant exchange(s);

(B) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions;

(C) Existing barriers to market entry;

(D) Market share and concentration;

(E) Price to cost ratios;

(F) Number of suppliers;

(G) Price demand side substitutability (for example, customer perceptions of competitors as viable alternatives); and

(H) Any other factors deemed relevant by the Commission.

(c) When a telecommunications carrier or intrastate toll service provider petitions the Commission for exemption under this provision, the Commission must provide notice of the petition to all relevant telecommunications carriers providing the applicable service(s) in the exchange(s) in question. Such notified telecommunications carriers will be provided an opportunity to submit comments in response to the petition. The comments may include requests that, following the Commission's analysis outlined above in Section 8(b)(A) through (H), the commenting telecommunications carrier be exempt from these rules for the applicable service(s) in the relevant exchange(s).

(d) For purposes of this rule, if a final trunk group provisioned by an intrastate toll provider exceeds the blockage standard specified by the provider for four consecutive months, that trunk group will be considered in violation of the provider's service standard.

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

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.020, 759.030, 759.050 & 759.450

Hist.: PUC 9-2005, f. & cert. ef. 12-23-05; PUC 10-2006, f. & cert. ef. 10-12-06

Racing Commission Chapter 462

Rule Caption: Horse medication and miscellaneous provisions.

Adm. Order No.: RC 2-2006(Temp)

Filed with Sec. of State: 10-2-2006

Certified to be Effective: 10-2-06 thru 3-21-07

Notice Publication Date:

Rules Adopted: 462-160-0100, 462-160-0110, 462-160-0120, 462-160-0130, 462-160-0140, 462-160-0150

Rules Suspended: 462-160-0010, 462-160-0020, 462-160-0030

Subject: Rules regarding veterinary practices, prohibited practices, medications and prohibited substances, testing procedures and trainer responsibility regarding use of medications in racing animals.

Rules Coordinator: Carol N. Morgan—(971) 673-0208

462-160-0010

Permitted Medications

Non-Steroidal Anti-Inflammatory Drug (NSAID) and Dimethylsulfoxide (DMSO).

(1) The only non-steroidal anti-inflammatory drug permitted by this rule is phenylbutazone (butazolidin).

(2) Phenylbutazone shall be authorized medication at race meets at which the average daily gross mutual wagering during the preceding year exceeded \$150,000. If a race meet with average daily gross mutual wagering during the preceding year of \$150,000 or less desires phenylbutazone be authorized medications at their race meet they may petition the commission to approve the use of phenylbutazone at their race meet. The commission may approve the use of phenylbutazone at such race meet, if in the

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opinion of the commission the race meet can provide for the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program adequately. Dimethylsulfoxide (DMSO) shall be permitted medication at any race meet if applied topically.

(3) Phenylbutazone is permitted only in horses three years of age or older. Phenylbutazone is prohibited in two year old horses.

(4) No horse utilizing phenylbutazone may be entered into a race unless the presence of the phenylbutazone in the horse is stated on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, errors must be corrected by noon following entry.

(5) Phenylbutazone shall be administered to the horse at least 24 hours before scheduled post time.

(6) Violations:

(a) Maximum dosage is such dosage amount that the test sample shall contain not more than five (5) micrograms of phenylbutazone or, its metabolites or analogs per milliliter of blood plasma:

(A) The first violation by the trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone, or the sample does not show phenylbutazone or oxyphenylbutazone when the horse was entered to run on phenylbutazone shall result in a fine of \$200.00 without loss of purse.

(B) The second violation and each additional violation by the same trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone or the sample does not show phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer, without loss of purse.

(C) A test sample with a phenylbutazone to oxyphenylbutazone ratio of greater than 3.1 shall be a rebuttable presumption of administration less than 24 hours before scheduled post time.

(D) If any test sample contains more than 10 micrograms of phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer and may result in a loss of purse.

(b) If phenylbutazone is detected in the urine or in any other specimen taken from a horse not stated to have phenylbutazone in its system on the entry form and/or program, the violation will result in a fine of \$250.00 and may result in loss of purse.

(c) If the same horse has three (3) overages of phenylbutazone during a 365 day period the commission veterinarians shall issue a ruling to rule the horse off phenylbutazone.

(7) Horses on phenylbutazone will be designated on the overnight and the daily racing program with a "B." Errors in the listing of phenylbutazone in the program, when discovered, shall be announced to the public and will not result in the horse being scratched.

(8) Dimethylsulfoxide. (DMSO) may be administered to a animal as an external topical application. No authorization or written approval from the commission veterinarians representing the commission is required for the external application of DMSO by either the horse's owner or trainer or licensed veterinarian.

(9) Sulfa drugs. Non-interfering levels of sulfa drugs in urine tests shall not be considered a violation of the prohibited medication statutes or rules. Non-interfering level shall be considered to be anything less than 1 microgram per milliliter.

(10) The following shall be a prohibited substance for possession and/or use for all persons coming onto the racecourse:

(a) In all forms and/or substitutes, Erythropoietin (EPO), Darbopoietin, and all drugs, substances or medications for which a recognized analytical method has not been developed to detect and confirm its administration; or the use of which may endanger the health and welfare of the animal, or the safety of the rider, if any.

(b) Any drug, substance or medication that has not been approved by the United States Food and Drug Administration for use in the United States.

(11) Extracorporeal Shock Wave Therapy (ESWT). ESWT shall only be performed on the racecourse by a licensed veterinarian. Any ESWT device brought onto the racecourse must be registered with a commission veterinarian. Any animal receiving ESWT shall be placed on the Vet's List, ineligible for 14 days from the last treatment and restricted from entry until a commission veterinarian receives a certificate from a licensed veterinarian stating:

(a) The name, age, sex, color and tattoo of the horse;

(b) The name, address, phone number and signature of the veterinarian performing the treatment(s);

(c) Dates of first and last treatment(s);

(d) The fitness of the animal to resume racing;

(e) The name of referring veterinarian, if any.

(12) No horse may be administered any substance, other than foods, by any route or method after entry except: phenylbutazone (by injection, feed or blown), lasix (by injection), or electrolytes (by feed or paste) unless approved by the commission veterinarian.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; RC 2-2005, f. & cert. ef. 10-18-05; Suspended by RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0020

Epistaxis Treatments

(1) Horses to run on epistaxis treatments must be so noted on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, errors must be corrected by noon following entry.

(2) The commission veterinarian shall establish and publish reasonable procedures pertaining to use of the epistaxis treatment. A copy of the established procedure shall be posted in the office of the racing secretary under the direction of the commission veterinarian.

(3) Horses that are entered to race with epistaxis treatment must be administered furosemide at least four hours prior to but not more than five hours prior to post time of the horse's scheduled race. The maximum dosage of furosemide which may be administered is 250 milligrams and the minimum dosage shall be that which can be detected in the horse's urine sample. (At 4 hours prior to post 150 milligrams can be detected). The commission may approve the use of epistaxis treatments at any race meet, if in the opinion of the commission the race meet can provide the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program. A licensed veterinarian must administer the epistaxis treatment.

(4) If the authorized epistaxis medication is not detected in the horse's urine or in any other specimen taken from the animal either prior to or following the race, a fine of up to \$250.00 and may be imposed upon the horse's trainer and may result in loss of purse.

(5) Unauthorized use of epistaxis treatment will result in a fine of up to \$250.00 to the horse's trainer and may result in loss of purse.

(6) Horses entered to race with epistaxis medication will be designated on the overnight and the daily racing program with a lasix or "L." If the race is the first race the horse is to run in on lasix, it shall be designated in the daily racing program with a "1-L." If the race is the first race the horse runs without lasix after running one or more races with lasix it shall be designated in the program by "O-L."

(7) When discovered prior to the race, errors in the listing of epistaxis treatments in the program shall be announced to the public.

(8) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of the commission veterinarian.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; Suspended by RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0030

Testing Procedures; Consequences

(1) The board of stewards or commission veterinarian may require any horse to be tested for drugs prior to removal from any list, after any race or workout, or whenever they have a reasonable suspicion that an illegal drug or excessive quantity of authorized drug has been used in a horse. Upon the specific request of a horse's trainer or other designated representative, a split sample shall be obtained unless there is insufficient specimen for a split sample.

(2) Whenever requested by the commission stewards, or commission veterinarian, any horse on a racecourse shall be immediately submitted by the horse's owner or trainer authorized agent to the commission veterinarian or designated representative for examination or testing. If the horse is not on the racecourse, it must be promptly returned to the racecourse. An extension of time may be granted if good cause is given at the time the request is made.

(3) If urine sample is not obtained within one hour of the time the horse started walking, the commission veterinarian may administer the diuretic furosemide to the horse. The needle and syringe used for the diuretic shall be labeled and attached to the urine sample's container. The quantity of diuretic administered shall be indicated on all portions of the urine tag.

(4) The horse's trainer shall be present in the testing area when a urine or other specimen is taken from a horse, unless the horse's owner or authorized representative who is at least 15 years old is present, and shall remain until the sample tag is signed by the trainer or other representative as wit-

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ness to the taking of the specimen. Failure to be present at or refusal to allow the taking of any specimen, or refusal to sign the specimen tag, or any act or threat to impede or prevent or interfere with the taking of a specimen is a violation and shall be reported to the stewards.

(5) Any test or examination made by the commission veterinarian may be witnessed by any commission representative and by the owner, trainer, or authorized agent of the horse.

(6) When laboratory analysis confirms the presence of an unauthorized drug, the commission investigators shall immediately conduct a thorough investigation of the incident. Within a reasonable time after receipt of the lab results and investigative report, the stewards shall hold or request the commission to hold a hearing to determine if the horse raced with an unauthorized drug and/or an excessive amount of an authorized drug in its system, and if so, who was responsible for the horse's condition.

(7) Laboratory analysis of saliva, urine, blood, or other sample taken from a horse after a race which indicates the presence of an unauthorized drug or an excessive quantity of an authorized drug shall be conclusive evidence that the horse contained that drug or quantity of drug during the running of the race.

(8) The owner or trainer or authorized agent of the horse may request confirmation of the lab results within 3 days of official notification to the trainer of a positive test. The commission shall have forwarded the remaining portion of the horse's specimen or the split sample to a qualified Association of Official Racing Chemists laboratory in another racing jurisdiction. The commission will not release a horse's specimen to any representative of the horse. All expenses for a confirmation test, including but not limited to transportation, analysis, and personal testimony from the other laboratory shall be borne by the horse's trainer. A copy of all written material received from the laboratory which conducted the confirmation analysis shall be forwarded to the horse's representative. The commission or stewards may use the written material as evidence at any hearing.

(9) If a horse is found to have raced in violation of the medication statutes and rules, excluding those statutes and rules governing the use of non-steroidal anti-inflammatory drugs or with trace levels of therapeutic medications as determined by the commission as authorized by ORS 462.415(7), its owners shall not participate in the purse distribution of that race and the horse shall be disqualified. Those owners shall promptly return any portion of the purse, together with any trophy. When a horse is disqualified in a race because of this rule, the eligibility of other horses which ran in the race and which have started in a subsequent race before announcement of the disqualification shall not be affected. If the ruling or order disqualifying a horse is appealed to the commission, all horses involved in the race shall participate in future races based upon the original order of finish of the race in question until final disposition of the appeal by the commission.

(10) If laboratory analysis detects any substance in quantities that interfere with the true and accurate testing and analysis of blood, saliva, urine or other samples taken from the racing animals, the laboratory shall perform alternate testing procedures to determine if any other prohibited drugs are present. The cost incurred by this additional testing shall be borne equally by the commission and the licensee. If another prohibited or unauthorized drug is found, the sanctions for the use of such drug shall apply.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03; Suspended by RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0100

Purpose

To describe requirements and procedures used to ensure the health and welfare of racehorses and to safeguard the interests of the public and the participants in racing.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0110

Veterinary Practices

(1) Veterinarians under Authority of Official Veterinarian:

(a) Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are under the authority of the official veterinarian and the stewards.

(b) The official veterinarian shall recommend to the stewards or the Commission the discipline that may be imposed upon a veterinarian who violates the rules.

(2) Treatment Restrictions:

(a) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer, via injection, topical application, inhalant, per os or per rectum, a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

(b) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(A) A recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

(B) A non-injectable substance on the direction or by prescription of a licensed veterinarian; or

(C) A non-injectable non-prescription medication or substance.

(c) No person shall possess a hypodermic needle, syringe or injectable of any kind on association grounds, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the stewards and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the stewards and/or the Commission.

(d) Veterinarians shall not have contact with an entered horse 24 hours prior to post time of which the horse is entered except for the administration of furosemide under the guidelines set forth in OAR 462-160-0130(8) unless approved by the official veterinarian.

(e) Any horse entered for racing must be present on the grounds 5 hours prior to the post time of the race they are entered in.

(3) Veterinarians' Reports:

(a) Every veterinarian who treats a racehorse at any location under the jurisdiction of the Commission shall, in writing on the Medication Report Form prescribed by the Commission, report to the official veterinarian or other commission designee at the racetrack where the horse is entered to run or as otherwise specified by the commission, the name of the horse treated, any medication, drug, substance, or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(b) The Medication Report Form shall be signed by the practicing veterinarian.

(c) The Medication Report Form must be filed by the treating veterinarian not later than post time of the race for which the horse is entered. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the Commission, or to the trainer or owner of record at the time of treatment.

(d) A timely and accurate filing of a Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent, if any, of a rules violation.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0120

Prohibited Practices

The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the Commission or its designee.

(3) The possession and/or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the Commission is forbidden:

(a) Erythropoietin;

(b) Darbepoetin;

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- (c) Oxyglobin®; and
- (d) Hemopure®.

(4) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(a) Any treated horse shall not be permitted to race for a minimum of 10 days following treatment;

(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the Commission;

(c) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be registered with and approved by the Commission or its designee before use;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or his/her designee.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0130

Medications and Prohibited Substances

(1) Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed in at the time of the violation in the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and impose penalties and disciplinary measures consistent with the recommendations contained therein. The stewards shall also consult with the official veterinarian to determine if the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's Medication Report Form received per OAR 462-160-0110(3). The stewards may also consult with the laboratory director or other individuals to determine seriousness of the laboratory finding or the medication violation. Penalties for all medication and drug violations shall be investigated and reviewed on a case by case basis. Extenuating factors include, but are not limited to:

(a) The past record of the trainer, veterinarian and owner in drug cases;

(b) The potential of the drug(s) to influence a horse's racing performance;

(c) The legal availability of the drug;

(d) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(e) The steps taken by the trainer to safeguard the horse;

(f) The probability of environmental contamination or inadvertent exposure due to human drug use;

(g) The purse of the race;

(h) Whether the drug found was one for which the horse was receiving a treatment as determined by the Medication Report Form;

(i) Whether there was any suspicious betting pattern in the race, and;

(j) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

(2) As a result of the investigation, there may be mitigating circumstances for which a lesser or no penalty is appropriate for the licensee and aggravating factors, which may increase the penalty beyond the minimum.

(3) Uniform Classification Guidelines The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(a) Class 1 — Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a race is very high.

(b) Class 2 — Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the racehorse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

(A) Opiate partial agonists, or agonist-antagonists;

(B) Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

(C) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

(D) Drugs with prominent CNS depressant action;

(E) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

(F) Muscle blocking drugs which have a direct neuromuscular blocking action;

(G) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

(H) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(c) Class 3 - Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

(A) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

(B) A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

(C) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

(D) Primary vasodilating/hypotensive agents; and

(E) Potent diuretics affecting renal function and body fluid composition.

(d) Class 4 — This category is comprised primarily of therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

(A) Non-opiate drugs which have a mild central analgesic effect;

(B) Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects;

(i) Drugs used solely as topical vasoconstrictors or decongestants;

(ii) Drugs used as gastrointestinal antispasmodics;

(iii) Drugs used to void the urinary bladder;

(iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs;

(v) Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

(C) Mineralocorticoid drugs;

(D) Skeletal muscle relaxants;

(E) Anti-inflammatory drugs — those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

(i) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs);

(ii) Corticosteroids (glucocorticoids); and

(iii) Miscellaneous anti-inflammatory agents.

(F) Anabolic and/or androgenic steroids and other drugs;

(G) Less potent diuretics;

(H) Cardiac glycosides and antiarrhythmics including:

(i) Cardiac glycosides;

(ii) Antirhythmic agents (exclusive of lidocaine, bretylium and propanolol); and

(iii) Miscellaneous cardiotoxic drugs.

(I) Topical Anesthetics — agents not available in injectable formulations;

(J) Antidiarrheal agents; and

(K) Miscellaneous drugs including:

(i) Expectorants with little or no other pharmacologic action;

(ii) Stomachics; and

(iii) Mucolytic agents.

(e) Class 5 — Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain anti-allergenic drugs. The anticoagulant drugs are also included.

(4) Penalties:

(a) In issuing penalties against individuals found guilty of medication and drug violations a regulatory distinction shall be made between the detection of therapeutic medications used routinely to treat racehorses and

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those drugs that have no reason to be found at any concentration in the test sample on race day.

(b) The stewards or the commission will use the Racing Medication and Testing Consortium's penalty category and schedule as a starting place in the penalty stage of the deliberations for a rule violation for any drug listed in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances.

(c) If a licensed veterinarian is administering or prescribing a drug not listed in the RCI Uniform Classification Guide lines for Foreign Substances or shown in the RMTC Penalty Guideline Listing, the identity of the drug shall be forwarded to the official veterinarian to be forwarded to the Racing Medication and Testing Consortium for classification.

(d) Any drug or metabolite thereof found to be presenting a pre- or post-race sample which is not classified in the most current RCI Uniform Classification Guidelines for Foreign Substances shall be assumed to be a RCI Class 1 Drug and the trainer and owner shall be subject to those penalties as set forth in schedule "A" unless satisfactorily demonstrated otherwise by the Racing Medication and Testing Consortium, with a penalty category assigned.

(e) The penalty categories and their related schedules, if applicable, shall be on the following criteria:

(A) Whether the drug is approved by the U.S. Food and Drug Administration for use in the horse;

(B) Whether the drug is approved by the U.S. Food and Drug Administration for use in any species;

(C) Whether the drug has any legitimate therapeutic application in the equine athlete;

(D) Whether the drug was identified as "necessary" by the RMTC Veterinary Advisory Committee;

(E) Whether legitimate, recognized therapeutic alternatives exist, and;

(F) The current RCI Classification of the drug.

(f) The penalty categories "A", "B" and "C" and their related schedules for Trainers and Owners are shown in the following tables: [Table not included. See ED. NOTE.]

(g) The recommended penalty for a violation involving a drug that carries a Category "D" penalty is a written warning to the trainer and owner. Multiple violations may result in fines and/or suspensions.

(h) Any licensee of the commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer.

(i) The licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding shall be notified in writing of the hearing and any resulting action. In addition their presence may be required at any and all hearings relative to the case.

(j) Any veterinarian found to be involved in the administration of any drug carrying the penalty category of "A" shall be referred to the State Licensing Board of Veterinary Medicine for consideration of further disciplinary action and/or license revocation. This is in addition to any penalties issued by the stewards or the commission.

(k) Any person who the stewards or the commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the stewards or the commission in no way prohibits a prosecution for criminal acts committed, nor does a potential criminal prosecution stall administrative action by the stewards or the commission.

(l) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(5) Medication Restrictions:

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

(A) Drugs or medications for which no acceptable threshold concentration has been established;

(B) Therapeutic medications in excess of established threshold concentrations;

(C) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

(D) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered.

(6) Medical Labeling:

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

(A) The name of the product;

(B) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(C) The name of each patient (horse) for whom the product is intended/prescribed;

(D) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

(E) The name of the person (trainer) to whom the product was dispensed.

(7) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

(A) Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone (or its metabolite oxyphenylbutazone) — 5 micrograms per milliliter;

(ii) Flunixin — 20 nanograms per milliliter;

(iii) Ketoprofen — 10 nanograms per milliliter.

(B) These or any other NSAID are prohibited to be administered within the 24 hours before post time for the race in which the horse is entered.

(C) The presence of more than one of the three approved NSAIDs, with the exception of Phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(b) Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

(8) Furosemide:

(a) Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian or the racing veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List the following process must be followed.

(A) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide they shall notify the official veterinarian or his/her designee, using the prescribed form, that they wish the horse to be put on the Furosemide List.

(B) The form must be received by the official veterinarian or his/her designee by the proper time deadlines so as to ensure public notification.

(C) A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to the official veterinarian or his/her designee, on the proper form, no later than the time of entry.

(D) After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with the official veterinarian. If a horse is removed from the offi-

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cial Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days.

(E) Furosemide shall only be administered on association grounds.

(F) Upon the request of the regulatory agency designee, the veterinarian administering the authorized bleeder medication shall surrender the syringe used to administer such medication which may then be submitted for testing

(b) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is utilized:

(A) Furosemide shall be administered at the direction of the official veterinarian no less than four hours prior to post time for the race for which the horse is entered.

(B) A horse qualified for furosemide administration must be brought to the detention barn within time to comply with the four-hour administration requirement specified above.

(C) The dose administered shall not exceed 250 mg. nor be less than 150 mg.

(D) Furosemide shall be administered by a single, intravenous injection.

(E) After treatment, the horse shall be required by the Commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or Commission security supervision until called to the saddling paddock.

(c) The use of furosemide shall be permitted under the following circumstances on association grounds where a detention barn is not utilized:

(A) Furosemide shall be administered no less than four hours prior to post time for the race for which the horse is entered.

(B) The furosemide dosage administered shall not exceed 250 mg. nor be less than 150 mg.

(C) Furosemide shall be administered by a single, intravenous injection.

(D) The trainer of the treated horse shall cause to be delivered to the official veterinarian no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the Commission:

(i) The name of the horse, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(d) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(A) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(B) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma

(9) Bleeder List:

(a) The official veterinarian shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to race for the following time periods:

(A) First incident — 14 days;

(B) Second incident within 365 day period — 30 days;

(C) Third incident within 365 day period — 180 days;

(D) Fourth incident within 365-day period — barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

(e) A horse may be removed from the Bleeder List only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(f) A horse which has been placed on a Bleeder List in another jurisdiction pursuant to these rules shall be placed on a Bleeder List in this jurisdiction.

(10) Anti-Ulcer Medications:

(11) The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered:

(a) Cimetidine (Tagamet®) — 8-20 mg/kg PO BID-TID.

(b) Omeprazole (Gastrogard®) — 2.2 grams PO SID.

(12) Environmental Contaminants and Substances of Human Use

(a) The following substances can be environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases:

(b) The following drugs are recognized as substances of human use and addiction and which could be found in the horse due to its close association with humans:

(c) Regulatory thresholds have been set for the following substances: Caffeine — 100 nanograms of caffeine per milliliter of serum or plasma

(d) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use it should be considered as a mitigating factor in any disciplinary action taken against the affected trainer.

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

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0140

Testing

(1) Reporting to the Test Barn:

(a) The official winning horse and any other horse ordered by the Commission and/or the stewards shall be taken to the test barn to have a blood and urine samples taken at the direction of the official veterinarian.

(b) Random or extra testing may be required by the stewards or the Commission at any time on any horse on association grounds.

(c) Unless otherwise directed by the stewards or the official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(d) A track security guard shall monitor access to the test barn area during and immediately following each racing performance. All persons who wish to enter the test barn area must be a minimum of 15-years-old, be currently licensed by the Commission, display their Commission identification badge and have a legitimate reason for being in the test barn area.

(2) Sample Collection:

(a) Sample collection shall be done in accordance with the guidelines and instructions provided by the official veterinarian.

(b) The official veterinarian shall determine a minimum sample requirement for the primary testing laboratory.

(3) Storage and Shipment of Split Samples:

(a) Split samples obtained in accordance with Subsection (2) above shall be secured and made available for further testing in accordance with the following procedures:

(A) A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the Commission.

(B) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(b) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the Commission. The request must be made in writing and delivered to a designated commission representative not later than 72 hours after the trainer of the horse receives written notice of the findings of the primary laboratory. Any split sample so requested must be shipped within the stated 72 hours.

(c) The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian shall constitute a waiver of all rights to split sample testing. Prior to shipment, the Commission shall confirm the split sample laboratory's

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willingness to provide the testing requested, the laboratory's willingness to simultaneously send results to both the person requesting the testing and the Commission, and arrangements for payment satisfactory to the split sample laboratory. If a reference laboratory will accept split samples, that laboratory must be included among the laboratories approved for split sample testing.

(d) The package containing the split sample shall be transported in a manner prescribed by the commission to the location where custody is transferred to the delivery carrier charged with delivery of the package to the Commission-approved laboratory selected by the owner or trainer.

(4) Laboratory Minimum Standards Laboratories conducting either primary or split post-race sample analysis must meet at least the following minimum standards:

(a) A testing laboratory must be accredited by a recognized accrediting body to any standards set forth and required by the Commission.

(b) A testing laboratory must have, or have access to, LC/MS instrumentation for screening and/or confirmation purposes.

(c) A testing laboratory must be able to meet minimum standards of detection, which is defined as the specific concentration at which a laboratory is expected to detect the presence of a particular drug and/or metabolite or by the adoption of a regulatory threshold.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

462-160-0150

Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well being of horses in his/her care.

(1) The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(2) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

(4) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds.

(5) Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

(a) The proper identity, custody, care, health, condition and safety of horses;

(b) Using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

(c) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(d) Promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(e) Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

(f) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing post-mortem examinations;

(g) Maintaining a knowledge of the medication record and status;

(h) Immediately reporting to the stewards and the official veterinarian a knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(i) Ensuring the fitness to perform creditably at the distance entered;

(j) Ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

(k) Ensuring proper bandages, equipment and shoes;

(l) Presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(m) Personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards; and

(n) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07

Secretary of State, Archives Division Chapter 166

Rule Caption: Adopts current Attorney General Model Rules of Procedure.

Adm. Order No.: OSA 4-2006

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06

Notice Publication Date:

Rules Amended: 166-001-0005, 166-500-0005

Subject: Amends the rules of the Archives Division to adopt the current Attorney General's Model Rules of Procedure dated January 1, 2006.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-001-0005

Model Rules of Procedure

The State Archivist adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 1, 2006.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Archives Division.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: OSA 4, f. & ef. 4-21-76; OSA 2-1986, f. & ef. 3-17-86; OSA 1-1988, f. & cert. ef. 8-10-88; OSA 1-1991, f. & cert. ef. 12-5-91; OSA 3-1994, f. 7-14-94, cert. ef. 7-15-94; OSA 4-2001, f. & cert. ef. 5-22-01; OSA 5-2004, f. & cert. ef. 11-1-04; OSA 4-2006, f. & cert. ef. 10-12-06

166-500-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, dated January 1, 2006, are adopted as the rules of procedure for the Administrative Rules Unit.

[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 Archives Division.]

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.335

Hist.: PRD 2-1988, f. & cert. ef. 2-5-88; PRD 6-1988, f. & cert. ef. 8-10-88; SOS-AD 1-1990, f. & cert. ef. 5-9-90; SOS-AD 2-1991, f. & cert. ef. 12-3-91; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0005; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 5-2001, f. & cert. ef. 7-5-01; OSA 5-2004, f. & cert. ef. 11-1-04; OSA 4-2006, f. & cert. ef. 10-12-06

Secretary of State, Audits Division Chapter 162

Rule Caption: Model Rules of Procedure.

Adm. Order No.: AUDIT 1-2006

Filed with Sec. of State: 10-11-2006

Certified to be Effective: 10-11-06

Notice Publication Date:

Rules Amended: 162-001-0005

Subject: Adopt the Model Rules of Procedures effective January 1, 2006. This was last amended for Model Rules of Procedures effective March 27, 2000.

Rules Coordinator: Julie A. Sparks—(503) 986-2255

162-001-0005

Model Rules of Procedure

The Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act effective January 1, 2006, are adopted as the rules of procedure for the Audits Division of the Secretary of State's Office.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Audits Division.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 297.210, 297.465, 128.435 & 692.285

ADMINISTRATIVE RULES

Hist.: DOA 1-1985, f. & ef. 10-11-85; DOA 1-1988, f. & cert. ef. 8-10-88; DOA 4-1991, f. & cert. ef. 8-28-91; DOA 6-1991, f. & cert. ef. 12-5-91; AUDIT 1-1999, f. & cert. ef. 12-16-99; AUDIT 1-2001, f. & cert. ef. 4-26-01; AUDIT 1-2006, f. & cert. ef. 10-11-06

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

Rule Caption: Requires use of alternate voting system for individuals with disabilities at 2006 general election.

Adm. Order No.: ELECT 13-2006(Temp)

Filed with Sec. of State: 10-12-2006

Certified to be Effective: 10-12-06 thru 4-10-07

Notice Publication Date:

Rules Amended: 165-007-0250

Subject: In order to comply with the disabled-voter access requirements of the Help America Vote Act, the Division is requiring all 36 Oregon counties to use an audio ballot marking system for the November 2006 general election. Audio Ballot Marking System is a form of 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 and must be used by counties in the 2006 general 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; ELECT 13-2006(Temp), f. & cert. ef. 10-12-06 thru 4-10-07

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**Water Resources Department
Chapter 690**

Rule Caption: Amended instream water right rules.

Adm. Order No.: WRD 4-2006

Filed with Sec. of State: 10-2-2006

Certified to be Effective: 10-2-06

Notice Publication Date: 5-1-06

Rules Adopted: 690-077-0076

Rules Amended: 690-077-0000, 690-077-0010, 690-077-0015, 690-077-0019, 690-077-0020, 690-077-0027, 690-077-0031, 690-077-0033, 690-077-0037, 690-077-0039, 690-077-0043, 690-077-0046, 690-077-0047, 690-077-0048, 690-077-0049, 690-077-0051, 690-077-0052, 690-077-0053, 690-077-0054, 690-077-0065, 690-077-0070, 690-077-0075, 690-077-0077, 690-077-0079, 690-077-0080, 690-077-0100

Subject: The Water Resources Commission adopted rules related to instream water rights, OAR Chapter 690, Division 77. The rules clarify the general provisions affecting instream water rights and the standards for state agency applied instream water rights. Additionally, the rules make other clarifications to instream water right leases and transfers, including allowing split season use instream leas-

es up to five years. These rules provide greater consistency with the water right transfer rules (Division 380).

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-077-0000

Purpose

(1) The purpose of this Division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights.

(2) This Division also provides for the conversion of existing minimum streamflows to instream water rights; for the instream transfer or lease of existing water rights for use as instream water rights; and for the enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses.

(3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission or by an order approving a time-limited instream transfer or lease, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under ORS 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18).

(4) In 2001, the Legislature authorized the split season use leasing of water rights for instream purposes. Under ORS 537.348(3), all or a portion of an existing water right may be used for the existing use and for instream use during the same year, provided that the uses are not concurrent and that the holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the instream water right.

(5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.

(6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0010

Definitions

As used in this Division:

(1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.

(2) "Agency" means ODFW, DEQ and Parks.

(3) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(4) "Comment" means a written statement concerning a particular application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

(5) "Commission" means the Water Resources Commission

(6) "Contested Case" means a hearing as defined in ORS 183.310(2) and conducted according to the procedures described in ORS chapter 537, 183.413 to 183.470 and OAR chapter 690, division 2.

(7) "DEQ" means the Department of Environmental Quality

(8) "Department" means the Water Resources Department

(9) "Director" means the director of the Water Resources Department.

(10) "Estimated Average Natural Flow" means average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology.

(11) "Held in Trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Department affecting instream water rights are limited by public trust obligations.

(12) "Instream" as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

ADMINISTRATIVE RULES

(13) "Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(14) "Instream lease" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right for a specified time-period as authorized by ORS 537.348(2).

(15) "Instream transfer" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1).

(16) "Instream Water Right" as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(17) "Minimum Streamflow" also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.

(18) "Multipurpose Storage Project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two beneficial uses and/or purposes.

(19) "ODFW" means the Oregon Department of Fish and Wildlife.

(20) "ODFW flow restoration priority watershed" means a geographic area identified by ODFW where there is a need for flow restoration during a specified season(s) to support fish recovery under the Oregon Plan for Salmon and Watersheds. The ODFW flow restoration priority watersheds are identified in Figures 1 to 18.

(21) "Parks" means the Oregon Parks and Recreation Department.

(22) "Planned" means a determination has been made for a specific course of action either by legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by the public or private sector.

(23) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this rule. Such uses include but are not limited to the policies, provisions, and maps contained in acknowledged city or county comprehensive plans and land use regulations.

(24) "Pollution Abatement" means the use of water to dilute, transport or prevent pollution.

(25) "Protest" means a written statement, filed in accordance with OAR chapter 690, division 2, and the applicable provisions of this division or division 380, expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing.

(26) "Public Benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(27) "Public Use," as defined in ORS 537.332, includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation.

(28) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(29) "Scenic Attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(30) "Split Season Use" means the exercise of a water right in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that water is not used for the existing purpose during the period in which the water is to be protected instream.

(31) "Time-Limited Instream Transfer," means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the water right will revert back to its original use:

(a) Without further action by the Department at the end of the period of time specified in the final order approving the instream transfer; or

(b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met.

(32) "Unappropriated Water Available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

(33) "Water Purveyor" means any entity formed for the purpose of delivering water supply to water right holders.

(34) "Water quality limited" has the meaning provided in the OAR 340-041.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.310, 536.332, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0015

General Statements

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

(5) Unless the Director determines otherwise, for instream water rights established through instream transfers, leases, or allocations of conserved water, it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant for the applied public use, if the criteria in Subsection (5)(a) and (b), or in Subsection (5)(a) and (c) are met:

(a) The flow does not exceed the maximum amount of any instream water right application applied for under OAR 690-077-0020 for the same reach or portion thereof, and for the same public use.

(b) For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed.

(c) The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality.

(6) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmental-sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(7) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(8) When instream water rights are established through instream transfers, leases, or allocations of conserved water of existing water rights, the order, and, where appropriate, the certificate shall define the appropriate point, reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream or for a point or shorter distance if needed to account for return flow or to prevent injury.

(9) Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses unless specifically withdrawn from appropriation for such use.

(10) Instream water rights shall be approved only if the amount, timing and location serve a public use or uses.

ADMINISTRATIVE RULES

(11) The combination of instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with Sections (4), (5), and (6) of this rule.

(12) An instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies that it shall be subordinate to future uses or appropriations.

(13) An instream water right created through the conversion of a minimum perennial streamflow, which consists in whole or part of waters released from storage, is enforceable only as to the waters released to satisfy the instream water right.

(14) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 1-1989(Temp), f. & cert. ef. 1-24-89; WRD 4-1989, f. & cert. ef. 7-11-89; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0019

Process for Instream Water Right Certificate Requests

(1) Except as provided in ORS 537.343, the Department shall process a request received under ORS 537.336 for a certificate for an instream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.250, and the policies under 537.332 to 537.360.

(2) Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in 183.310 to 183.550 conflicts with a provision in ORS 537.120 to 537.360, the provisions in 537.120 to 537.360 shall control.

(3) Pursuant to Section 46, Chapter 416, Oregon Laws 1995, for each application described under OAR 690-077-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in Chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

Stat. Auth.: ORS 536.025, 536.027, 537.140 - 537.250 & 537.332 - 537.360

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0020

Application Requirements

(1) Only ODFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.

(2) To promote coordination, ODFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.

(3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.

(4) Applications to establish instream water rights shall be submitted in writing and shall include the following:

(a) The name(s) and address(es) of the agency(ies) applying;

(b) The public uses to be served by the requested instream water right and the flows necessary to support the public uses;

(c) Stream or lake name;

(d) If a stream, the reach delineated by river mile and stream to which it is tributary;

(e) The appropriate section of a Department basin map with the applicable lake or stream reach identified;

(f) The instream flow requested by month and year in cubic feet per second or acre-feet or lake elevation;

(g) A description of the technical data and methods used to determine the requested amounts;

(h) Evidence of notification of other qualified applicant agencies;

(i) If a multi-agency request, the amounts and times requested for each category of public use;

(j) Identification of affected local governments (pursuant to OAR 690-077-0010) and copies of letters notifying each affected local government of the intent to file the instream water right application;

(k) Written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.

(l) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(5) The applicant is encouraged to propose:

(a) A means and location for measuring the instream water right;

(b) The strategy and responsibility for monitoring flows for the instream right; and

(c) Any provisions needed for managing the water right to protect the public uses.

(6) Any request for an instream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request.

(7) Within 60 days after the Department proceeds with the application under OAR 690-077-0031, the Department shall complete the application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department mails the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-077-0052(2) by the date specified in the request, the Department may reject the application. The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this Section.

Stat. Auth.: ORS 197, 536.025, 536.027, 537.153, 536.220, 536.300, 536.310, 537.336, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0027

Completeness Review

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-077-0020(4) and is complete and not defective. If the Department determines that the application is incomplete or defective, the Department shall return the application.

(2) Upon determining that an application contains the information listed under OAR 690-077-0020(4) and is complete and not defective, the Department shall endorse on the application the date upon which the application was received for filing at the Department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter 538, the Department shall reject the application and return the application with an explanation of the statutory prohibition.

Stat. Auth.: ORS 537.150 & 538

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0031

Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-077-0029(2), the Department shall give public notice of the application in the weekly notice published by the Department. The weekly notice shall be transmitted to the following:

ADMINISTRATIVE RULES

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(b) Affected Indian tribes; and

(c) All persons on the Department's weekly mailing list.

(2) The notice shall include a request for comments on the application, the date by which comments must be received by the Department, and information about how an interested person may obtain future notices about the application and a copy of the proposed final order. The notice also shall include the following information about the application:

(a) The name(s) and address(es) of the applicant agency(ies);

(b) County(ies) of water use;

(c) Application file number;

(d) Description of the characteristics and the purpose of the proposed instream water right;

(e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation;

(f) Common name of surface water source(s); and

(g) The stream reach by mile or geographic location.

(3) The notice shall be transmitted by regular United States mail, or at the request of the recipient, transmitted electronically.

(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department deposits the notice in the mail of the United States Postal Service. All comments must be received by the Department on or before the end of the 30-day comment period.

(5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 537.140 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0033

Public Interest Presumption

(1) The Department shall presume that a proposed water use will not impair or be detrimental to the public interest if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The public interest presumption described in Section (1) of this rule is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(a) One or more of the criteria for establishing the public interest presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0037

Public Interest Review

(1) Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-077-0029, before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-077-0033.

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8) and may either:

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the public interest presumption is established or that the proposed instream use can be modified or conditioned to meet the public interest presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the public interest presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(b) In making any determination or finding in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Threatened, endangered or sensitive species;

(B) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under Section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0002(42);

(C) Fish or wildlife;

(D) Recreation;

(E) Economic development; and

(F) Local comprehensive plans, including supporting provisions such as public facilities plans.

(c) In making any determination or finding in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of Section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-077-0043, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this Section and Sections (5)-(7) of this rule. The Department shall find that the public interest presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four public interest presumption criteria listed in OAR 690-077-0033(1)(a)-(d) are not met;

(b) The proposed use may impair or be detrimental to the public interest according to standards described in ORS 537.170(8), including:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(5) If the Department finds that under Section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 denying the application unless the Department makes specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(8) the issuance of an instream water right certificate will not impair or be detrimental to the public interest.

(6) If the Department finds that under Section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 approving the application with any appropriate modifications or conditions.

(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-077-0043, the Director shall schedule a contested case hearing.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

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690-077-0039

Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-077-0031 and all findings of the Department, but the proposed final order need not separately address each comment received.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft certificate, including any proposed modifications, conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the Department.

(3) The Department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050.

(4) Within seven days after issuing the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-077-0031, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-077-0043(4).

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0043

Protests and Standing

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order, whether issued following a contested case hearing or where no contested case hearing is held.

(3) The request for standing must be in writing, signed by the requester, and include the following:

(a) The requester's name, mailing address and telephone number;

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

(4) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing, or failure to provide sufficient specificity to afford the Department an

opportunity to respond to the issue, precludes judicial review based on that issue.

(5) Any person who has filed a timely request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.

(7) Within 10 days after the close of the filing period established under Section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0046

Determination to Hold a Contested Case Hearing

(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:

(a) Issue a final order as provided under ORS 537.170(6); or

(b) Schedule a contested case hearing.

(2) The Director:

(a) May schedule a contested case hearing if:

(A) A protest has been submitted; and

(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.

(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-077-0043 and requests a contested case hearing.

(3) As soon as possible after making a determination under Section (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing, and describe the procedures each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered the scheduling of the contested case hearing for purposes of the running of the 45-day time period under Section (4) of this rule.

(4) Within 45 days after the Director schedules a contested case hearing under ORS 537.153(8), the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of ORS 183.413 to 183.470 and OAR chapter 690, division 02. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(5) Notwithstanding the provisions of ORS 183.413 to 183.470 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this rule shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under OAR 690-077-0043 and who requests to participate as a party or limited party in the contested case hearing prior to the start of the proceeding.

(6) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.413 to 183.470 except:

(a) As provided in Sections (4) and (5) of this rule; and

(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.

(6) After the conclusion of a contested case hearing, any party may file exceptions to the hearing officer's proposed order in the manner described in OAR 690-002-0175.

Stat. Auth.: ORS 536.025, 536.027, 537.153, 537.170 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0047

Final Orders

(1) In developing the final order, the Department shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

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(2) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order rejecting the application or modifying or conditioning the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying or conditioning the proposed final order.

(3) A final order issued under Section (2) of this rule for an instream water right certificate may include any condition the Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The final order may:

(a) Approve the instream water right application for the quantity of water requested;

(b) Approve the instream water right application for a lesser quantity of water; or

(c) Deny the instream water right application.

(4) If the Director reduces the quantity of water requested, denies the instream water right application, or conditions the instream water right, the Director shall include a statement of findings that sets forth the basis for the reduction, denial or conditions.

(5) Upon issuing a final order, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department shall also publish notice of the final order by publication in the weekly notice published by the Department.

Stat. Auth.: ORS 536.025, 536.027, 537.170, 537.343 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0048

Final Public Interest Determination

If the presumption of public interest under OAR 690-077-0033 is overcome in the manner described in OAR 690-077-0037, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use, or the proposed use as modified or conditioned in the proposed final order, would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(8).

Stat. Auth.: ORS 536.025, 536.027, 537.170 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0049

Statement of Findings

Any order or proposed order by the Director or Commission that approves, reduces, conditions or denies an instream water right application shall include a statement or findings that sets forth the basis for the approval, reduction, conditioning or denial.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0040; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0044; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0051

Contested Case Hearing on Final Order

If a contested case hearing is not held prior to the issuance of the final order:

(1) Where the final order modifies or conditions the proposed final order, the applicant may request and the Director shall schedule a contested case hearing as provided under OAR 690-077-0046 by submitting the information required for a protest under OAR 690-077-0043 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications or conditions to the proposed final order.

(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases.

Stat. Auth.: ORS 536.025, 536.027, 537.170 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0052

Time Requirements

(1) Except as provided in Section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.336 within 180 days after the Department proceeds with the application under OAR 690-077-0029(2).

(2) At the request of the applicant, the Department may extend the 180-day period set forth in Section (1) of this rule for a reasonable period of time. The extension shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary.

(3) If a contested case hearing is held, the Director shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the Department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings.

(4) If the applicant does not request an extension under Section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-077-0029(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Director to issue a final order or schedule a contested case hearing on an application for a water right.

(5) The mandatory timelines set forth in division 77 for the Department to process applications shall not apply to applications filed before October 31, 1996.

Stat. Auth.: ORS 536.025, 536.027, 537.175 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0053

Issuance of Instream Water Right Certificate

After the Director issues a final order approving an instream water right, the Department shall issue a certificate for an instream water right according to the provisions of ORS 537.341. The instream water right shall date from the filing of the application with the Commission. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon and shall be issued by the Commission according to the procedures established under ORS 537.338. The Commission shall forward a copy of each certificate issued under this rule to the state agency requesting the instream water right. A certificate for an instream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336.

Stat. Auth.: ORS 536.025, 536.027, 537.338 & 537.341

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0054

Conversion of Minimum Perennial Streamflows to Instream Water Rights

(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate Department mailing lists notice of proposed conversion, and a list of all existing minimum perennial streamflows established on any waters of this state prior to June 25, 1988 separated as follows:

(a) Those flows the Commission intends to convert without change to instream water rights;

(b) Those flows the Commission intends to condition with OAR 690-077-0015(12) and schedule a hearing before converting to instream water rights.

(2) Any person or agency, including the Department, may request a hearing on any of the conversions proposed within 60 days of publication in the Secretary of State's bulletin or the mailing of notice.

(3) Requests for hearings shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that:

(a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary;

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(b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or

(c) The conversion from a minimum streamflow to an instream water right would not be in the public interest.

(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created.

(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission:

(a) To approve the conversion; or

(b) To conduct a hearing under ORS 537.170.

(6) The Commission shall act on the Director's recommendation in accordance with OAR 690-077-0046.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0050; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0065

General Provisions

(1) The Department shall promote and facilitate potential instream transfers and leases under ORS 537.348 that would provide benefits for public uses.

(2) The Department encourages irrigation districts and other water purveyors to develop single lease applications that pool individual water rights and ownerships that are to be leased during the same term.

(3) Department personnel shall review all instream transfer or lease applications pursuant to OAR 690-077-0070 through 690-077-0079 to assure that they comply with these rules and, if possible, to develop conditions to prevent enlargement of the original right or injury to other water right owners.

(4) Completed lease applications submitted pursuant to OAR 690-077-0076, including signatures of lessor and lessee (if applicable), and all necessary attachments or exhibits, must be received by the Department's Salem office prior to July 1, or for year around uses, must be received prior to October 1. Completed lease applications received after this date shall be returned or, at the request of the applicant, be processed to be effective for the next calendar year. At the discretion of the Director, an application may be received and processed after this date during the current year.

(5) The Department may compile descriptive information to assist all parties in addressing technical issues related to instream transfers and leases, including but not limited to describing injury and enlargement issues, determining whether a proposed instream water right would support a public use, setting the location of a proposed instream water right and making agreements for measuring and monitoring the instream water right. The descriptive information shall not restrict new leases, but shall offer options that have been used in earlier leases to ensure compliance with OAR chapter 690, division 77.

(6) The Department may prepare lease application forms that include the requirements listed in OAR 690-077-0076(3) and any additional information the Department deems necessary to comply with the policies of OAR chapter 690, division 77 and to reflect the nature of the water rights subject to being leased instream. For example, a special form could be prepared for an irrigation district to sponsor a single lease application that involved multiple water right owners.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01, Renumbered from 690-077-0078; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0070

Application for Instream Transfer

(1) As provided in ORS 537.348(1), any person may apply for an instream transfer, including a time-limited instream transfer.

(2) In addition to the transfer application requirements described in OAR 690-380-3000, an instream transfer application shall include the following information:

(a) Public use(s) for which the instream right is desired;

(b) Description of the time periods of the instream use and quantity of water to be transferred to instream use;

(c) The location of the proposed instream use. If a reach or lake level is requested, identify the upstream and downstream extent of the reach or the appropriate lake level;

(d) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right;

(f) For a time-limited instream transfer, the duration or number of years for which the time-limited instream transfer is being requested.

(3) The Department may require additional information needed to complete the evaluation of the proposed conversion.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0075

Processing an Instream Transfer Application

A proposed instream transfer, including a time-limited instream transfer, of a water use subject to transfer to an instream water right shall be processed pursuant to the water rights transfer rules in OAR chapter 690, division 380 and the following provisions:

(1) The Department shall provide notice of the proposed instream transfer pursuant to OAR 690-380-4000, and to affected Indian tribes.

(2) In addition to the assessment described in OAR 690-380-4010, the Department's preliminary determination shall include an assessment of whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and

(b) The proposed reach(es) is (are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion;

(B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream;

(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-077-0015(8);

(D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate the reduced flows available, in accordance with paragraph (2)(c)(B) of this rule.

(c) The proposed flow(s) is (are) consistent with OAR 690-077-0015(7), (8) and (11), shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.

(3) An instream transfer shall be approved if the Department determines that the transfer is consistent with OAR 690-380-5000, and Section (2) of this rule.

(4) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 and Section (2) of this rule if no protests are received under OAR 690-380-4030.

(5) Upon approval of an instream transfer, the Department shall issue a permanent instream water right certificate. However, upon approval of a time-limited instream transfer, the Department shall issue a final order with a specific date of expiration or other conditions for termination for the instream water right and suspend the use of the original right during the effective period of the instream water right. A copy of the certificate or final order shall be mailed to the applicant and as appropriate to affected Indian tribes, ODFW, DEQ and Parks. The Director shall also issue a new certificate for any remaining right for the existing use as appropriate.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

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Stats. Implemented: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358
Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0076

Application for an Instream Lease

(1) A holder of any of the following types of water rights may enter into a lease to convert all or a portion of a water right to an instream water right for a specified time period not to exceed five years:

(a) Surface water rights for beneficial use or storage established by a water right certificate or an adjudication under ORS Chapter 539 as evidenced by court decree; or

(b) A surface water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Director under ORS 537.250, or transfer application for which an order has been issued under ORS 540.530 approving the change and for which proper proof of completion of the change has been filed with the Commission;

(c) Secondary water rights for the use of stored water established by permit, certificate or court decree; or

(d) The conserver's portion of conserved water allocated under ORS 537.445 to 537.500.

(2) The parties to the lease application shall include but are not limited to:

(a) The holder(s) of the subject water right(s) as the lessor(s);

(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor, if applicable; and

(c) The lessee, if different than the Department.

(3) At a minimum, the lease application shall include:

(a) Names and signatures of the parties;

(b) A description of the water right(s) to be leased. If only a portion of a water right will be leased, a clear description, including maps if necessary, of the portion to be leased;

(c) Rate, total volume, timing and location of the instream right, including any necessary conditions to avoid enlargement of the original right or potential injury to other water right holders;

(d) A description of how the lease will serve a public use or uses;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed lease is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(f) Provision insuring the original use will be suspended;

(g) The term of the lease;

(h) A statement by the lessors verifying that the water rights described in Subsection (3)(b) of this rule have been used under the terms and conditions of the rights during the last five years, or as an instream water right, or an explanation why the water right is not subject to forfeiture under ORS 540.610. As an alternative, an irrigation district or other water purveyor may provide evidence for owners, verifying delivery of water for the lands appurtenant to the rights to be leased;

(i) If the lessor(s), as identified in Subsection (2)(a) of this rule, is not the deeded landowner to which the water right is appurtenant, sufficient documentation to demonstrate that the lessor(s) is authorized to pursue the instream lease. Such documentation shall include:

(A) A notarized statement from the landowner consenting to the lease and a copy of the recorded deed;

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner.

(j) The name and address of any water purveyor that conveys water to the water right(s) described in Subsection (3)(b) of this rule.

(4) Lease applications shall conform with applicable provisions of OAR 690-077-0015.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.332 - 537.360, 537.455 - 537.500

Hist.: WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0077

Processing an Instream Lease Application

(1) On receipt of a lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office.

(2) A written assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use and avoid injury or enlargement;

(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include but are not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the year leased; the role of return flows; conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and issues potentially arising from water users that share a conveyance system. Any allegations of injury to existing water rights or enlargement of the original water right that are received within 21 days of the date of mailing of the weekly public notice shall be reviewed by the parties to the lease before the Department issues an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.

(4) If the Department determines that the proposed lease may cause injury to existing water rights or enlargement of the original right, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

(5) If a lease is for more than one year the parties shall review any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.

(6) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to continue.

(7) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(3)(c) shall conform to the provisions of OAR 690-077-0015(7) and (8) and 690-077-0075(2).

(8) Except as provided in OAR 690-077-0079, a lease involving a water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the original water right or the instream right, not both, during any one season unless the source is from stored water.

(9) If the water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the original right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source.

(10) Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a lease when needed to establish an instream water right in a particular season or at a particular time. A renewal shall be subject to the provisions of this rule.

(11) Water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right.

(12) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

(13) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system.

(14) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to pro-

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visions of these rules. Those leases are covered by OAR chapter 690 division 19.

(15) Except as provided in Sections (4) and (5) of this rule, orders approving lease applications shall only be terminated by a superceding order or by specific provision of the originating order approving the lease application.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360
Stats. Implemented:
Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0079

Split Season Use Instream Leasing

(1) An applicant for a split season use lease of water shall provide the information and follow the lease process described under OAR 690-077-0076 and 690-077-0077.

(2) In addition to the application requirements described in OAR 690-077-0076, split season use leases applications shall:

(a) Be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose.

(b) Describe when the water will be used for the existing purpose and when the water will be used for the instream purpose.

(A) The existing water use and the instream use shall not be concurrent. However, a portion of a water right appurtenant to one piece of land may undergo split season use, while another portion appurtenant to a different piece of land may undergo only one type of use, or a different time period for split season use.

(B) The type of use under a split season use may be changed only once during a calendar year, except for full-year uses which may have a single instream use period and two existing use periods.

(3) The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Department, or provide for third party measurement and reporting to the satisfaction of the Department. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

(4) The water right lessor or lessee shall contact the watermaster or other Department field staff to determine the necessary measurement and reporting requirements associated with leasing a water right. The complete lease application shall include:

- (a) Location(s) and type(s) of measuring device(s);
- (b) Frequency of measurement;
- (c) Parties responsible for the respective measurements; and
- (d) Amount of water proposed to be used, listed by rate and duty for the existing purpose and the instream purpose, including monthly or partial season rate or duty limitations, if appropriate.

(5) The Commission shall review the split season use leasing program no later than the year 2014 to determine if any changes should be made in the program.

NOTE: ORS 537.348(3) sunsets on January 2, 2008.
Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358
Stats. Implemented: ORS 537.332 - 537.360
Hist.: WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0080

Cancellation or Waiving of an Instream Water Right

(1) There is a rebuttable presumption that an instream water right, or a portion thereof, that has not been put to a public use for five successive years in which water was available is forfeited.

(2) Upon making a preliminary finding that the instream water right has been forfeited the Director shall notify DEQ, ODFW, Parks, and those persons and agencies on the Department's weekly mailing list of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks.

(3) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper.

(4) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(1).

(5) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(2).

(6) An instream water right established under ORS 537.336 through 537.338 (OAR 690-077-0020) may be canceled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in Section (2) of this rule.

(7) An instream water right shall not be subject to forfeiture due to non-use when water was not available.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358
Stats. Implemented: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358
Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0100

Precedence of Future Uses

(1) The applicants for a proposed multipurpose storage project may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(2) An applicant for a right to use water for municipal purposes may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(4) Within six months of the receipt of the petition the Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and decision on precedence may occur before the final decision on the permit.

(5) After the public hearing the Commission shall enter an order to:

- (a) Approve the requested precedence;
- (b) Approve the requested precedence conditionally; or
- (c) Deny the requested precedence.

(6) The Department shall also publish a statement of findings that explains the basis for the decision made in Section (5) of this rule.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 536 & 537
Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

Rule Caption: Amended water right transfer rules and adopted rules for modifications to ground water registrations.

Adm. Order No.: WRD 5-2006

Filed with Sec. of State: 10-6-2006

Certified to be Effective: 10-6-06

Notice Publication Date: 5-1-06

Rules Adopted: 690-380-2240, 690-382-0010, 690-382-0100, 690-382-0200, 690-382-0300, 690-382-0400, 690-382-0450, 690-382-0500, 690-382-0600, 690-382-0700, 690-382-0800, 690-382-0900, 690-382-1000, 690-382-1100, 690-382-1200

Rules Amended: 690-380-0010, 690-380-0100, 690-380-2110, 690-380-2120, 690-380-2130, 690-380-2200, 690-380-2260, 690-380-2300, 690-380-2330, 690-380-2420, 690-380-2430, 690-380-3000, 690-380-3100, 690-380-3200, 690-380-3220, 690-380-4000, 690-380-4010, 690-380-4020, 690-380-4030, 690-380-4200, 690-380-5000, 690-380-5030, 690-380-5040, 690-380-5100, 690-380-5110, 690-380-5120, 690-380-5140, 690-380-6010, 690-380-6030, 690-380-8000, 690-380-8020

Subject: The Water Resources Commission adopted rules related to defining the process and standards for recognizing ground water modification (OAR Chapter 690, Division 282, HB 2123, 2005 Legislative Assembly). HB 2123 also modified ORS 540.531 to provide great flexibility for surface water to ground water point of diversion transfers. The Water Resources Commission also amended rules relating to the implementation of the provisions of HB 2123 related to surface water to ground water transfers and also clarify other provisions related to water right transfers (OAR Chapter 690, Division 380).

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-380-0010

Purpose

(1) The rules in OAR chapter 690, division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the character of use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.

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(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR chapter 690, division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 provided the water use complies with the requirements under ORS 540.510(3)(a)(A) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, division 385, however, a petition for the change must be submitted to the Department by the district;

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;

(e) A change in point of diversion in response to government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;

(f) A change in point of diversion or appropriation or a change in place of use under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9);

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;

(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 – 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0001; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 380. Where a term is defined in more than one rule, the definition in this rule applies.

(1) “District” means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553 or a corporation organized under ORS Chapter 554.

(2) “Enlargement” means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) “Injury” or “Injury to an existing water right” means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) “Layered” means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) “ODFW” means the Oregon Department of Fish and Wildlife.

(6) “Point of appropriation” means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(7) “Point of diversion” means the place at which surface water is diverted from a surface water source as specified in the water right. It may

be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(8) “Primary water right” means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(9) “Protest” means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

(10) “Report of ownership and lien information” means a document prepared by a title company that includes current ownership, a legal description of the lands, identification of lien holders, and if a water right conveyance agreement has been recorded for the subject lands, a copy of the agreement and identification of the owner of the lands at the time the agreement was recorded.

(11) “Standing statement” means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

(12) “Supplemental water right or permit” means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(13) “Water right conveyance agreement” means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(14) “Water use subject to transfer” means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0005; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2100

Change in Point of Diversion or Point of Appropriation

(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, or certificate of registration modification under OAR chapter 690, division 382.

(2) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer.

(3) As provided in ORS 450.695(2), a water authority may change the points of diversion or appropriation or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion or appropriation from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and chapter 690, division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion or appropriation authorized by a water use permit, as defined in OAR 690-380-0100(14)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and chapter 690, division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion or appropriation for water right permits other than those covered under subsection (3)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 450.695 & 540.510 - 540.532

ADMINISTRATIVE RULES

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0015; WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0010; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2120

Change in Point of Diversion to Reflect Historical Use

(1) As provided in ORS 540.532, any individual who holds a water right certificate or decree may request a change in point of diversion or appropriation to reflect the historical use of water at a point of diversion or appropriation other than that described in the water right certificate or decree. The individual shall use the Department's water right transfer application form, clearly marked "Historic Change in POD," and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000.

(2) An individual requesting a change in the point of diversion or appropriation under section (1) of this rule shall provide to the Department the following additional information:

(a) Evidence that the actual, current point of diversion or appropriation for the water right in question has been in use for more than 10 years;

(b) A map meeting the requirements of OAR 690-380-3100, except that it need not be prepared by a certified water rights examiner. The map shall be of sufficient detail and clarity to identify the true point of diversion or appropriation including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion or appropriation as specified in the water right certificate or decree and the actual, current point of diversion or appropriation;

(c) Evidence that there has been no claim of injury prior to the request for the change in point of diversion or appropriation. The evidence shall include a statement from the local watermaster, based upon the watermaster's knowledge and Department records, that no complaint of injury has been made due to the use of water at the actual, current point of diversion or appropriation.

(3) On receipt of an application for a change in point of diversion or appropriation under section (1) of this rule, the Department shall:

(a) Provide the applicant a list of the affected water rights. The list shall include, but is not limited to:

(A) Any water right with an intervening point of diversion or appropriation;

(B) Any water right for use of stored water being delivered from an upstream reservoir to a downstream user;

(C) Any water right upstream from a significant inflow of water if the request moves the proposed point of diversion upstream, above the inflow, from the authorized point of diversion;

(D) Any water right downstream from a significant inflow of water if the request moves the proposed point of diversion downstream, below the inflow, from the authorized point of diversion;

(b) Provide the applicant a copy of a notice to be mailed or hand-delivered to the affected water right holders that:

(A) Describes the locations of the authorized and actual points of diversion or appropriation;

(B) States that the recipient on the notice may provide comments to the Department on whether the requested change in point of diversion or appropriation will cause injury; and

(C) Establishes a comment period of at least 30 days after the notice is mailed or hand-delivered to each of the affected water right holders;

(c) Consult with ODFW in the manner provided under OAR 690-380-5060; and

(d) Provide notice of the application in the weekly notice published by the Department.

(4) Upon receipt from the Department of the list of affected water rights and a copy of the notice, the individual shall determine the name and address of the current holder of each affected water right identified by the Department and shall mail or hand deliver the notice to all such holders. The individual shall provide to the Department written proof of service upon the water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the written proof of service and before the comment date specified in the notice, whichever is later.

(5) If, after considering any comments received, the Department finds the individual requesting a change in point of diversion or appropriation to reflect historical use satisfies the requirements under section (2) to (4) of this rule and that the change does not cause injury, the request shall be

approved. The order approving the change in point of diversion or appropriation shall establish a deadline for compliance with any conditions needed to prevent injury and, where required, to provide fish screening. If a certificate had previously been issued, the order shall cancel the certificate. The director shall issue a new certificate confirming the change in point of diversion or appropriation and preserving all other conditions of the water right.

(6) After the deadline for compliance with conditions of an approval established pursuant to section (5) of this rule, the use of water from the point of diversion or appropriation shall be subject to continued compliance with the conditions.

(7) As used in this rule, "individual" means a natural person and does not include a government body, organization, business enterprise, or other such entity.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.532

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0240; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2130

Change from a Surface Water Point of Diversion to a Ground Water Appropriation

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if:

(a) The criteria in OAR 690-380-5000 are met;

(b) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface source; and

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes basin ground water study area if:

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;

(b) The criteria in OAR 690-380-5000 are met;

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the

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original point of diversion shall apply at the new point of diversion authorized under the transfer.

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.

(9) The Department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury.

(10) For transfers allowed under this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6), except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.

(11) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Deschutes basin ground water study area" means the Deschutes River Basin drainage area indicated in OAR 690, division 505, Exhibit 1.

(12) The Department shall provide notice and review of transfer applications under section (3) of this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(13) Opportunities to protest a transfer under section (3) of this rule shall be pursuant to OAR 690-380-4030.

(14) The Department shall issue final orders on transfer applications under section (3) of this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, 540.530 & 540.531

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0210; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2200

Changes in Place of Use

No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer, permit amendment under ORS 537.211, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2260.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2240

Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a water use subject to transfer, a permit, or a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a transfer or permit amendment, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to transfer or amend a layered water use subject to transfer or permit should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A supplemental irrigation water right may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the supplemental right is to be moved.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2260

Exchanges of Water

(1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.

(2) After receipt of a complete exchange application, the Department shall give at least 30 days public notice of the application:

(a) By publication in the Department's weekly notice; and

(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks.

(3) Any person may submit comments by the date identified in the notices prescribed by subsections (2)(a) and (b) of this rule.

(4) After the comment period prescribed in section (2) of this rule, the Director shall:

(a) Issue a proposed order approving or denying the application in compliance with ORS 540.537 taking into account comments received under section (3) of this rule; and

(b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed order.

(5) If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentators to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.

(6) After the public hearing, the Commission may:

(a) Confirm the Director's decision and authorize issuance of a final order;

(b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or

(c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS 183.310 to 183.550.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2300

Changes in Character of Use

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and 540.520(8) and (9) or as approved by the Department through a water right transfer, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2340.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2330

Substitution of Supplemental Ground Water Right for Primary Surface Water Right

(1) As provided in ORS 540.524, the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the use of the supplemental water right for the

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primary water right. This rule does not authorize a change in place of use, character of use, point of diversion or point of appropriation.

(2) A substitution may not be made under section (1) of this rule if the use of the supplemental ground water right results in an enlargement of the primary surface water right.

(3) An application shall be submitted on a form provided by the Department with the appropriate fee as established under ORS 536.050. The Department may request additional information if necessary to assist with the injury evaluation.

(4) Upon receiving an application, the Department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520(5) to (7) and OAR 690-380-4000 to 690-380-4200.

(5) The Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury, the Director shall prohibit or condition the use to avoid or mitigate the injury. The Director shall issue an order approving or denying the substitution within 90 days after the Department receives an application under section (1) of this rule.

(6) For the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental ground water right shall be treated as a primary water right.

(7) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this rule may be terminated upon a request by the water right holder or by an order of the Director if the Director determines that the use of the ground water as the primary water right causes injury. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2420

Notice of Merger, Consolidation or Formation of a Water Authority

(1) Municipal water supply entities that merge, consolidate or form a water authority may notify the Department of such action and request issuance of superseding certificates pursuant to sections (2) and (3) of this rule. The notice and request for issuance of superseding certificates shall include the following:

(a) A listing of the entities in the merger, consolidation or formation of a water authority;

(b) A copy of the documents filed with the city, county or state authorities approving such action;

(c) A copy of the cooperative agreement, or other evidence, between the authority and the county or other authority granted coordinative functions under ORS Chapter 197 showing consistency with local comprehensive plans;

(d) A listing of the certificated water rights by number of all water rights for the usual municipal purposes of all entities involved;

(e) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the points of diversion or appropriation;

(f) The name and address of the authority authorized to conduct business; and

(g) A written request that new water right certificates be issued to the authority.

(2) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue superseding certificates confirming the resulting municipal use of water, showing the place of use within the legal description of the service boundaries of the new entity as it was officially formed.

(3) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue certificates to supersede the certificates that were issued before a merger, consolidation or formation of a water authority. Superseding certificates describing the place of use shall be issued to the authority.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0150; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2430

Acquisition of Water Rights by a Water Authority

(1) In addition to using the process described in OAR 690-380-2420, a water authority may acquire water rights from a municipality, a domestic water supply district, an irrigation district, a drainage district, a water improvement district, or a water control district.

(2) A water authority that acquires a water right may:

(a) Exercise the right subject to the limitations in section (4) of this rule if the right is for municipal purposes;

(b) Submit a request for issuance of a superseding certificate that includes the information described in section (3) of this rule if the right is a certificated right for municipal use;

(c) Submit a water right transfer application to change the character of use if the right is subject to transfer; or

(d) Submit a water right transfer application to change the point of diversion or appropriation if the right is a permit or a right subject to transfer.

(3) A request for issuance of a superseding certificate submitted pursuant to subsection (2)(b) of this rule shall be in writing and include:

(a) The name and address of the water authority;

(b) The certificate number of the water right acquired by the water authority; and

(c) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the existing points of diversion or appropriation for the right.

(4) The Director may restrict the use of water by a water authority to the lands described by previous water use authorizations or, in consultation with the water authority, may impose other restrictions on the use as needed to eliminate the interference with or impairment of prior vested water rights.

(5) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR chapter 690, division 300.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0130; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3000

Application for Transfer

Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on permit, certificate, decree or proof of appropriation.

(4) Name of decree and certificate number, if applicable.

(5) Permit number and certificate number, if applicable.

(6) Source of water (from permit, decree or certificate).

(7) Date of priority.

(8) The existing and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.

(9) The authorized existing use of water.

(10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.

(11) The authorized place of use identified by its location within the public land survey and tax lot number.

(12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:

(a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:

(A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;

(B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or

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(C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or

(b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-380-4010(4) and prior to Department approval of the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-4010(5);

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant. Such an entity may only apply for a transfer under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(14) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(15) The proposed use of water.

(16) The proposed place of use shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-380-3100.

(19) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(20) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(21) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected water right is located or that serves the right and any district in which the affected water right would be located or that would serve the right after the proposed transfer.

(22) An oath that the information contained in the application is true and accurate.

(23) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

(24) The signature of the applicant, and if an entity, the title of the person signing the form.

(25) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-3400.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.531

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 1-2000(Temp), f. 5-16-00, cert. ef. 5-16-00 thru 11-10-00; Administrative correction 6-21-01; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0060; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3100

Map Requirements

(1) A map shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) Except as otherwise provided under OAR chapter 690, division 380 or 382, the map shall be prepared by a certified water right examiner.

(b) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(c) The preferred map size is 8-1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) may be used.

(d) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if three copies of the application map and an electronic file of the map in a format approved by the Department are submitted.

(e) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(f) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(g) The map shall be plotted to the accuracy consistent with the map scale.

(h) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(i) If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.

(j) If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, and a clear legend;

(b) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original;

(c) The location of each existing and proposed point of diversion or appropriation;

(d) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;

(e) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;

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(f) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(g) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(h) Notwithstanding the requirements of subsection (1)(g), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;

(i) Notwithstanding the requirements of subsection (1)(g), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(j) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0070; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3200

District May Submit Application for Water Users

(1) A district, authorized to act on behalf of its members, may apply for a water right transfer under the provisions of ORS 540.520. If the proposed change is for other than a change in point of diversion or appropriation, the application shall contain a notarized statement from the owner of the right authorizing the proposed change.

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR chapter 690, division 385.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0020; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3220

Separate Application Required for Each Water Right

For changes involving more than one landowner or water use subject to transfer, a separate transfer application is required for each water use subject to transfer from each landowner involved, except under the following circumstances:

(1) A change in point or points of diversion or appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships.

(2) A change in use or place of use of all rights on a single parcel from all sources.

(3) A change in use or place of use from as many as four land owners may be allowed within a district. Such a change must be for the same water right and not total more than 10 acres transferred.

(4) Transfers between two parcels using water from the same source.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-89; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0035; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0025; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4000

Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any

fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4010

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be denied, the preliminary determination shall:

(a) Describe the basis for the denial; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information to demonstrate that the applicant is authorized to pursue the transfer:

(a) A report of ownership and lien information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant that has been prepared within the prior three months;

(b) A copy of a written notification of the proposed transfer provided by the applicant to all lien holders on the subject lands unless the report on ownership and lien information shows that a water right conveyance agreement has been recorded for the subject lands; and

(c) If the landowner identified in the report of ownership and lien information is not the applicant, a notarized statement consenting to the transfer by the landowner identified in the report or an authorized representative of the entity to whom the interest in the water right has been conveyed as identified in a water right conveyance agreement or other documentation demonstrating that the applicant is authorized to pursue the transfer in the absence of the consent of the landowner.

(6) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(7) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

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690-380-4020

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the transfer application and preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

(2) The notice shall include the following information about the application:

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required under OAR 690-380-4000;

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the right to be transferred, and the authorized source for the right;

(c) The application file number;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) As provided in ORS 540.520(5), the cost of publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)(b) and providing the Department with an affidavit of publication or by paying the costs of the publication in advance to the Department.

(4) On issuance of the preliminary determination, the Department shall mail to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice. The Department shall allow the applicant a period of not fewer than 45 days after mailing of the preliminary determination to provide the Department with the affidavit required under section (3) of this rule.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use;

(b) A change in point of diversion or appropriation to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or

(c) Applications for a change in the point of diversion or appropriation of less than one-fourth mile and where there are no intervening diversions or wells between the old point of diversion or appropriation and the proposed new point of diversion or appropriation.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) If the applicant fails to provide the Department with the affidavit required under section(3) of this rule within the period allowed under section (4) of this rule, the Department shall request written notification that the applicant either:

(a) Published the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant published the notice, the applicant shall include the affidavit required under OAR 690-380-4020(3); or

(b) Requests the Department to publish the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant requests the Department to publish the notice, the applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs not to exceed twenty (20) percent.

(8) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice if the applicant fails to respond with the required information within 30 days after the Department mails a request under section (7) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520 & 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0080; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4030

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later:

(a) Any person may file, jointly or severally, with the Department, a protest or standing statement; and

(b) If the Department's preliminary determination is that a proposed change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050.

(2) A person filing a protest under this rule must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-380-4020(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-380-0100(11) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183.310 - 183.550, 536.050 & 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0085; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4200

Hearings

(1) If a protest is filed under OAR 690-380-4030, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

(b) If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

(3) If after hearing the Department issues a proposed final order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of OAR 690-380-5030 to 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5000

Approval of Transfers

(1) A transfer application shall be approved if the Department determines that:

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14) and, for a right described under OAR 690-380-0100(14)(d), the proof of completion has been approved under OAR 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;

(c) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);

(d) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in OAR 690-380-0100(3); and

(e) Any other requirements for water right transfers are met.

(2) Except as otherwise provided in OAR 690-380-4020(8), the Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 if no protests or notifications of intent are received under OAR 690-380-4030(1).

Stat. Auth.: ORS 536.025 & 536.027

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Stats. Implemented: ORS 540.510 - 540.532
Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0050; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5030

Approval of Injurious Transfers

The Department may approve a transfer of a point of diversion or appropriation that would injure another water right if:

(1) For any water right other than an instream water right, the applicant files an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040, and

(2) For any instream water right held by the Department pursuant to ORS 537.336 or 537.346, the Department consents to the change after complying with the provisions of OAR 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5040

Affidavits of Consent

An affidavit consenting to a proposed change in point of diversion under OAR 690-380-5030(1) shall be notarized and shall include statements that the affiant:

(1) Is the holder of a water right that the Department has determined would be injured;

(2) Has reviewed the preliminary determination or proposed order of the Department concluding the transfer would result in injury and recognizes the nature of the injury;

(3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and

(4) Consents to the injury resulting from the proposed change in point of diversion or appropriation.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5100

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for transfers except as specified in OAR 690-005-0025 and 690-380-3000(19).

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in OAR 690-005-0040 (Resolution of Land Use Dispute).

(3) The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-380-4000.

Stat. Auth.: ORS 197, 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.531

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0057; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5110

Original Right Terminated

Approval of a change in use or place of use terminates the right to use water for the existing character of use or place of use under the original water right as described in the transfer application form required under OAR 690-380-3000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0040; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5120

Multiple Primary Water Rights on the Same Lands

If the water right records show two or more irrigation rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0045; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5140

Time for Completion

(1) The Department shall fix a time limit in the order authorizing a change of character of use, place of use or point of diversion or appropriation within which the approved changes may be completed.

(2) Extensions of time to complete a transfer may be granted pursuant to OAR 690-380-6020.

(3) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1). The time for completion of the change requested in a transfer application is one full year plus the time until the next October 1. The time for completion of the change of a municipal or quasi-municipal right is five years plus the time until the next October 1. A longer time for completion may be allowed if the applicant can justify the need for a longer period of time.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0087; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-6010

Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon approval of a change in use or place of use, the water use subject to transfer is considered inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not applied to beneficial use under the terms of the transfer order for change in use or place of use, or within any extension of time allowed for completion, is lost.

(3) Non-completion of a change in point of diversion or appropriation does not forfeit the water use subject to transfer. However, upon expiration of the time allowed for completion, the water use shall again become subject to forfeiture pursuant to the provisions of ORS 540.610.

(4) For a change in point of diversion or appropriation, the claim of beneficial use shall identify the lands served by the new point of diversion or appropriation using:

(a) The existing final proof survey map for the right of record; or

(b) Another map prepared in accordance with OAR chapter 690, division 14.

(5) A new application is required to change the point of diversion or appropriation to a new location not authorized by the order.

(6) If the change in point of diversion or appropriation is not completed, the point of diversion or appropriation shall revert to the last authorized point of diversion or appropriation prior to the transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0090; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-6030

Proof Of Use; Noncompliance

(1) For transfers requested prior to July 10, 1987, at such time given in the order approving the transfer for complete application of water, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.

(2) Transfers requested on or after July 10, 1987 shall have a Claim of Beneficial Use report and map prepared by a certified water right examiner in accordance with OAR chapter 690, division 14.

(3) If any property described in the order approving the transfer application is not included in the request for a water right certificate, the owners of the transfer shall provide to the Department the name and address of the landowner of that property.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0110; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-8000

Temporary Transfers

Any person who holds a water use subject to transfer may request that the Department approve:

(1) For a period of not to exceed five years, a temporary transfer of:

(a) Place of use and, if necessary to convey the water to the new temporary place of use, point of diversion or appropriation; or

(b) Character of use of a right to store water, or

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(2) For a period of not to exceed 25 years, a temporary transfer in the Deschutes River Basin of place of use, type of use, and point of diversion or appropriation if necessary to convey water to the new temporary place of use, of all or a portion of a water right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.520 & 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0300; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-8020

Supplemental Water Rights

(1) When an application for a temporary transfer of the place of use is filed with the Department, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. The applicant shall also indicate whether the supplemental water right or permit is intended to be temporarily transferred with the primary water right or to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

(2) If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant shall include the information required under OAR 690-380-3000 and 690-380-8000 for the supplemental water right or permit.

(3) If an existing supplemental water right or permit is not included in the temporary transfer application, the Department shall notify the applicant and the landowner, as identified under OAR 690-380-3000(14), that the order approving the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(4) The notice shall contain the following:

(a) A description of the supplemental water right or permit and the land to which it is appurtenant;

(b) A statement that the applicant and landowner, as identified under OAR 690-380-3000(14), has 30 days, from the date of the notice, to either modify the application to include the supplemental water right, or withdraw the application;

(c) A statement that, unless the applicant complies with subsection (4)(b) of this rule, the order approving the application for the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(5) If the application is withdrawn, the Department shall keep the examination fee, and shall refund any other fees submitted with the application.

(6) If the application is not modified or withdrawn, the director shall enter an order approving the temporary transfer of the primary water right and not allowing the exercise of the supplemental water right until the primary water right reverts to the original water use.

(7) The Department shall not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in injury or enlargement.

(8) If the Department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the Department shall notify the applicant of the Department's intent not to allow the temporary transfer of the supplemental water right or permit before the Department issues the order approving the temporary transfer of the primary water right. The notice shall inform the applicant that the supplemental water right or permit shall remain appurtenant to the land described in the application, but may not be exercised until the primary water right reverts to the original water use.

(9) If the primary water right does not revert soon enough to allow the use of water under the supplemental water right within five years, the supplemental water right shall become subject to cancellation for nonuse under ORS 540.610.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0320; WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0010

Purpose

(1) The rules in OAR Chapter 690, Division 382 establish the requirements and procedures to be used by the Department to evaluate an application to modify a ground water certificate of registration. The rules describe the requirements for changing the point of appropriation, place of use, or character of use of a certificate of registration.

(2) No change in point of appropriation, place of use, or character of use of a certificate of registration may be made except as provided under these rules and OAR Chapter 690, Division 380.

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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR Chapter 690, Division 382. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground water registration.

(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;

(b) Increasing the acreage irrigated under a certificate of registration;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of appropriation than is legally available to that certificate of registration at the original point of appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right or certificate of registration.

(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.

(7) "Report of ownership and lien information" means a document prepared by a title company that includes current ownership, a legal description of the lands, identification of lien holders, and if a water right conveyance agreement has been recorded for the subject lands, a copy of the agreement and identification of the owner of the lands at the time the agreement was recorded.

(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.

(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(10) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025; 536.027, 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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0200

Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered

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water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a registration modification, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to modify a layered certificate of registration should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A certificate of registration that the applicant designates as being for supplemental irrigation use may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the certificate of registration is to be moved.

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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0300

Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered.

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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0400

Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on the certificate of registration.

(4) Certificate of registration number for the registration to be modified.

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.

(6) Source of water as described on the certificate of registration.

(7) Date of priority.

(8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The authorized and proposed use of water, if applicable.

(10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(13) For a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground water body developed or proposed to be developed.

(14) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

(15) An oath that the information contained in the application is true and accurate.

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in OAR 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(17) The signature of the applicant, and if an entity, the title of the person signing the form.

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, \$350.

(b) For examination of all other applications to modify a certificate of registration, \$500.

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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0450

Existing Documentation of Modifications

If documentation of a modification under a ground water registration was on file with the Department prior to July 22, 2005, the Department shall provide an application for recognition of the modification described in the notice priority with respect to processing other applications for recognition of ground water registration modifications. An application filed under OAR 690-382-0400 may incorporate by reference information about the modification that is on file with the Department.

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)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

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690-382-0500

Fee Refunds

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the Department's recognition of the modification, the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(17)(b).

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0600

Request for Comments

(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required by OAR 690-382-0400.

(2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete, the Department shall file the application and request public comments on the application:

- (a) In the weekly notice published by the Department; and
- (b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025; 536.027, 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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0700

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-382-0600(4), the Department shall prepare a preliminary determination of whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

- (a) The proposed modification would result in enlargement;
- (b) The proposed modification would result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;
- (c) The proposed modification would result in injury; and
- (d) Any other requirements for registration modifications are met.

(3) For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:

- (a) Describe the basis for the Department's conclusions; and
- (b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be included in the modification, or to withdraw the application.

(5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information to demonstrate that the applicant is authorized to pursue the modification:

(a) A report of ownership and lien information as defined in OAR 690-382-0100(7) for the land to which the water right is appurtenant that has been prepared within the prior three months;

(b) A copy of a written notification of the proposed modification provided by the applicant to all lien holders on the subject lands unless the report on ownership and lien information shows that a water right conveyance agreement has been recorded for the subject lands; and

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership and lien information:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership and lien information or who are authorized representatives of an entity to whom the interest in the water right has been conveyed as identified in a water right conveyance agreement; or

(B) Documentation demonstrating that the applicant is authorized to pursue the modification in the absence of the consent of the persons named on the certificate of registration or the assignee and the owner of the lands to which registration is appurtenant.

(6) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.

(7) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0800

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the application to modify the registration and the preliminary determination:

- (a) By publication in the Department's weekly notice;
- (b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

(2) The notice shall include the following information about the application:

- (a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required OAR 690-382-0600;
- (b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the registration to be modified, and the authorized source for the registration;
- (c) The registration and certificate numbers;
- (d) The applicant's name and address;
- (e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;
- (f) A summary of the Department's preliminary determination; and
- (g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) The cost of publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)(b) and providing the Department with an affidavit of publication or by paying the costs of the publication in advance to the Department.

(4) On issuance of the preliminary determination, the Department shall mail to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice. The Department shall allow the applicant a period of not fewer than 45 days after mailing of the preliminary determination to provide the Department with the affidavit required under section (3) of this rule.

(5) No notice by publication in a newspaper is required for:

- (a) A change in place of use; or
- (b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny recognition of the modification if the applicant fails to provide the Department with the affidavit required under

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section (3) of this rule within the period allowed under section (4) of this rule.

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0900

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.

(2) A person filing a protest must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-382-0100(8) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1000

Recognition of Modifications

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements for modification of the certificate of registration are met.

(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in OAR 690-382-0700 if no protests are received under OAR 690-382-0900.

(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.

(4) The order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1100

Hearings

(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:

(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;

(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or

(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.

(2) Notice and conduct of the hearing shall be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise.

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)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1200

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-0070(13).

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in OAR 690-005-0040 (Resolution of Land Use Dispute).

(3) The Director may presume that the certificate modification would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-382-0800.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)
Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (ch. 614, 2005 Oregon Water Laws)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

Rule Caption: Updated rules related to contested case hearings and rulemaking; adopted rules for public records requests.

Adm. Order No.: WRD 6-2006

Filed with Sec. of State: 10-6-2006

Certified to be Effective: 10-6-06

Notice Publication Date: 5-1-06

Rules Adopted: 690-002-0075, 690-002-0190, 690-003-0100, 690-003-0120, 690-003-0140, 690-003-0160, 690-003-0180, 690-003-0200, 690-003-0220, 690-003-0240

Rules Amended: 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

Rules Repealed: 690-001-0003, 690-002-0040, 690-002-0050, 690-002-0060, 690-002-0080, 690-002-0090, 690-002-0100, 690-002-0110, 690-002-0120, 690-002-0130, 690-002-0140, 690-002-0150, 690-002-0160, 690-002-0170, 690-002-0180

Subject: The Water Resources Commission adopted rules related to rulemaking to reflect the latest version of the Attorney General's Uniform Rules (OAR Chapter 690, Division 1), and to update rules related to contested case hearings to be consistent with the Attorney General's Model Rules of Procedure (OAR Chapter 690, Division 2). The Commission also adopted rules related to requests for public records and the processing of those requests (OAR Chapter 690, Division 3).

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-001-0000

Notice

Prior to the adoption, amendment, or repeal of any permanent rule by the Water Resources Commission or the Water Resources Department, the Department must give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(2) By mailing or electronic mailing a copy of the notice and a copy of the rule or an explanation of how the person or organization may acquire a copy of the rule to persons and organizations on the Water Resources Department's mailing list established pursuant to ORS 183.335(8) at least 28 days prior to the effective date;

(3) By mailing or electronic mailing to the persons specified in ORS 183.335(15) at least 49 days before the effective date; and

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(4) By mailing or electronic mailing a copy of the notice to the following persons, organizations, or publications at least 28 days before the effective date:

- (a) Associated Press;
- (b) Persons and organizations that filed a written request for such notice with the Department; and
- (c) Cities, counties, and local planning agencies likely to be directly affected by the proposed rule.

(5) In lieu of providing a copy of the rule or rules as proposed, the Department may provide a summary of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the Department posts the rule or rules on a web site, the Department must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link in the rule summary will not affect the validity of any rule.

(6) Persons who have requested from the Department notices of proposed rulemakings may choose to receive notices by mail rather than receive the notices electronically.

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.335, 183.341

Hist.: WRD 1, f. & ef. 11-25-75; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 2-1994, f. & cert. ef. 3-4-94; PAR 9-2006, f. & cert. ef. 10-9-06; WRD 6-2006, f. & cert. ef. 10-6-06

690-001-0005

Uniform and Model Rules of Procedure, Adoption

The Water Resources Commission adopted the January 1, 2006 edition of the Attorney General's Uniform and Model Rules of Procedure. The Water Resources Department and the Water Resources Commission must follow the Uniform and Model Rules in all matters, except where a different procedure is prescribed by statute.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the agency.]

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.341

Hist.: WRD 3, f. & ef. 2-18-77; WRD 2-1978, f. & ef. 5-1-78; WRD 8-1978, f. & ef. 10-18-78; WRD 1-1980, f. & ef. 1-9-80; WRD 2-1982, f. & ef. 1-22-82; WRD 1-1984, f. & ef. 2-1-84; WRD 6-1986, f. & ef. 11-12-86; WRD 9-1988, f. & cert. ef. 8-5-88; WRD 15-1990, f. & cert. ef. 8-23-90; WRD 2-1992, f. & cert. ef. 2-10-92; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1994, f. & cert. ef. 1-14-94; WRD 1-1999, f. & cert. ef. 2-5-99; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0000

Scope and Purpose

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in this Division (division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR chapter 690 and statutory provisions govern entitlement to a contested case hearing.

Stat. Auth.: ORS 183, 536.027 & 536.029

Stats. Implemented: ORS 183, 536.027 & 536.029

Hist.: WRD 4-1983, f. & ef. 8-10-83; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-075-0000; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0010

Definitions

The following definitions apply to OAR chapter 690, division 002:

(1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Water Resources Department.

(5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and the address to which the document was mailed.

(6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing. Where provided or required by applicable law, a "protest" may include a request for contested case hearing. Except as provided in ORS 543.230, a protest must be in writing.

(7) "Protestant" means any person filing a protest against an action or proposed action.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.310 - 183.497 & 536 - 543

Hist.: WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0020

Authorized Non-Attorney Representation

A party or limited party participating in a contested case hearing may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-003-0555 of the Attorney General's Model Rules.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341 & 183.457

Hist.: WRD 8-1987(Temp), f. 8-27-87, ef. 8-25-87; WRD 1-1988, f. 1-19-88, cert. ef. 2-23-88; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-002-0001; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0023

Agency Representation by Officer or Employee

As authorized by the Attorney General pursuant to ORS 183.452, Department officers and employees may appear and participate on behalf of the Department and Commission in the following types of contested case hearings:

(1) Civil penalty hearings under ORS 537.792 and OAR chapter 690 division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;

(2) Civil penalty hearings under ORS 536.900 and OAR chapter 690 division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;

(3) Protested water use applications under ORS 537.170 or 537.622 and OAR Chapter 690 Divisions 77 or 310;

(4) Protested conversions of minimum perennial streamflows to instream water rights under OAR chapter 690 division 77;

(5) Requests for reservations of water for future economic development under OAR chapter 690 division 79;

(6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;

(7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;

(8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;

(9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under ORS 537.211;

(10) Non-FERC hydro projects under OAR 690 division 51 and ORS chapters 543 and 543A;

(11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;

(12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and

(13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 183.452 & 536 - 543

Hist.: WRD 7-1996, f. & cert. ef. 7-23-96; WRD 2-2000, f. & cert. ef. 5-26-00; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0025

Time for Filing Protests or Requests for Hearing

(1) Pursuant to the Model Rules of Procedure, a protest is timely filed only if:

(a) The protest is filed by the applicable deadline as described in OAR 137-003-0520(8); and

(b) The protest includes any statutorily required fees.

(2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a request for hearing is considered filed only when actually received by the Department.

(3) A person may not file a protest or request for hearing by electronic mail.

Stat. Auth.: ORS 183.341, 536.025, 536.027

Statutes Implemented: ORS 183.341 & 536 - 543

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0030

Form and Content of Protest

(1) Except as otherwise provided in ORS chapter 537 and OAR 690 divisions 77 and 310 relating to applications for water rights, in ORS chapter 543 relating to hydroelectric projects, and in OAR 690, division 17

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relating to cancellation of perfected and developed water rights, a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, and include any statutory filing fee. A protest must contain a detailed statement of:

(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;

(b) The specific relief or action requested;

(c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; and

(d) Citation of legal authority or basis for the claim or relief asserted or requested.

(2) Proof of service upon the person or persons whose rights or applications are protested shall be attached to the original protest, unless the protestant is the sole applicant for or holder of the right.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 536 - 543

Hist.: WRD 4-1978, f. & ef. 5-22-78; WRD 8-1978, f. & ef. 10-18-78; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-001-0010; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0035

Requests for Standing in Matters Involving Applications Made under ORS Chapter 537

(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing by complying with OAR 690-310-0160.

(2) Any person who has filed a request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(3) If no protest is filed, and the department does not change the proposed final order, the director must refund the standing fee.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0075

Scope of Hearing

The issues to be considered in a contested case hearing are limited to issues timely raised by the parties in any protests, requests for hearing or requests for standing, and as identified by the administrative law judge as allowed by applicable law.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 536 - 543

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0105

Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622

(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6), and OAR 690-002-0035 may file a request to participate as parties or limited parties in the contested case hearing in which standing was obtained following the procedures in OAR 137-003-0535.

(2) In contested cases conducted pursuant to ORS 537.170 or 537.622, the Administrative Law Judge may only allow persons who have timely filed a request for standing to intervene in the case pursuant to OAR 137-003-0535.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 537.170, 537.622

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0175

Exceptions to Proposed Orders

(1) If the recommended action in the proposed order is adverse to any party to the Department, the party or Department may file exceptions and present argument to the Department. Exceptions must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission policies to which modifications are sought.

(2) Parties must file their exceptions with the Department at its Salem offices, by any method allowed in the notice of appeal rights provided in the proposed order.

(3) A party must file any exceptions within 30 days following the date of service of the proposed order on the parties to the contested case proceeding.

(4) Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order.

(5) If the applicable law provides for the Commission to review any exceptions or issue the final order, the Commission may form a subcommittee to review the exceptions and provide a report prior to the Commission issuing a final order.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 183.470 & 536 - 543

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 2-2000, f. & cert. ef. 5-26-00; WRD 6-2006, f. & cert. ef. 10-6-06

690-002-0190

Exceptions to Final Orders

(1) Any party to a contested case hearing held pursuant to ORS 537.170 or 537.622 may file exceptions to a final order.

(a) Parties must file their exceptions with the Department at its Salem offices, by any method allowed in the notice of appeal rights provided in the final order.

(b) The party must file any exceptions within 20 days following the date of service of the final order on the parties to the contested case proceeding.

(2)(a) If a party files an exception to a final order, the Department must refer the exceptions to the Commission.

(b) The Commission must consider the party's arguments contained in its exceptions filed pursuant to subsection (a), and may allow and consider oral arguments by all parties to the contested case hearing, prior to issuing a final order on exceptions.

(c) The Commission may form a subcommittee to review the exceptions and provide a report to the Commission.

(3) Where exceptions are timely filed to the final order, within 60 days from the close of the exception period, the Commission must either issue a modified final order or deny the exceptions and affirm the final order.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Statutes Implemented: ORS 183.341, 537.173 & 537.626

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0100

Purpose

Increased public involvement in and awareness of water resource issues have placed greater demands on viewing and copying Department records. These rules guide Department implementation of the public records law, ORS 192.410 to 192.505, including Department recovery of its actual costs of making public records available and copying services under ORS 192.440. Furthermore, these rules serve to ensure that all Department public records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.410 - 192.505, 536.040 & 536.480

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0120

Scope

(1) With some exceptions prescribed by law, every person has the right to inspect public records of a state agency, including the Department. The Department may take reasonable measures to ensure the integrity of public records and to maintain office efficiency. Public access to view and copy public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule.

(2) These rules do not apply to a person who obtains Department public records by using a Department computer, or any other computer, to download public records from the Department's web page.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Statutes Implemented: ORS 183.341, 537.173 & 537.626

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0140

Requests to Review or Obtain Copies of Public Records

(1) The right to review public records includes the right to review the original public record where practicable. The requestor does not have a right to personally locate the public record or to review portions of the public record that are exempt from disclosure pursuant to ORS 192.501 to 192.505.

(2) Requests for Department public records should be as specific as possible including, as appropriate, the type, number, subject matter and approximate date of the public record. If the public records request is unclear, the Department may request further clarification of the request. If the Department cannot identify specific public records responsive to a public records request, the Department may provide general files or distinct sections of public records that are likely to contain the requested public records.

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(3) The Department may require a person making a public records request to submit the request in writing, which may be satisfied by submitting the request by electronic mail.

(4) All requests to inspect or copy records other than maps, well logs or water right information available through the Department's web page must be made to the public records officer in the headquarters office.

(5) As appropriate, staff at the Department's field offices will provide public records to a requestor in response to a public records request, unless the volume of the request exceeds the office's capacity to provide public records in a timely manner. If a field office is unable to provide requested public records in a timely manner, the Salem office will provide the public records in response to the public records request.

(6) The Department will accommodate public records requests as follows:

(a) The Department will establish hours during which the public may review the Department's public records.

(b) Pursuant to ORS 192.430(1) and this rule, the Department will designate and provide a supervised space, if available, for viewing public records. This space will accommodate at least one reviewer at a time.

(c) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) The Department's ability to accommodate in-person public requests may be limited by staff and equipment availability. Additionally, prior to making public records available for public review, the Department will ascertain whether the public record requested is exempt from public disclosure under ORS chapter 192 and other applicable law. Based on these limitations, Department staff may require appointments to view and copy public records.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.420, 192.430, 536.040 & 536.480

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0160

Costs for Public Record Review and Copying

(1) The Department may charge a fee for copies of requested public records and certifying public records. The fee will be the fees required by ORS 536.050, or for any copying fees not identified in ORS 536.050, the Department will establish and charge a fee reasonably calculated to reimburse the Department for the actual costs of providing copies of the public records.

(2) An hourly rate may be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to exclude exempt material, supervising the inspection of records, certifying records, mailing records or otherwise responding to the public records request. An hourly rate will not exceed the actual hourly compensation and other payroll expenses of the person performing the tasks for which the rate is charged. The Department may charge for the cost of searching for public records regardless of whether the Department was able to locate the requested public record.

(3) If necessary to respond to a public records request, the Department may request the Department of Justice Attorney General review the public records to exclude material exempt from disclosure. The Department will assess a charge for this process at the hourly rate charged by the Department of Justice.

(4) Payment for public records requests may be made in the form of cash, check, or money order. Make checks and money orders payable to "Oregon Water Resources Department-Public Records Request." Persons may pay fees for public records requests by credit card, if that service becomes available.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.440, 536.050 & 536.480

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0180

Department Response to Public Records Requests

(1) Prior to responding to a public records request, the Department will provide the requestor with a written estimation of the fee for responding to the request. The Department may provide the estimation by electronic mail. If the estimated fee exceeds \$25, the Department will not continue to process the public records request until it has received a confirmation in writing or by electronic mail to proceed with the response.

(2) The Department may require prepayment of the estimated charges. If the actual charges are less than the prepayment, the overpayment will be refunded to the requestor. If the actual charges are more than the prepayment, the Department will require payment of the additional charges before providing the requested public records. If the Department deter-

mines that the actual charge will exceed the estimated charge by more than \$25, the Department will notify the requestor before completing the response.

(3) Whenever feasible, the Department will provide double-sided copies of requested public records, and the fee for a double-sided copy will be the same as the cost of a single page.

(4) Copies of requested electronic public records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of public records. Public access to Department computer terminals is allowed where such terminals are available; however, the public may not access Department databases in any manner that may allow the databases or records in the databases to be modified or deleted.

(5) The Department will respond to a public records request within 15 working days after receiving a written request in its Salem office, unless the volume of public records requested, staff availability to respond to the public record request, the difficulty in determining whether any of the public records are exempt from disclosure, or the necessity of consulting with legal counsel make this deadline unreasonable. If the Department determines that it will require more than 15 working days to respond to a public records request, it will inform the requestor of the estimated time necessary to comply with the public records request.

(6) In order to protect the integrity of Department public records, the Department will not allow public records to be loaned or taken off-premises by any person, except Department staff, to fulfill a public records request.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.440, 536.050 & 536.480

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0200

Certification of Copies of Records

Certification of both hard copies and electronic copies of records will be provided for the fee identified in ORS 536.050. The Department will certify only that on the date copied, the copy was a true and correct copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.440 & 536.480

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

690-003-0220

Fee Waivers and Reductions

(1) There will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice of a meeting; or

(b) When the material requested has been distributed through mass mailing and is readily available to the Department at the time of request.

(2) There may be no charge for Department responses to public records requests made by a local, state, or federal governmental entity or a representative of a governmental entity acting in a public function or capacity unless any of the following factors apply:

(a) Fulfilling the request will cause financial hardship on the Department;

(b) The time or expense will interfere with the Department's regular business;

(c) The Department determines the volume of the public records requested is excessive; or

(d) The public records request will require the Department to segregate exempt from non-exempt public records.

(3) The Department may grant a request for a waiver or reduction of public records review or reproduction charges in some circumstances. A person making a public records request may submit a written request for a waiver or reduction of the charges. The request must demonstrate that the public records request is in the public interest because making the public record available primarily benefits the general public.

(a) If the Department finds the request satisfies the public interest test, it will determine whether to deny or grant the fee waiver or reduction, either in whole or in part.

(b) If the Department denies a request for a fee waiver or reduction, the requestor may petition the Attorney General or district attorney under the process provided under ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.440 & 536.480

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

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690-003-0240

Exempt Public Records

All records prepared, owned, used or retained by the Department are public records subject to disclosure unless exempt from disclosure under ORS chapter 192 or other applicable law. If the Department determines that all or part of a requested public record is exempt from disclosure, the Department will notify the requestor in writing and will state the reasons why the Department considers the public record exempt from disclosure.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.445 - 192.502

Hist: WRD 6-2006, f. & cert. ef. 10-6-06

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125-045-0110	6-1-06	Repeal	6-1-06	125-246-0100	5-31-06	Amend	7-1-06

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125-246-0130	5-31-06	Amend	7-1-06	125-247-0610	5-31-06	Amend	7-1-06
125-246-0140	5-31-06	Amend	7-1-06	125-247-0630	5-31-06	Amend	7-1-06
125-246-0150	5-31-06	Amend	7-1-06	125-247-0690	5-31-06	Adopt	7-1-06
125-246-0170	12-22-05	Amend(T)	2-1-06	125-247-0691	5-31-06	Adopt	7-1-06
125-246-0170	5-31-06	Amend	7-1-06	125-247-0700	5-31-06	Amend	7-1-06
125-246-0210	5-31-06	Amend	7-1-06	125-247-0710	5-31-06	Amend	7-1-06
125-246-0220	5-31-06	Amend	7-1-06	125-247-0730	5-31-06	Amend	7-1-06
125-246-0300	5-31-06	Amend	7-1-06	125-247-0731	5-31-06	Adopt	7-1-06
125-246-0310	5-31-06	Amend	7-1-06	125-247-0740	5-31-06	Amend	7-1-06
125-246-0321	5-31-06	Amend	7-1-06	125-248-0100	5-31-06	Amend	7-1-06
125-246-0322	5-31-06	Amend	7-1-06	125-248-0110	5-31-06	Amend	7-1-06
125-246-0323	5-31-06	Amend	7-1-06	125-248-0120	5-31-06	Amend	7-1-06
125-246-0330	5-31-06	Amend	7-1-06	125-248-0130	5-31-06	Amend	7-1-06
125-246-0335	5-31-06	Amend	7-1-06	125-248-0200	5-31-06	Amend	7-1-06
125-246-0345	5-31-06	Amend	7-1-06	125-248-0210	5-31-06	Amend	7-1-06
125-246-0350	5-31-06	Amend	7-1-06	125-248-0220	5-31-06	Amend	7-1-06
125-246-0353	5-31-06	Amend	7-1-06	125-248-0230	5-31-06	Amend	7-1-06
125-246-0355	5-31-06	Amend	7-1-06	125-248-0240	5-31-06	Amend	7-1-06
125-246-0360	5-31-06	Amend	7-1-06	125-248-0250	5-31-06	Amend	7-1-06
125-246-0400	5-31-06	Amend	7-1-06	125-248-0260	5-31-06	Amend	7-1-06
125-246-0410	5-31-06	Amend	7-1-06	125-248-0300	5-31-06	Amend	7-1-06
125-246-0420	5-31-06	Amend	7-1-06	125-248-0310	5-31-06	Amend	7-1-06
125-246-0430	5-31-06	Amend	7-1-06	125-248-0330	5-31-06	Amend	7-1-06
125-246-0440	5-31-06	Amend	7-1-06	125-248-0340	5-31-06	Amend	7-1-06
125-246-0450	5-31-06	Amend	7-1-06	125-249-0100	5-31-06	Amend	7-1-06
125-246-0460	5-31-06	Amend	7-1-06	125-249-0120	5-31-06	Amend	7-1-06
125-246-0500	5-31-06	Amend	7-1-06	125-249-0130	5-31-06	Amend	7-1-06
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125-246-0570	5-31-06	Amend	7-1-06	125-249-0160	5-31-06	Amend	7-1-06
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125-246-0576	5-31-06	Adopt	7-1-06	125-249-0210	5-31-06	Amend	7-1-06
125-247-0010	5-31-06	Amend	7-1-06	125-249-0280	5-31-06	Amend	7-1-06
125-247-0165	5-31-06	Amend	7-1-06	125-249-0290	5-31-06	Amend	7-1-06
125-247-0170	5-31-06	Amend	7-1-06	125-249-0300	5-31-06	Amend	7-1-06
125-247-0200	5-31-06	Amend	7-1-06	125-249-0310	5-31-06	Amend	7-1-06
125-247-0255	5-31-06	Amend	7-1-06	125-249-0320	5-31-06	Amend	7-1-06
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125-247-0270	5-31-06	Amend	7-1-06	125-249-0390	5-31-06	Amend	7-1-06
125-247-0275	5-31-06	Amend	7-1-06	125-249-0395	5-31-06	Adopt	7-1-06
125-247-0280	5-31-06	Amend	7-1-06	125-249-0400	5-31-06	Amend	7-1-06
125-247-0285	5-31-06	Amend	7-1-06	125-249-0440	5-31-06	Amend	7-1-06
125-247-0287	5-31-06	Amend	7-1-06	125-249-0450	5-31-06	Amend	7-1-06
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125-247-0290	12-22-05	Adopt(T)	2-1-06	125-249-0610	5-31-06	Amend	7-1-06
125-247-0291	12-22-05	Adopt(T)	2-1-06	125-249-0620	5-31-06	Amend	7-1-06
125-247-0292	12-22-05	Adopt(T)	2-1-06	125-249-0630	5-31-06	Amend	7-1-06
125-247-0293	5-31-06	Adopt	7-1-06	125-249-0640	5-31-06	Amend	7-1-06
125-247-0294	5-31-06	Adopt	7-1-06	125-249-0645	5-31-06	Adopt	7-1-06
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125-247-0430	5-31-06	Amend	7-1-06	125-249-0670	5-31-06	Amend	7-1-06
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125-249-0860	5-31-06	Amend	7-1-06	137-047-0400	1-1-06	Amend	2-1-06
125-249-0870	5-31-06	Amend	7-1-06	137-047-0410	1-1-06	Amend	2-1-06
125-249-0900	5-31-06	Amend	7-1-06	137-047-0700	1-1-06	Amend	2-1-06
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137-008-0005	1-1-06	Amend	1-1-06	137-048-0240	1-1-06	Amend	2-1-06
137-008-0010	1-1-06	Amend	2-1-06	137-048-0250	1-1-06	Amend	2-1-06
137-008-0010(T)	1-1-06	Repeal	2-1-06	137-048-0260	1-1-06	Amend	2-1-06
137-010-0030	12-31-05	Amend	1-1-06	137-048-0300	1-1-06	Amend	2-1-06
137-015-0005	5-5-06	Adopt	6-1-06	137-048-0310	1-1-06	Amend	2-1-06
137-015-0010	5-5-06	Adopt	6-1-06	137-048-0320	1-1-06	Amend	2-1-06
137-025-0300	1-4-06	Amend	2-1-06	137-049-0100	1-1-06	Amend	2-1-06
137-045-0010	1-1-06	Amend	2-1-06	137-049-0120	1-1-06	Amend	2-1-06
137-045-0035	1-1-06	Amend	2-1-06	137-049-0130	1-1-06	Amend	2-1-06
137-045-0050	1-1-06	Amend	2-1-06	137-049-0140	1-1-06	Amend	2-1-06
137-045-0070	1-1-06	Amend	2-1-06	137-049-0150	1-1-06	Amend	2-1-06
137-045-0080	1-1-06	Amend	2-1-06	137-049-0160	1-1-06	Amend	2-1-06
137-046-0100	1-1-06	Amend	2-1-06	137-049-0200	1-1-06	Amend	2-1-06
137-046-0110	1-1-06	Amend	2-1-06	137-049-0210	1-1-06	Amend	2-1-06
137-046-0130	1-1-06	Amend	2-1-06	137-049-0220	1-1-06	Amend	2-1-06
137-046-0200	1-1-06	Amend	2-1-06	137-049-0260	1-1-06	Amend	2-1-06
137-046-0210	1-1-06	Amend	2-1-06	137-049-0280	1-1-06	Amend	2-1-06
137-046-0300	1-1-06	Amend	2-1-06	137-049-0290	1-1-06	Amend	2-1-06
137-046-0310	1-1-06	Amend	2-1-06	137-049-0300	1-1-06	Amend	2-1-06
137-046-0320	1-1-06	Amend	2-1-06	137-049-0310	1-1-06	Amend	2-1-06
137-046-0400	1-1-06	Amend	2-1-06	137-049-0320	1-1-06	Amend	2-1-06
137-046-0410	1-1-06	Amend	2-1-06	137-049-0330	1-1-06	Amend	2-1-06
137-046-0440	1-1-06	Amend	2-1-06	137-049-0360	1-1-06	Amend	2-1-06
137-046-0460	1-1-06	Amend	2-1-06	137-049-0370	1-1-06	Amend	2-1-06
137-046-0470	1-1-06	Amend	2-1-06	137-049-0380	1-1-06	Amend	2-1-06
137-046-0480	1-1-06	Amend	2-1-06	137-049-0390	1-1-06	Amend	2-1-06
137-047-0000	1-1-06	Amend	2-1-06	137-049-0395	1-1-06	Adopt	2-1-06
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137-047-0250	1-1-06	Amend	2-1-06	137-049-0420	1-1-06	Amend	2-1-06
137-047-0257	1-1-06	Amend	2-1-06	137-049-0430	1-1-06	Amend	2-1-06
137-047-0260	1-1-06	Amend	2-1-06	137-049-0440	1-1-06	Amend	2-1-06
137-047-0262	1-1-06	Amend	2-1-06	137-049-0450	1-1-06	Amend	2-1-06
137-047-0263	1-1-06	Amend	2-1-06	137-049-0460	1-1-06	Amend	2-1-06
137-047-0265	1-1-06	Amend	2-1-06	137-049-0610	1-1-06	Amend	2-1-06
137-047-0270	1-1-06	Amend	2-1-06	137-049-0620	1-1-06	Amend	2-1-06
137-047-0275	1-1-06	Amend	2-1-06	137-049-0630	1-1-06	Amend	2-1-06
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137-049-0670	1-1-06	Amend	2-1-06	137-055-3440	1-3-06	Amend	2-1-06
137-049-0680	1-1-06	Amend	2-1-06	137-055-3440(T)	1-3-06	Repeal	2-1-06
137-049-0690	1-1-06	Amend	2-1-06	137-055-3480	1-3-06	Amend	2-1-06
137-049-0815	1-1-06	Adopt	2-1-06	137-055-3490	1-3-06	Amend	2-1-06
137-049-0820	1-1-06	Amend	2-1-06	137-055-3490(T)	1-3-06	Repeal	2-1-06
137-049-0860	1-1-06	Amend	2-1-06	137-055-3500(T)	1-3-06	Repeal	2-1-06
137-049-0870	1-1-06	Amend	2-1-06	137-055-3640	1-3-06	Amend	2-1-06
137-049-0900	1-1-06	Amend	2-1-06	137-055-3660	1-3-06	Amend	2-1-06
137-049-0910	1-1-06	Amend	2-1-06	137-055-4060	1-3-06	Amend	2-1-06
137-055-1020	1-3-06	Amend	2-1-06	137-055-4060	10-2-06	Amend	11-1-06
137-055-1020	7-3-06	Amend	8-1-06	137-055-4080	1-3-06	Amend	2-1-06
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137-055-1060	1-3-06	Amend	2-1-06	137-055-4110	1-3-06	Amend	2-1-06
137-055-1070	1-3-06	Amend	2-1-06	137-055-4120	1-3-06	Amend	2-1-06
137-055-1070(T)	1-3-06	Repeal	2-1-06	137-055-4120(T)	1-3-06	Repeal	2-1-06
137-055-1090	1-3-06	Amend	2-1-06	137-055-4130	1-3-06	Amend	2-1-06
137-055-1090	10-2-06	Amend	11-1-06	137-055-4160	1-3-06	Amend	2-1-06
137-055-1100	1-3-06	Amend	2-1-06	137-055-4300	1-3-06	Amend	2-1-06
137-055-1100	10-2-06	Amend	11-1-06	137-055-4320	1-3-06	Amend	2-1-06
137-055-1120	1-3-06	Amend	2-1-06	137-055-4420	1-3-06	Amend	2-1-06
137-055-1120(T)	1-3-06	Repeal	2-1-06	137-055-4450	1-3-06	Amend	2-1-06
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137-055-1140	7-3-06	Amend	8-1-06	137-055-4540	1-3-06	Amend	2-1-06
137-055-1140(T)	1-3-06	Repeal	2-1-06	137-055-4540	10-2-06	Amend	11-1-06
137-055-1145	1-3-06	Amend	2-1-06	137-055-4540(T)	1-3-06	Repeal	2-1-06
137-055-1145	7-3-06	Amend	8-1-06	137-055-4560	1-3-06	Amend	2-1-06
137-055-1160	1-3-06	Amend	2-1-06	137-055-5020	1-3-06	Amend	2-1-06
137-055-1160(T)	1-3-06	Repeal	2-1-06	137-055-5020(T)	1-3-06	Repeal	2-1-06
137-055-1180	1-3-06	Amend	2-1-06	137-055-5025	1-3-06	Amend	2-1-06
137-055-1180(T)	1-3-06	Repeal	2-1-06	137-055-5110	1-3-06	Amend	2-1-06
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137-055-2060	1-3-06	Amend	2-1-06	137-055-5110(T)	1-3-06	Repeal	2-1-06
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137-055-2160	7-3-06	Amend	8-1-06	137-055-5120(T)	1-3-06	Repeal	2-1-06
137-055-2160	10-2-06	Amend	11-1-06	137-055-5125	1-3-06	Repeal	2-1-06
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137-055-3020	7-3-06	Amend	8-1-06	137-055-5240(T)	1-3-06	Repeal	2-1-06
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137-055-3060	7-3-06	Amend	8-1-06	137-055-5400(T)	1-3-06	Repeal	2-1-06
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137-055-3140	1-3-06	Amend(T)	2-1-06	137-055-5510	1-3-06	Amend	2-1-06
137-055-3140	7-3-06	Amend	8-1-06	137-055-5510(T)	1-3-06	Repeal	2-1-06
137-055-3220	1-3-06	Amend	2-1-06	137-055-5520	1-3-06	Amend	2-1-06
137-055-3240	1-3-06	Amend	2-1-06	137-055-5520	10-2-06	Amend	11-1-06
137-055-3240(T)	1-3-06	Repeal	2-1-06	137-055-5520(T)	1-3-06	Repeal	2-1-06
137-055-3280	1-3-06	Amend	2-1-06	137-055-6021	1-3-06	Adopt	2-1-06
137-055-3400	1-3-06	Amend	2-1-06	137-055-6021	7-3-06	Amend	8-1-06
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137-055-6200	10-2-06	Amend	11-1-06	141-089-0115	1-3-06	Amend	2-1-06
137-055-6200(T)	1-3-06	Repeal	2-1-06	141-089-0120	1-3-06	Amend	2-1-06
137-055-6210	1-3-06	Amend	2-1-06	141-089-0130	1-3-06	Amend	2-1-06
137-055-6210	7-3-06	Amend	8-1-06	141-089-0145	1-3-06	Amend	2-1-06
137-055-6220	1-3-06	Amend	2-1-06	141-089-0150	1-3-06	Amend	2-1-06
137-055-6220	10-2-06	Amend	11-1-06	141-089-0155	1-3-06	Amend	2-1-06
137-055-6260	1-3-06	Amend	2-1-06	141-089-0165	1-3-06	Amend	2-1-06
137-055-6260	7-3-06	Amend	8-1-06	141-089-0170	1-3-06	Amend	2-1-06
137-055-6260	10-2-06	Amend	11-1-06	141-089-0175	1-3-06	Amend	2-1-06
137-055-6280	1-3-06	Amend	2-1-06	141-089-0180	1-3-06	Amend	2-1-06
137-087-0000	1-1-06	Adopt	1-1-06	141-089-0185	1-3-06	Amend	2-1-06
137-087-0005	1-1-06	Adopt	1-1-06	141-089-0190	1-3-06	Amend	2-1-06
137-087-0010	1-1-06	Adopt	1-1-06	141-089-0200	1-3-06	Amend	2-1-06
137-087-0015	1-1-06	Adopt	1-1-06	141-089-0220	1-3-06	Amend	2-1-06
137-087-0020	1-1-06	Adopt	1-1-06	141-089-0225	1-3-06	Amend	2-1-06
137-087-0025	1-1-06	Adopt	1-1-06	141-089-0230	1-3-06	Amend	2-1-06
137-087-0030	1-1-06	Adopt	1-1-06	141-089-0240	1-3-06	Amend	2-1-06
137-087-0035	1-1-06	Adopt	1-1-06	141-089-0250	1-3-06	Amend	2-1-06
137-087-0040	1-1-06	Adopt	1-1-06	141-089-0255	1-3-06	Amend	2-1-06
137-087-0045	1-1-06	Adopt	1-1-06	141-089-0265	1-3-06	Amend	2-1-06
137-087-0050	1-1-06	Adopt	1-1-06	141-089-0275	1-3-06	Amend	2-1-06
137-087-0055	1-1-06	Adopt	1-1-06	141-089-0295	1-3-06	Amend	2-1-06
137-087-0060	1-1-06	Adopt	1-1-06	141-089-0300	1-3-06	Amend	2-1-06
137-087-0065	1-1-06	Adopt	1-1-06	141-089-0310	1-3-06	Amend	2-1-06
137-087-0070	1-1-06	Adopt	1-1-06	141-089-0415	1-3-06	Amend	2-1-06
137-087-0075	1-1-06	Adopt	1-1-06	141-089-0420	1-3-06	Amend	2-1-06
137-087-0080	1-1-06	Adopt	1-1-06	141-089-0430	1-3-06	Amend	2-1-06
137-087-0085	1-1-06	Adopt	1-1-06	141-089-0520	1-3-06	Amend	2-1-06
137-087-0090	1-1-06	Adopt	1-1-06	141-089-0530	1-3-06	Amend	2-1-06
137-087-0095	1-1-06	Adopt	1-1-06	141-089-0555	1-3-06	Amend	2-1-06
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141-085-0020	3-27-06	Amend	5-1-06	141-089-0570	1-3-06	Amend	2-1-06
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141-085-0421	3-27-06	Amend	5-1-06	150-18.902(6)	7-31-06	Renumber	9-1-06
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165-001-0000	4-18-06	Amend	6-1-06	166-500-0005	10-12-06	Amend	11-1-06
165-001-0005	3-7-06	Amend	4-1-06	170-030-0055	12-15-05	Adopt	1-1-06
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177-036-0180	12-31-05	Adopt	2-1-06	177-083-0060	4-9-06	Adopt	5-1-06
177-036-0180(T)	12-31-05	Repeal	2-1-06	177-083-0070	4-9-06	Adopt	5-1-06
177-036-0190	12-31-05	Adopt	2-1-06	177-085-0005	12-31-05	Amend	2-1-06
177-036-0190(T)	12-31-05	Repeal	2-1-06	177-085-0005(T)	12-31-05	Repeal	2-1-06
177-036-0200	12-31-05	Adopt	2-1-06	177-085-0015	12-31-05	Amend	2-1-06
177-036-0200(T)	12-31-05	Repeal	2-1-06	177-085-0015(T)	12-31-05	Repeal	2-1-06
177-036-0210	12-31-05	Adopt	2-1-06	177-085-0020	12-31-05	Amend	2-1-06
177-036-0210(T)	12-31-05	Repeal	2-1-06	177-085-0020(T)	12-31-05	Repeal	2-1-06
177-037-0000	12-31-05	Adopt	2-1-06	177-085-0025	12-31-05	Amend	2-1-06
177-037-0000(T)	12-31-05	Repeal	2-1-06	177-085-0025(T)	12-31-05	Repeal	2-1-06
177-037-0010	12-31-05	Adopt	2-1-06	177-085-0030	12-31-05	Amend	2-1-06
177-037-0010(T)	12-31-05	Repeal	2-1-06	177-085-0030(T)	12-31-05	Repeal	2-1-06
177-037-0020	12-31-05	Adopt	2-1-06	177-085-0035	12-31-05	Amend	2-1-06
177-037-0020(T)	12-31-05	Repeal	2-1-06	177-085-0035(T)	12-31-05	Repeal	2-1-06
177-037-0030	12-31-05	Adopt	2-1-06	177-085-0065	12-31-05	Amend	2-1-06
177-037-0030(T)	12-31-05	Repeal	2-1-06	177-085-0065(T)	12-31-05	Repeal	2-1-06
177-037-0040	12-31-05	Adopt	2-1-06	177-200-0010	6-26-06	Amend(T)	7-1-06
177-037-0040(T)	12-31-05	Repeal	2-1-06	177-200-0010	9-1-06	Amend	10-1-06
177-037-0050	12-31-05	Adopt	2-1-06	177-200-0010(T)	9-1-06	Repeal	10-1-06
177-037-0050(T)	12-31-05	Repeal	2-1-06	177-200-0020	12-31-05	Amend	2-1-06
177-037-0060	12-31-05	Adopt	2-1-06	177-200-0020(T)	12-31-05	Repeal	2-1-06
177-037-0060(T)	12-31-05	Repeal	2-1-06	213-001-0000	4-12-06	Amend	5-1-06
177-037-0070	12-31-05	Adopt	2-1-06	213-003-0001	4-12-06	Amend	5-1-06
177-037-0070(T)	12-31-05	Repeal	2-1-06	213-005-0002	4-12-06	Amend	5-1-06
177-040-0000	3-1-06	Amend	4-1-06	213-013-0001	4-12-06	Amend	5-1-06
177-040-0010	12-31-05	Amend	2-1-06	213-017-0005	4-12-06	Amend	5-1-06
177-040-0017	12-31-05	Amend	2-1-06	213-017-0006	4-12-06	Amend	5-1-06
177-040-0017(T)	12-31-05	Repeal	2-1-06	213-017-0007	4-12-06	Amend	5-1-06
177-040-0026	11-23-05	Amend(T)	1-1-06	213-017-0008	4-12-06	Amend	5-1-06
177-040-0026	1-25-06	Amend	3-1-06	213-018-0020	7-1-06	Amend	8-1-06
177-040-0026(T)	1-25-06	Repeal	3-1-06	213-019-0008	4-12-06	Amend	5-1-06
177-040-0029	12-31-05	Amend	2-1-06	213-019-0010	4-12-06	Amend	5-1-06
177-040-0105	12-31-05	Amend	2-1-06	213-019-0012	4-12-06	Amend	5-1-06
177-040-0160	4-27-06	Amend	6-1-06	213-019-0015	4-12-06	Amend	5-1-06
177-040-0300	3-1-06	Adopt	4-1-06	220-001-0010	5-15-06	Repeal	6-1-06
177-040-0310	3-1-06	Adopt	4-1-06	220-001-0020	5-15-06	Repeal	6-1-06
177-040-0320	3-1-06	Adopt	4-1-06	220-001-0030	5-15-06	Repeal	6-1-06
177-046-0020	12-31-05	Amend	2-1-06	220-001-0040	5-15-06	Repeal	6-1-06
177-046-0020(T)	12-31-05	Repeal	2-1-06	220-001-0050	5-15-06	Repeal	6-1-06
177-046-0110	12-31-05	Amend	2-1-06	220-005-0005	12-30-05	Amend(T)	2-1-06
177-046-0110(T)	12-31-05	Repeal	2-1-06	220-005-0005	5-15-06	Repeal	6-1-06
177-050-0025	12-31-05	Amend	2-1-06	220-005-0010	12-30-05	Amend(T)	2-1-06
177-050-0025(T)	12-31-05	Repeal	2-1-06	220-005-0010	5-15-06	Repeal	6-1-06
177-050-0027	12-31-05	Amend	2-1-06	220-005-0015	12-30-05	Amend(T)	2-1-06
177-050-0027(T)	12-31-05	Repeal	2-1-06	220-005-0015	5-15-06	Repeal	6-1-06
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220-005-0115	12-30-05	Amend(T)	2-1-06	220-050-0105	5-15-06	Repeal	6-1-06
220-005-0115	5-15-06	Repeal	6-1-06	220-050-0110	12-30-05	Amend(T)	2-1-06
220-005-0120	12-30-05	Amend(T)	2-1-06	220-050-0110	5-15-06	Repeal	6-1-06
220-005-0120	5-15-06	Repeal	6-1-06	220-050-0140	12-30-05	Amend(T)	2-1-06
220-005-0130	12-30-05	Amend(T)	2-1-06	220-050-0140	5-15-06	Repeal	6-1-06
220-005-0130	5-15-06	Repeal	6-1-06	220-050-0150	12-30-05	Suspend	2-1-06
220-005-0135	12-30-05	Amend(T)	2-1-06	220-050-0150	5-15-06	Repeal	6-1-06
220-005-0135	5-15-06	Repeal	6-1-06	220-050-0300	12-30-05	Amend(T)	2-1-06
220-005-0140	12-30-05	Amend(T)	2-1-06	220-050-0300	5-15-06	Repeal	6-1-06
220-005-0140	5-15-06	Repeal	6-1-06	250-010-0055	7-3-06	Amend	8-1-06
220-005-0150	12-30-05	Amend(T)	2-1-06	250-016-0012	1-1-06	Adopt	2-1-06
220-005-0150	5-15-06	Repeal	6-1-06	250-020-0013	7-3-06	Amend	8-1-06
220-005-0160	12-30-05	Amend(T)	2-1-06	250-020-0102	3-28-06	Amend	5-1-06
220-005-0160	5-15-06	Repeal	6-1-06	250-020-0102	9-5-06	Amend(T)	9-1-06
220-005-0170	12-30-05	Amend(T)	2-1-06	250-020-0161	7-3-06	Amend	8-1-06
220-005-0170	5-15-06	Repeal	6-1-06	250-020-0259	10-12-06	Amend	11-1-06
220-005-0180	5-15-06	Repeal	6-1-06	250-020-0265	10-12-06	Repeal	11-1-06
220-005-0210	12-30-05	Amend(T)	2-1-06	250-020-0266	3-28-06	Amend	5-1-06
220-005-0210	5-15-06	Repeal	6-1-06	250-020-0266	10-12-06	Repeal	11-1-06
220-005-0220	12-30-05	Amend(T)	2-1-06	250-020-0280	10-12-06	Amend	11-1-06
220-005-0220	5-15-06	Repeal	6-1-06	250-020-0350	3-28-06	Amend	5-1-06
220-005-0225	12-30-05	Adopt(T)	2-1-06	255-015-0003	4-5-06	Amend	5-1-06
220-005-0225	5-15-06	Repeal	6-1-06	255-036-0010	4-5-06	Amend	5-1-06
220-005-0230	12-30-05	Suspend	2-1-06	255-037-0010	4-5-06	Amend	5-1-06
220-005-0230	5-15-06	Repeal	6-1-06	255-060-0011	3-20-06	Amend(T)	5-1-06
220-005-0240	12-30-05	Suspend	2-1-06	255-060-0011	6-14-06	Amend	7-1-06
220-005-0240	5-15-06	Repeal	6-1-06	255-060-0011	6-15-06	Amend(T)	7-1-06
220-005-0245	12-30-05	Adopt(T)	2-1-06	255-060-0011	10-9-06	Amend	11-1-06
220-005-0245	5-15-06	Repeal	6-1-06	255-060-0016	8-7-06	Adopt(T)	9-1-06
220-005-0250	12-30-05	Amend(T)	2-1-06	255-060-0016	8-30-06	Amend(T)	10-1-06
220-005-0250	5-15-06	Repeal	6-1-06	255-060-0016(T)	8-30-06	Suspend	10-1-06
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220-010-0020	5-15-06	Repeal	6-1-06	255-075-0035	12-29-05	Amend	2-1-06
220-010-0030	12-30-05	Amend(T)	2-1-06	257-030-0060	7-5-06	Amend(T)	8-1-06
220-010-0030	5-15-06	Repeal	6-1-06	257-030-0070	7-5-06	Amend(T)	8-1-06
220-010-0050	12-30-05	Amend(T)	2-1-06	257-030-0075	7-5-06	Suspend	8-1-06
220-010-0050	5-15-06	Repeal	6-1-06	257-030-0105	7-5-06	Adopt(T)	8-1-06
220-010-0060	12-30-05	Amend(T)	2-1-06	257-030-0110	7-5-06	Adopt(T)	8-1-06
220-010-0060	5-15-06	Repeal	6-1-06	257-030-0120	7-5-06	Adopt(T)	8-1-06
220-010-0200	12-30-05	Suspend	2-1-06	257-030-0130	7-5-06	Adopt(T)	8-1-06
220-010-0200	5-15-06	Repeal	6-1-06	257-030-0140	7-5-06	Adopt(T)	8-1-06
220-010-0300	12-30-05	Amend(T)	2-1-06	257-030-0150	7-5-06	Adopt(T)	8-1-06
220-010-0300	5-15-06	Repeal	6-1-06	257-030-0160	7-5-06	Adopt(T)	8-1-06
220-030-0035	12-30-05	Amend(T)	2-1-06	257-030-0170	7-5-06	Adopt(T)	8-1-06
220-030-0035	5-15-06	Repeal	6-1-06	257-050-0020	11-18-05	Adopt	1-1-06
220-040-0015	12-30-05	Amend(T)	2-1-06	257-050-0040	11-18-05	Amend	1-1-06
220-040-0015	5-15-06	Repeal	6-1-06	257-050-0050	3-31-06	Amend	5-1-06
220-040-0025	12-30-05	Suspend	2-1-06	257-050-0070	11-18-05	Amend	1-1-06
220-040-0025	5-15-06	Repeal	6-1-06	257-050-0070	3-31-06	Amend	5-1-06
220-040-0035	12-30-05	Amend(T)	2-1-06	257-050-0080	11-18-05	Repeal	1-1-06
220-040-0035	5-15-06	Repeal	6-1-06	257-050-0090	11-18-05	Amend	1-1-06
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220-040-0045	5-15-06	Repeal	6-1-06	257-050-0095	3-31-06	Adopt	5-1-06
220-040-0050	12-30-05	Amend(T)	2-1-06	257-050-0100	3-31-06	Amend	5-1-06
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257-050-0125	11-18-05	Adopt	1-1-06	259-060-0305	5-15-06	Amend	6-1-06
257-050-0125	3-31-06	Amend	5-1-06	259-060-0405	5-15-06	Amend	6-1-06
257-050-0140	11-18-05	Amend	1-1-06	259-060-0500	5-15-06	Amend	6-1-06
257-050-0140	3-31-06	Amend	5-1-06	259-060-0600	5-15-06	Amend	6-1-06
257-050-0145	11-18-05	Adopt	1-1-06	259-060-0600	10-13-06	Amend	11-1-06
257-050-0145	3-31-06	Amend	5-1-06	259-061-0005	5-15-06	Adopt	6-1-06
257-050-0150	11-18-05	Amend	1-1-06	259-061-0010	5-15-06	Adopt	6-1-06
257-050-0150	3-31-06	Amend	5-1-06	259-061-0015	5-15-06	Adopt	6-1-06
257-050-0155	3-31-06	Adopt	5-1-06	259-061-0020	5-15-06	Adopt	6-1-06
257-050-0157	11-18-05	Adopt	1-1-06	259-061-0030	5-15-06	Adopt	6-1-06
257-050-0157	3-31-06	Amend	5-1-06	259-061-0040	5-15-06	Adopt	6-1-06
257-050-0160	11-18-05	Repeal	1-1-06	259-061-0050	5-15-06	Adopt	6-1-06
257-050-0170	11-18-05	Adopt	1-1-06	259-061-0055	5-15-06	Adopt	6-1-06
257-050-0170	3-31-06	Amend	5-1-06	259-061-0060	5-15-06	Adopt	6-1-06
257-050-0180	3-31-06	Adopt	5-1-06	259-061-0070	5-15-06	Adopt	6-1-06
257-050-0200	11-18-05	Adopt	1-1-06	259-061-0080	5-15-06	Adopt	6-1-06
257-050-0200	3-31-06	Amend	5-1-06	259-061-0090	5-15-06	Adopt	6-1-06
259-008-0005	10-13-06	Amend	11-1-06	259-061-0095	5-15-06	Adopt	6-1-06
259-008-0010	2-28-06	Amend	4-1-06	259-061-0100	5-15-06	Adopt	6-1-06
259-008-0010	10-13-06	Amend	11-1-06	259-061-0110	5-15-06	Adopt	6-1-06
259-008-0045	2-28-06	Amend	4-1-06	259-061-0120	5-15-06	Adopt	6-1-06
259-008-0065	8-15-06	Amend(T)	9-1-06	259-061-0130	5-15-06	Adopt	6-1-06
259-008-0065	10-13-06	Amend	11-1-06	259-061-0140	5-15-06	Adopt	6-1-06
259-008-0070	7-6-06	Amend	8-1-06	259-061-0150	5-15-06	Adopt	6-1-06
259-008-0076	12-7-05	Adopt	1-1-06	259-061-0160	5-15-06	Adopt	6-1-06
259-009-0005	1-24-06	Amend	3-1-06	259-061-0170	5-15-06	Adopt	6-1-06
259-009-0005	7-7-06	Amend	8-1-06	259-061-0180	5-15-06	Adopt	6-1-06
259-009-0059	1-23-06	Adopt(T)	3-1-06	259-061-0190	5-15-06	Adopt	6-1-06
259-009-0059	5-3-06	Adopt	6-1-06	259-061-0200	5-15-06	Adopt	6-1-06
259-009-0059(T)	5-3-06	Repeal	6-1-06	259-061-0210	5-15-06	Adopt	6-1-06
259-009-0062	1-24-06	Amend	3-1-06	259-061-0220	5-15-06	Adopt	6-1-06
259-009-0062	7-7-06	Amend	8-1-06	259-061-0230	5-15-06	Adopt	6-1-06
259-009-0062	10-13-06	Amend	11-1-06	259-061-0240	5-15-06	Adopt	6-1-06
259-009-0065	1-24-06	Amend	3-1-06	259-061-0250	5-15-06	Adopt	6-1-06
259-012-0005	6-9-06	Amend	7-1-06	259-061-0260	5-15-06	Adopt	6-1-06
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259-012-0015	6-9-06	Amend	7-1-06	274-005-0060	7-27-06	Amend	9-1-06
259-012-0035	6-9-06	Amend	7-1-06	274-010-0100	1-27-06	Amend	3-1-06
259-060-0005	5-15-06	Amend	6-1-06	274-010-0115	1-27-06	Amend	3-1-06
259-060-0010	5-15-06	Amend	6-1-06	274-010-0120	1-27-06	Amend	3-1-06
259-060-0015	5-15-06	Amend	6-1-06	274-010-0135	1-27-06	Amend	3-1-06
259-060-0020	5-15-06	Amend	6-1-06	274-010-0140	1-27-06	Repeal	3-1-06
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259-060-0065	5-15-06	Amend	6-1-06	274-010-0150	1-27-06	Repeal	3-1-06
259-060-0070	5-15-06	Amend	6-1-06	274-010-0155	1-27-06	Amend	3-1-06
259-060-0075	5-15-06	Amend	6-1-06	274-010-0160	1-27-06	Amend	3-1-06
259-060-0080	5-15-06	Amend	6-1-06	274-010-0170	1-27-06	Amend	3-1-06
259-060-0085	5-15-06	Amend	6-1-06	274-010-0175	1-27-06	Amend	3-1-06
259-060-0090	5-15-06	Amend	6-1-06	274-012-0001	2-23-06	Adopt(T)	4-1-06
259-060-0095	5-15-06	Amend	6-1-06	274-012-0001	4-25-06	Adopt	6-1-06
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259-060-0130	5-15-06	Amend	6-1-06	274-012-0100	4-25-06	Adopt	6-1-06
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274-012-0110	2-23-06	Adopt(T)	4-1-06	291-011-0025	10-16-06	Amend	11-1-06
274-012-0110	4-25-06	Adopt	6-1-06	291-011-0030	10-16-06	Amend	11-1-06
274-012-0110(T)	4-25-06	Repeal	6-1-06	291-011-0035	10-16-06	Amend	11-1-06
274-012-0115	2-23-06	Adopt(T)	4-1-06	291-011-0040	10-16-06	Amend	11-1-06
274-012-0115	4-25-06	Adopt	6-1-06	291-011-0050	10-16-06	Amend	11-1-06
274-012-0115(T)	4-25-06	Repeal	6-1-06	291-011-0060	10-16-06	Amend	11-1-06
274-012-0120	2-23-06	Adopt(T)	4-1-06	291-011-0064	10-16-06	Amend	11-1-06
274-012-0120	4-25-06	Adopt	6-1-06	291-011-0080	10-16-06	Amend	11-1-06
274-012-0120(T)	4-25-06	Repeal	6-1-06	291-014-0100	7-24-06	Adopt	9-1-06
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274-012-0125	4-25-06	Adopt	6-1-06	291-014-0120	7-24-06	Adopt	9-1-06
274-012-0125(T)	4-25-06	Repeal	6-1-06	291-014-0130	7-24-06	Adopt	9-1-06
274-012-0130	2-23-06	Adopt(T)	4-1-06	291-016-0020	10-9-06	Amend	11-1-06
274-012-0130	4-25-06	Adopt	6-1-06	291-016-0030	10-9-06	Amend	11-1-06
274-012-0130(T)	4-25-06	Repeal	6-1-06	291-016-0040	10-9-06	Amend	11-1-06
274-012-0131	2-23-06	Adopt(T)	4-1-06	291-016-0045	10-9-06	Amend	11-1-06
274-012-0131	4-25-06	Adopt	6-1-06	291-016-0050	10-9-06	Amend	11-1-06
274-012-0131(T)	4-25-06	Repeal	6-1-06	291-016-0060	10-9-06	Amend	11-1-06
274-020-0340	12-27-05	Amend	2-1-06	291-016-0100	10-9-06	Amend	11-1-06
274-030-0600	12-23-05	Adopt(T)	2-1-06	291-028-0100	7-24-06	Adopt	9-1-06
274-030-0600	6-16-06	Adopt	8-1-06	291-028-0105	7-24-06	Adopt	9-1-06
274-030-0600(T)	6-16-06	Repeal	8-1-06	291-028-0110	7-24-06	Adopt	9-1-06
274-030-0605	12-23-05	Adopt(T)	2-1-06	291-028-0115	7-24-06	Adopt	9-1-06
274-030-0605	6-16-06	Adopt	8-1-06	291-047-0005	1-1-06	Amend	2-1-06
274-030-0605(T)	6-16-06	Repeal	8-1-06	291-047-0010	1-1-06	Amend	2-1-06
274-030-0610	12-23-05	Adopt(T)	2-1-06	291-047-0020	1-1-06	Repeal	2-1-06
274-030-0610	6-16-06	Adopt	8-1-06	291-047-0021	1-1-06	Adopt	2-1-06
274-030-0610(T)	6-16-06	Repeal	8-1-06	291-047-0025	1-1-06	Repeal	2-1-06
274-030-0615	12-23-05	Adopt(T)	2-1-06	291-047-0061	1-1-06	Adopt	2-1-06
274-030-0615	6-16-06	Adopt	8-1-06	291-047-0065	1-1-06	Adopt	2-1-06
274-030-0615(T)	6-16-06	Repeal	8-1-06	291-047-0070	1-1-06	Adopt	2-1-06
274-030-0620	12-23-05	Adopt(T)	2-1-06	291-047-0075	1-1-06	Adopt	2-1-06
274-030-0620	6-16-06	Adopt	8-1-06	291-047-0080	1-1-06	Adopt	2-1-06
274-030-0620(T)	6-16-06	Repeal	8-1-06	291-047-0085	1-1-06	Adopt	2-1-06
274-030-0621	12-23-05	Adopt(T)	2-1-06	291-047-0090	1-1-06	Adopt	2-1-06
274-030-0621	6-16-06	Adopt	8-1-06	291-047-0095	1-1-06	Adopt	2-1-06
274-030-0621(T)	6-16-06	Repeal	8-1-06	291-047-0100	1-1-06	Adopt	2-1-06
274-030-0630	12-23-05	Adopt(T)	2-1-06	291-047-0105	1-1-06	Adopt	2-1-06
274-030-0630	6-16-06	Adopt	8-1-06	291-047-0110	1-1-06	Adopt	2-1-06
274-030-0630(T)	6-16-06	Repeal	8-1-06	291-047-0115	1-1-06	Am. & Ren.	2-1-06
274-030-0640	12-23-05	Adopt(T)	2-1-06	291-047-0120	1-1-06	Am. & Ren.	2-1-06
274-030-0640	6-16-06	Adopt	8-1-06	291-047-0125	1-1-06	Am. & Ren.	2-1-06
274-030-0640(T)	6-16-06	Repeal	8-1-06	291-047-0130	1-1-06	Am. & Ren.	2-1-06
274-040-0015	7-27-06	Amend	9-1-06	291-047-0135	1-1-06	Am. & Ren.	2-1-06
274-040-0030	3-31-06	Amend(T)	5-1-06	291-047-0140	1-1-06	Am. & Ren.	2-1-06
274-040-0030	5-30-06	Amend	7-1-06	291-063-0010	1-1-06	Amend	2-1-06
274-040-0030	7-27-06	Amend	9-1-06	291-063-0016	1-1-06	Amend	2-1-06
274-040-0030(T)	5-30-06	Repeal	7-1-06	291-063-0030	1-1-06	Amend	2-1-06
274-040-0031	7-27-06	Adopt	9-1-06	291-063-0050	1-1-06	Amend	2-1-06
274-040-0032	7-27-06	Adopt	9-1-06	291-065-0005	7-24-06	Amend	9-1-06
274-040-0033	7-27-06	Adopt	9-1-06	291-065-0006	7-24-06	Amend	9-1-06
274-045-0060	12-27-05	Amend	2-1-06	291-065-0007	7-24-06	Amend	9-1-06
291-001-0100	6-1-06	Adopt(T)	7-1-06	291-065-0010	7-24-06	Repeal	9-1-06
291-011-0010	10-16-06	Amend	11-1-06	291-077-0020	2-15-06	Amend	3-1-06

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291-077-0033	2-15-06	Amend	3-1-06	309-120-0240	1-1-06	Adopt	2-1-06
291-077-0035	2-15-06	Amend	3-1-06	309-120-0245	1-1-06	Adopt	2-1-06
291-100-0008	8-7-06	Amend(T)	9-1-06	309-120-0250	1-1-06	Adopt	2-1-06
291-100-0130	8-7-06	Amend(T)	9-1-06	309-120-0255	1-1-06	Adopt	2-1-06
291-104-0005	6-1-06	Amend	7-1-06	309-120-0260	1-1-06	Adopt	2-1-06
291-104-0010	12-7-05	Amend	1-1-06	309-120-0265	1-1-06	Adopt	2-1-06
291-104-0010	6-1-06	Amend	7-1-06	309-120-0270	1-1-06	Am. & Ren.	2-1-06
291-104-0015	12-7-05	Amend	1-1-06	309-120-0275	1-1-06	Am. & Ren.	2-1-06
291-104-0030	12-7-05	Amend	1-1-06	309-120-0280	1-1-06	Am. & Ren.	2-1-06
291-104-0035	12-7-05	Amend	1-1-06	309-120-0285	1-1-06	Am. & Ren.	2-1-06
291-104-0111	6-1-06	Adopt	7-1-06	309-120-0290	1-1-06	Am. & Ren.	2-1-06
291-104-0116	6-1-06	Adopt	7-1-06	309-120-0295	1-1-06	Am. & Ren.	2-1-06
291-104-0125	6-1-06	Adopt	7-1-06	325-005-0015	2-6-06	Adopt	3-1-06
291-104-0130	6-1-06	Adopt	7-1-06	325-010-0001	2-6-06	Adopt	3-1-06
291-104-0135	6-1-06	Adopt	7-1-06	325-010-0005	2-6-06	Adopt	3-1-06
291-130-0006	3-13-06	Amend	4-1-06	325-010-0010	2-6-06	Adopt	3-1-06
291-130-0010	3-13-06	Repeal	4-1-06	325-010-0015	2-6-06	Adopt	3-1-06
291-130-0011	3-13-06	Adopt	4-1-06	325-010-0020	2-6-06	Adopt	3-1-06
291-130-0016	3-13-06	Am. & Ren.	4-1-06	325-010-0025	2-6-06	Adopt	3-1-06
291-130-0020	3-13-06	Amend	4-1-06	325-010-0030	2-6-06	Adopt	3-1-06
291-130-0021	3-13-06	Adopt	4-1-06	325-010-0035	2-6-06	Adopt	3-1-06
291-130-0030	3-13-06	Amend	4-1-06	325-010-0040	2-6-06	Adopt	3-1-06
291-130-0050	3-13-06	Amend	4-1-06	325-010-0045	2-6-06	Adopt	3-1-06
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291-204-0020	8-1-06	Adopt	9-1-06	330-070-0013	1-1-06	Amend	2-1-06
291-204-0030	8-1-06	Adopt	9-1-06	330-070-0014	1-1-06	Amend	2-1-06
291-204-0040	8-1-06	Adopt	9-1-06	330-070-0020	1-1-06	Amend	2-1-06
291-204-0050	8-1-06	Adopt	9-1-06	330-070-0021	1-1-06	Amend	2-1-06
291-204-0060	8-1-06	Adopt	9-1-06	330-070-0022	1-1-06	Amend	2-1-06
291-204-0070	8-1-06	Adopt	9-1-06	330-070-0025	1-1-06	Amend	2-1-06
291-204-0080	8-1-06	Adopt	9-1-06	330-070-0026	1-1-06	Amend	2-1-06
309-012-0000	6-1-06	Repeal	6-1-06	330-070-0040	1-1-06	Amend	2-1-06
309-012-0005	6-1-06	Repeal	6-1-06	330-070-0045	1-1-06	Amend	2-1-06
309-041-1220	7-1-06	Amend	8-1-06	330-070-0048	1-1-06	Amend	2-1-06
309-120-0000(T)	1-1-06	Repeal	2-1-06	330-070-0055	1-1-06	Amend	2-1-06
309-120-0005(T)	1-1-06	Repeal	2-1-06	330-070-0059	1-1-06	Amend	2-1-06
309-120-0015	1-1-06	Repeal	2-1-06	330-070-0060	1-1-06	Amend	2-1-06
309-120-0020	1-1-06	Repeal	2-1-06	330-070-0062	1-1-06	Amend	2-1-06
309-120-0021(T)	1-1-06	Repeal	2-1-06	330-070-0063	1-1-06	Amend	2-1-06
309-120-0070	1-1-06	Adopt	2-1-06	330-070-0064	1-1-06	Amend	2-1-06
309-120-0070(T)	1-1-06	Repeal	2-1-06	330-070-0073	1-1-06	Amend	2-1-06
309-120-0075	1-1-06	Adopt	2-1-06	330-070-0089	1-1-06	Amend	2-1-06
309-120-0075(T)	1-1-06	Repeal	2-1-06	330-070-0097	1-1-06	Amend	2-1-06
309-120-0080	1-1-06	Adopt	2-1-06	330-090-0105	1-1-06	Amend	2-1-06
309-120-0080(T)	1-1-06	Repeal	2-1-06	330-090-0105	10-1-06	Amend	11-1-06
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309-120-0205	1-1-06	Am. & Ren.	2-1-06	330-090-0110	10-1-06	Amend	11-1-06
309-120-0210	1-1-06	Adopt	2-1-06	330-090-0120	1-1-06	Amend	2-1-06
309-120-0215	1-1-06	Adopt	2-1-06	330-090-0130	1-1-06	Amend	2-1-06
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309-120-0225	1-1-06	Adopt	2-1-06	330-110-0010	4-3-06	Amend	5-1-06
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330-110-0055	4-3-06	Amend	5-1-06	333-012-0061	7-1-06	Amend	8-1-06
331-405-0020	1-1-06	Amend	1-1-06	333-012-0070	7-1-06	Amend	8-1-06
331-405-0030	1-1-06	Amend	1-1-06	333-012-0260	4-17-06	Amend	6-1-06
331-405-0045	1-1-06	Adopt	1-1-06	333-012-0265	1-1-06	Amend(T)	2-1-06
331-410-0000	1-1-06	Amend	1-1-06	333-012-0265	4-17-06	Amend	6-1-06
331-410-0010	1-1-06	Amend	1-1-06	333-012-0265(T)	4-17-06	Repeal	6-1-06
331-410-0020	1-1-06	Amend	1-1-06	333-018-0015	4-17-06	Amend	6-1-06
331-410-0030	1-1-06	Amend	1-1-06	333-018-0015	7-1-06	Amend	8-1-06
331-410-0040	1-1-06	Amend	1-1-06	333-018-0015	9-13-06	Amend	10-1-06
331-640-0010	9-1-06	Amend	10-1-06	333-018-0030	1-1-06	Amend(T)	2-1-06
331-640-0030	9-1-06	Amend	10-1-06	333-018-0030	4-17-06	Amend	6-1-06
331-640-0050	9-1-06	Amend	10-1-06	333-018-0030(T)	4-17-06	Repeal	6-1-06
331-640-0055	9-1-06	Adopt	10-1-06	333-019-0031	4-17-06	Amend	6-1-06
331-640-0060	9-1-06	Adopt	10-1-06	333-019-0036	1-1-06	Amend	2-1-06
333-001-0000	6-1-06	Repeal	6-1-06	333-025-0100	1-1-06	Amend	2-1-06
333-001-0005	6-1-06	Repeal	6-1-06	333-025-0105	1-1-06	Amend	2-1-06
333-002-0000	8-2-06	Adopt	9-1-06	333-025-0110	1-1-06	Amend	2-1-06
333-002-0010	8-2-06	Adopt	9-1-06	333-025-0115	1-1-06	Amend	2-1-06
333-002-0020	8-2-06	Adopt	9-1-06	333-025-0120	1-1-06	Amend	2-1-06
333-002-0030	8-2-06	Adopt	9-1-06	333-025-0135	1-1-06	Amend	2-1-06
333-002-0035	8-2-06	Adopt	9-1-06	333-025-0140	1-1-06	Amend	2-1-06
333-002-0040	8-2-06	Adopt	9-1-06	333-025-0160	1-1-06	Amend	2-1-06
333-002-0050	8-2-06	Adopt	9-1-06	333-025-0165	1-1-06	Adopt	2-1-06
333-002-0060	8-2-06	Adopt	9-1-06	333-050-0010	1-27-06	Amend	3-1-06
333-002-0070	8-2-06	Adopt	9-1-06	333-050-0020	1-27-06	Amend	3-1-06
333-002-0080	8-2-06	Adopt	9-1-06	333-050-0040	1-27-06	Amend	3-1-06
333-002-0090	8-2-06	Adopt	9-1-06	333-050-0050	1-27-06	Amend	3-1-06
333-002-0100	8-2-06	Adopt	9-1-06	333-050-0060	1-27-06	Amend	3-1-06
333-002-0110	8-2-06	Adopt	9-1-06	333-050-0080	1-27-06	Amend	3-1-06
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333-060-0110	7-1-06	Amend	8-1-06	333-100-0057	6-16-06	Amend	8-1-06
333-060-0120	7-1-06	Amend	8-1-06	333-100-0060	6-16-06	Amend	8-1-06
333-060-0150	7-1-06	Amend	8-1-06	333-100-0065	6-16-06	Amend	8-1-06
333-060-0160	7-1-06	Amend	8-1-06	333-100-0070	6-16-06	Amend	8-1-06
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333-060-0500	7-1-06	Adopt	8-1-06	333-101-0007	6-16-06	Amend	8-1-06
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333-060-0515	7-1-06	Adopt	8-1-06	333-101-0020	6-16-06	Amend	8-1-06
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333-061-0215	1-31-06	Amend	3-1-06	333-101-0270	6-16-06	Amend	8-1-06
333-061-0220	1-31-06	Amend	3-1-06	333-101-0280	6-16-06	Amend	8-1-06
333-061-0230	1-31-06	Amend	3-1-06	333-101-0290	6-16-06	Amend	8-1-06
333-061-0235	1-31-06	Amend	3-1-06	333-102-0001	6-16-06	Amend	8-1-06
333-061-0245	1-31-06	Amend	3-1-06	333-102-0005	6-16-06	Amend	8-1-06
333-061-0250	1-31-06	Amend	3-1-06	333-102-0015	6-16-06	Amend	8-1-06
333-061-0260	1-31-06	Amend	3-1-06	333-102-0020	6-16-06	Amend	8-1-06
333-061-0265	1-31-06	Amend	3-1-06	333-102-0025	6-16-06	Amend	8-1-06
333-061-0270	1-31-06	Amend	3-1-06	333-102-0030	6-16-06	Amend	8-1-06
333-061-0290	1-31-06	Amend	3-1-06	333-102-0040	6-16-06	Amend	8-1-06
333-064-0060	2-8-06	Amend(T)	3-1-06	333-102-0075	6-16-06	Amend	8-1-06
333-064-0060	4-6-06	Amend	5-1-06	333-102-0101	6-16-06	Amend	8-1-06
333-076-0101	3-2-06	Amend(T)	4-1-06	333-102-0103	6-16-06	Amend	8-1-06
333-076-0125	3-2-06	Amend(T)	4-1-06	333-102-0110	6-16-06	Amend	8-1-06
333-076-0130	3-2-06	Amend(T)	4-1-06	333-102-0115	6-16-06	Amend	8-1-06
333-076-0135	3-2-06	Amend(T)	4-1-06	333-102-0125	6-16-06	Amend	8-1-06
333-076-0450	6-27-06	Amend	8-1-06	333-102-0130	6-16-06	Amend	8-1-06
333-076-0470	6-27-06	Amend	8-1-06	333-102-0135	6-16-06	Amend	8-1-06
333-076-0490	6-27-06	Amend	8-1-06	333-102-0190	6-16-06	Amend	8-1-06
333-076-0510	6-27-06	Amend	8-1-06	333-102-0200	6-16-06	Amend	8-1-06
333-076-0530	6-27-06	Amend	8-1-06	333-102-0203	6-16-06	Amend	8-1-06
333-076-0550	6-27-06	Amend	8-1-06	333-102-0235	6-16-06	Amend	8-1-06
333-076-0560	6-27-06	Amend	8-1-06	333-102-0245	6-16-06	Amend	8-1-06
333-076-0570	6-27-06	Amend	8-1-06	333-102-0247	6-16-06	Amend	8-1-06
333-076-0590	6-27-06	Amend	8-1-06	333-102-0255	6-16-06	Amend	8-1-06
333-076-0610	6-27-06	Amend	8-1-06	333-102-0260	6-16-06	Amend	8-1-06
333-076-0650	6-27-06	Amend	8-1-06	333-102-0285	6-16-06	Amend	8-1-06
333-076-0670	6-27-06	Amend	8-1-06	333-102-0290	6-16-06	Amend	8-1-06
333-076-0690	6-27-06	Amend	8-1-06	333-102-0293	6-16-06	Amend	8-1-06
333-076-0710	6-27-06	Amend	8-1-06	333-102-0297	6-16-06	Amend	8-1-06
333-100-0005	6-16-06	Amend	8-1-06	333-102-0305	6-16-06	Amend	8-1-06

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333-102-0327	6-16-06	Amend	8-1-06	333-106-0030	6-16-06	Amend	8-1-06
333-102-0330	6-16-06	Amend	8-1-06	333-106-0035	6-16-06	Amend	8-1-06
333-102-0345	6-16-06	Amend	8-1-06	333-106-0040	6-16-06	Amend	8-1-06
333-102-0350	6-16-06	Amend	8-1-06	333-106-0045	6-16-06	Amend	8-1-06
333-102-0355	6-16-06	Amend	8-1-06	333-106-0055	6-16-06	Amend	8-1-06
333-102-0365	6-16-06	Amend	8-1-06	333-106-0101	6-16-06	Amend	8-1-06
333-102-0900	6-16-06	Amend	8-1-06	333-106-0105	6-16-06	Amend	8-1-06
333-102-0910	6-16-06	Amend	8-1-06	333-106-0110	6-16-06	Amend	8-1-06
333-103-0001	6-16-06	Amend	8-1-06	333-106-0130	6-16-06	Amend	8-1-06
333-103-0005	6-16-06	Amend	8-1-06	333-106-0201	6-16-06	Amend	8-1-06
333-103-0010	6-16-06	Amend	8-1-06	333-106-0210	6-16-06	Amend	8-1-06
333-103-0015	6-16-06	Amend	8-1-06	333-106-0215	6-16-06	Amend	8-1-06
333-103-0020	6-16-06	Amend	8-1-06	333-106-0225	6-16-06	Amend	8-1-06
333-103-0025	6-16-06	Amend	8-1-06	333-106-0235	6-16-06	Amend	8-1-06
333-103-0030	6-16-06	Amend	8-1-06	333-106-0240	6-16-06	Amend	8-1-06
333-103-0035	6-16-06	Amend	8-1-06	333-106-0245	6-16-06	Amend	8-1-06
333-105-0003	6-16-06	Amend	8-1-06	333-106-0301	6-16-06	Amend	8-1-06
333-105-0005	6-16-06	Amend	8-1-06	333-106-0305	6-16-06	Amend	8-1-06
333-105-0050	6-16-06	Amend	8-1-06	333-106-0310	6-16-06	Amend	8-1-06
333-105-0075	6-16-06	Amend	8-1-06	333-106-0315	6-16-06	Amend	8-1-06
333-105-0420	6-16-06	Amend	8-1-06	333-106-0325	6-16-06	Amend	8-1-06
333-105-0440	6-16-06	Amend	8-1-06	333-106-0350	6-16-06	Amend	8-1-06
333-105-0450	6-16-06	Amend	8-1-06	333-106-0355	6-16-06	Amend	8-1-06
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333-105-0500	6-16-06	Amend	8-1-06	333-106-0410	6-16-06	Repeal	8-1-06
333-105-0510	6-16-06	Amend	8-1-06	333-106-0415	6-16-06	Repeal	8-1-06
333-105-0520	6-16-06	Amend	8-1-06	333-106-0420	6-16-06	Repeal	8-1-06
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333-105-0540	6-16-06	Amend	8-1-06	333-106-0485	6-16-06	Repeal	8-1-06
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333-105-0600	6-16-06	Amend	8-1-06	333-106-0512	6-16-06	Repeal	8-1-06
333-105-0610	6-16-06	Amend	8-1-06	333-106-0515	6-16-06	Repeal	8-1-06
333-105-0620	6-16-06	Amend	8-1-06	333-106-0517	6-16-06	Repeal	8-1-06
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333-105-0700	6-16-06	Amend	8-1-06	333-106-0545	6-16-06	Repeal	8-1-06
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333-105-0740	6-16-06	Amend	8-1-06	333-106-0560	6-16-06	Repeal	8-1-06
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333-106-0601	6-16-06	Amend	8-1-06	333-116-0090	6-16-06	Amend	8-1-06
333-106-0700	6-16-06	Amend	8-1-06	333-116-0100	6-16-06	Amend	8-1-06
333-106-0710	6-16-06	Amend	8-1-06	333-116-0105	6-16-06	Amend	8-1-06
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333-106-0750	6-16-06	Amend	8-1-06	333-116-0120	6-16-06	Amend	8-1-06
333-109-0001	6-16-06	Amend	8-1-06	333-116-0123	6-16-06	Amend	8-1-06
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333-109-0003	6-16-06	Amend	8-1-06	333-116-0130	6-16-06	Amend	8-1-06
333-109-0005	6-16-06	Amend	8-1-06	333-116-0150	6-16-06	Amend	8-1-06
333-109-0010	6-16-06	Amend	8-1-06	333-116-0160	6-16-06	Amend	8-1-06
333-109-0015	6-16-06	Amend	8-1-06	333-116-0165	6-16-06	Amend	8-1-06
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333-109-0025	6-16-06	Amend	8-1-06	333-116-0180	6-16-06	Amend	8-1-06
333-109-0030	6-16-06	Amend	8-1-06	333-116-0190	6-16-06	Amend	8-1-06
333-109-0035	6-16-06	Amend	8-1-06	333-116-0200	6-16-06	Amend	8-1-06
333-109-0040	6-16-06	Amend	8-1-06	333-116-0210	6-16-06	Repeal	8-1-06
333-109-0045	6-16-06	Amend	8-1-06	333-116-0220	6-16-06	Amend	8-1-06
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333-113-0010	6-16-06	Amend	8-1-06	333-116-0255	6-16-06	Adopt	8-1-06
333-113-0101	6-16-06	Amend	8-1-06	333-116-0260	6-16-06	Amend	8-1-06
333-113-0105	6-16-06	Amend	8-1-06	333-116-0265	6-16-06	Repeal	8-1-06
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333-113-0120	6-16-06	Amend	8-1-06	333-116-0290	6-16-06	Amend	8-1-06
333-113-0125	6-16-06	Amend	8-1-06	333-116-0300	6-16-06	Amend	8-1-06
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333-113-0135	6-16-06	Amend	8-1-06	333-116-0320	6-16-06	Amend	8-1-06
333-113-0140	6-16-06	Amend	8-1-06	333-116-0330	6-16-06	Amend	8-1-06
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333-113-0201	6-16-06	Amend	8-1-06	333-116-0350	6-16-06	Amend	8-1-06
333-113-0205	6-16-06	Amend	8-1-06	333-116-0360	6-16-06	Amend	8-1-06
333-113-0210	6-16-06	Amend	8-1-06	333-116-0370	6-16-06	Amend	8-1-06
333-113-0301	6-16-06	Amend	8-1-06	333-116-0380	6-16-06	Amend	8-1-06
333-113-0305	6-16-06	Amend	8-1-06	333-116-0390	6-16-06	Amend	8-1-06
333-113-0310	6-16-06	Amend	8-1-06	333-116-0400	6-16-06	Amend	8-1-06
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333-113-0335	6-16-06	Adopt	8-1-06	333-116-0410	6-16-06	Amend	8-1-06
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333-116-0525	6-16-06	Amend	8-1-06	333-120-0170	6-16-06	Amend	8-1-06
333-116-0530	6-16-06	Amend	8-1-06	333-120-0180	6-16-06	Amend	8-1-06
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333-116-0577	6-16-06	Amend	8-1-06	333-120-0230	6-16-06	Amend	8-1-06
333-116-0580	6-16-06	Amend	8-1-06	333-120-0240	6-16-06	Amend	8-1-06
333-116-0583	6-16-06	Amend	8-1-06	333-120-0250	6-16-06	Amend	8-1-06
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333-116-0700	6-16-06	Amend	8-1-06	333-120-0600	6-16-06	Amend	8-1-06
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333-116-0740	6-16-06	Adopt	8-1-06	333-120-0650	6-16-06	Amend	8-1-06
333-116-0740	6-16-06	Amend	8-1-06	333-120-0660	6-16-06	Amend	8-1-06
333-116-0760	6-16-06	Amend	8-1-06	333-120-0670	6-16-06	Amend	8-1-06
333-116-0800	6-16-06	Amend	8-1-06	333-120-0680	6-16-06	Amend	8-1-06
333-116-0810	6-16-06	Amend	8-1-06	333-120-0690	6-16-06	Amend	8-1-06
333-116-0820	6-16-06	Amend	8-1-06	333-120-0700	6-16-06	Amend	8-1-06
333-116-0830	6-16-06	Amend	8-1-06	333-120-0710	6-16-06	Amend	8-1-06
333-116-0840	6-16-06	Amend	8-1-06	333-120-0720	6-16-06	Amend	8-1-06
333-116-0850	6-16-06	Amend	8-1-06	333-120-0730	6-16-06	Amend	8-1-06
333-116-0860	6-16-06	Repeal	8-1-06	333-120-0740	6-16-06	Adopt	8-1-06
333-116-0880	6-16-06	Amend	8-1-06	333-121-0020	6-16-06	Amend	8-1-06
333-116-0905	6-16-06	Amend	8-1-06	333-121-0030	6-16-06	Amend	8-1-06
333-116-0910	6-16-06	Amend	8-1-06	333-121-0100	6-16-06	Amend	8-1-06
333-116-0915	6-16-06	Amend	8-1-06	333-121-0110	6-16-06	Amend	8-1-06
333-116-1000	6-16-06	Adopt	8-1-06	333-121-0160	6-16-06	Amend	8-1-06
333-116-1010	6-16-06	Adopt	8-1-06	333-121-0190	6-16-06	Amend	8-1-06
333-116-1015	6-16-06	Adopt	8-1-06	333-121-0200	6-16-06	Amend	8-1-06
333-116-1030	6-16-06	Adopt	8-1-06	333-121-0300	6-16-06	Amend	8-1-06
333-120-0015	6-16-06	Amend	8-1-06	333-121-0310	6-16-06	Amend	8-1-06
333-120-0017	6-16-06	Amend	8-1-06	333-121-0320	6-16-06	Amend	8-1-06
333-120-0020	6-16-06	Amend	8-1-06	333-121-0340	6-16-06	Amend	8-1-06
333-120-0100	6-16-06	Amend	8-1-06	333-121-0350	6-16-06	Amend	8-1-06
333-120-0110	6-16-06	Amend	8-1-06	333-121-0360	6-16-06	Amend	8-1-06

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333-121-0380	6-16-06	Amend	8-1-06	333-162-0160	7-1-06	Repeal	8-1-06
333-121-0500	6-16-06	Amend	8-1-06	333-162-0180	7-1-06	Repeal	8-1-06
333-121-0510	6-16-06	Amend	8-1-06	333-162-0190	7-1-06	Repeal	8-1-06
333-122-0001	6-16-06	Adopt	8-1-06	333-162-0200	7-1-06	Repeal	8-1-06
333-122-0003	6-16-06	Adopt	8-1-06	333-162-0210	7-1-06	Repeal	8-1-06
333-122-0005	6-16-06	Adopt	8-1-06	333-162-0220	7-1-06	Repeal	8-1-06
333-122-0050	6-16-06	Adopt	8-1-06	333-162-0230	7-1-06	Repeal	8-1-06
333-122-0075	6-16-06	Adopt	8-1-06	333-162-0240	7-1-06	Repeal	8-1-06
333-122-0100	6-16-06	Adopt	8-1-06	333-162-0250	7-1-06	Repeal	8-1-06
333-122-0125	6-16-06	Adopt	8-1-06	333-162-0260	7-1-06	Repeal	8-1-06
333-122-0150	6-16-06	Adopt	8-1-06	333-162-0270	7-1-06	Repeal	8-1-06
333-122-0175	6-16-06	Adopt	8-1-06	333-162-0280	7-1-06	Amend	8-1-06
333-122-0200	6-16-06	Adopt	8-1-06	333-162-0290	7-1-06	Repeal	8-1-06
333-122-0225	6-16-06	Adopt	8-1-06	333-162-0300	7-1-06	Repeal	8-1-06
333-122-0250	6-16-06	Adopt	8-1-06	333-162-0310	7-1-06	Repeal	8-1-06
333-122-0275	6-16-06	Adopt	8-1-06	333-162-0320	7-1-06	Repeal	8-1-06
333-122-0300	6-16-06	Adopt	8-1-06	333-162-0330	7-1-06	Repeal	8-1-06
333-122-0325	6-16-06	Adopt	8-1-06	333-162-0340	7-1-06	Repeal	8-1-06
333-122-0350	6-16-06	Adopt	8-1-06	333-162-0350	7-1-06	Repeal	8-1-06
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333-122-0400	6-16-06	Adopt	8-1-06	333-162-0370	7-1-06	Repeal	8-1-06
333-122-0425	6-16-06	Adopt	8-1-06	333-162-0380	7-1-06	Repeal	8-1-06
333-122-0450	6-16-06	Adopt	8-1-06	333-162-0390	7-1-06	Repeal	8-1-06
333-122-0475	6-16-06	Adopt	8-1-06	333-162-0400	7-1-06	Repeal	8-1-06
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333-122-0575	6-16-06	Adopt	8-1-06	333-162-0440	7-1-06	Repeal	8-1-06
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333-157-0000	7-1-06	Amend	8-1-06	333-162-0480	7-1-06	Repeal	8-1-06
333-157-0010	7-1-06	Amend	8-1-06	333-162-0490	7-1-06	Repeal	8-1-06
333-157-0027	7-1-06	Amend	8-1-06	333-162-0500	7-1-06	Repeal	8-1-06
333-157-0030	7-1-06	Amend	8-1-06	333-162-0510	7-1-06	Repeal	8-1-06
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333-157-0070	7-1-06	Amend	8-1-06	333-162-0530	7-1-06	Repeal	8-1-06
333-157-0080	7-1-06	Amend	8-1-06	333-162-0540	7-1-06	Repeal	8-1-06
333-158-0000	7-1-06	Amend	8-1-06	333-162-0552	7-1-06	Repeal	8-1-06
333-158-0010	7-1-06	Amend	8-1-06	333-162-0560	7-1-06	Repeal	8-1-06
333-160-0000	7-1-06	Amend	8-1-06	333-162-0570	7-1-06	Repeal	8-1-06
333-160-0170	7-1-06	Repeal	8-1-06	333-162-0580	7-1-06	Repeal	8-1-06
333-162-0000	7-1-06	Repeal	8-1-06	333-162-0590	7-1-06	Repeal	8-1-06
333-162-0010	7-1-06	Repeal	8-1-06	333-162-0600	7-1-06	Repeal	8-1-06
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333-162-0040	7-1-06	Amend	8-1-06	333-162-0630	7-1-06	Repeal	8-1-06
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333-162-0070	7-1-06	Repeal	8-1-06	333-162-0650	7-1-06	Repeal	8-1-06
333-162-0080	7-1-06	Repeal	8-1-06	333-162-0660	7-1-06	Repeal	8-1-06
333-162-0090	7-1-06	Repeal	8-1-06	333-162-0670	7-1-06	Repeal	8-1-06
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333-162-0120	7-1-06	Repeal	8-1-06	333-162-0700	7-1-06	Repeal	8-1-06
333-162-0130	7-1-06	Repeal	8-1-06	333-162-0710	7-1-06	Repeal	8-1-06
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333-162-0740	7-1-06	Repeal	8-1-06	333-670-0050	4-17-06	Suspend	6-1-06
333-162-0750	7-1-06	Repeal	8-1-06	333-670-0050	10-6-06	Repeal	11-1-06
333-162-0760	7-1-06	Repeal	8-1-06	333-670-0060	4-17-06	Suspend	6-1-06
333-162-0770	7-1-06	Repeal	8-1-06	333-670-0060	10-6-06	Repeal	11-1-06
333-162-0780	7-1-06	Repeal	8-1-06	333-670-0070	4-17-06	Suspend	6-1-06
333-162-0790	7-1-06	Repeal	8-1-06	333-670-0070	10-6-06	Repeal	11-1-06
333-162-0800	7-1-06	Repeal	8-1-06	333-670-0080	4-17-06	Suspend	6-1-06
333-162-0810	7-1-06	Repeal	8-1-06	333-670-0080	10-6-06	Repeal	11-1-06
333-162-0820	7-1-06	Repeal	8-1-06	333-670-0090	4-17-06	Suspend	6-1-06
333-162-0830	7-1-06	Repeal	8-1-06	333-670-0090	10-6-06	Repeal	11-1-06
333-162-0840	7-1-06	Repeal	8-1-06	333-670-0100	4-17-06	Suspend	6-1-06
333-162-0850	7-1-06	Repeal	8-1-06	333-670-0100	10-6-06	Repeal	11-1-06
333-162-0860	7-1-06	Repeal	8-1-06	333-670-0110	4-17-06	Suspend	6-1-06
333-162-0870	7-1-06	Repeal	8-1-06	333-670-0110	10-6-06	Repeal	11-1-06
333-162-0880	7-1-06	Amend	8-1-06	333-670-0120	4-17-06	Suspend	6-1-06
333-162-0890	7-1-06	Amend	8-1-06	333-670-0120	10-6-06	Repeal	11-1-06
333-162-0910	7-1-06	Amend	8-1-06	333-670-0130	4-17-06	Suspend	6-1-06
333-162-0920	7-1-06	Amend	8-1-06	333-670-0130	10-6-06	Repeal	11-1-06
333-162-0940	7-1-06	Amend	8-1-06	333-670-0140	4-17-06	Suspend	6-1-06
333-162-0940	7-1-06	Amend	8-1-06	333-670-0140	10-6-06	Amend	11-1-06
333-162-0960	7-1-06	Repeal	8-1-06	333-670-0145	10-6-06	Adopt	11-1-06
333-162-0970	7-1-06	Repeal	8-1-06	333-670-0150	4-17-06	Suspend	6-1-06
333-162-0980	7-1-06	Repeal	8-1-06	333-670-0150	10-6-06	Repeal	11-1-06
333-162-0990	7-1-06	Repeal	8-1-06	333-670-0160	4-17-06	Suspend	6-1-06
333-162-1000	7-1-06	Repeal	8-1-06	333-670-0160	10-6-06	Repeal	11-1-06
333-162-1005	7-1-06	Amend	8-1-06	333-670-0170	4-17-06	Suspend	6-1-06
333-162-1010	7-1-06	Repeal	8-1-06	333-670-0170	10-6-06	Repeal	11-1-06
333-162-1020	7-1-06	Repeal	8-1-06	333-670-0180	4-17-06	Suspend	6-1-06
333-170-0060	7-1-06	Amend	8-1-06	333-670-0180	10-6-06	Repeal	11-1-06
333-175-0011	7-1-06	Amend	8-1-06	333-670-0190	4-17-06	Suspend	6-1-06
333-175-0021	7-1-06	Amend	8-1-06	333-670-0190	10-6-06	Repeal	11-1-06
333-175-0031	7-1-06	Amend	8-1-06	333-670-0200	4-17-06	Suspend	6-1-06
333-175-0041	7-1-06	Amend	8-1-06	333-670-0200	10-6-06	Repeal	11-1-06
333-175-0051	7-1-06	Amend	8-1-06	333-670-0210	4-17-06	Suspend	6-1-06
333-175-0061	7-1-06	Amend	8-1-06	333-670-0210	10-6-06	Repeal	11-1-06
333-175-0071	7-1-06	Amend	8-1-06	333-670-0220	4-17-06	Suspend	6-1-06
333-175-0081	7-1-06	Amend	8-1-06	333-670-0220	10-6-06	Repeal	11-1-06
333-175-0091	7-1-06	Amend	8-1-06	333-670-0230	4-17-06	Suspend	6-1-06
333-175-0101	7-1-06	Amend	8-1-06	333-670-0230	10-6-06	Repeal	11-1-06
333-500-0057	10-6-06	Amend	11-1-06	333-670-0240	4-17-06	Suspend	6-1-06
333-510-0002	10-6-06	Adopt	11-1-06	333-670-0240	10-6-06	Repeal	11-1-06
333-510-0030	10-6-06	Amend	11-1-06	333-670-0250	4-17-06	Suspend	6-1-06
333-510-0045	1-1-06	Amend(T)	2-1-06	333-670-0250	10-6-06	Repeal	11-1-06
333-510-0045	10-6-06	Amend	11-1-06	333-670-0260	4-17-06	Suspend	6-1-06
333-510-0046	10-6-06	Adopt	11-1-06	333-670-0260	10-6-06	Repeal	11-1-06
333-510-0047	10-6-06	Adopt	11-1-06	333-670-0270	4-17-06	Suspend	6-1-06
333-670-0000	4-17-06	Suspend	6-1-06	333-670-0270	10-6-06	Repeal	11-1-06
333-670-0000	10-6-06	Repeal	11-1-06	333-670-0280	4-17-06	Suspend	6-1-06
333-670-0010	4-17-06	Suspend	6-1-06	333-670-0280	10-6-06	Repeal	11-1-06
333-670-0010	10-6-06	Repeal	11-1-06	334-010-0010	1-5-06	Amend	2-1-06
333-670-0020	4-17-06	Suspend	6-1-06	334-010-0015	1-5-06	Amend	2-1-06
333-670-0020	10-6-06	Repeal	11-1-06	334-010-0015	2-16-06	Amend(T)	4-1-06
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333-670-0030	10-6-06	Repeal	11-1-06	334-010-0033	1-5-06	Amend	2-1-06
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335-005-0035	5-8-06	Adopt	6-1-06	340-135-0070	8-15-06	Repeal	9-1-06
335-070-0040	5-8-06	Amend	6-1-06	340-135-0080	8-15-06	Repeal	9-1-06
335-070-0060	5-8-06	Amend	6-1-06	340-135-0090	8-15-06	Amend	9-1-06
335-070-0065	5-8-06	Amend	6-1-06	340-135-0100	8-15-06	Repeal	9-1-06
335-080-0005	5-8-06	Amend	6-1-06	340-135-0105	8-15-06	Adopt	9-1-06
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335-095-0030	5-8-06	Amend	6-1-06	340-200-0020	3-14-06	Amend	4-1-06
335-095-0055	5-8-06	Amend	6-1-06	340-200-0040	3-14-06	Amend	4-1-06
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340-012-0053	3-31-06	Amend	5-1-06	340-220-0040	6-30-06	Amend	8-1-06
340-012-0054	3-31-06	Amend	5-1-06	340-220-0050	6-30-06	Amend	8-1-06
340-012-0054	6-29-06	Amend	8-1-06	340-238-0040	3-14-06	Amend	4-1-06
340-012-0055	3-31-06	Amend	5-1-06	340-238-0050	3-14-06	Amend	4-1-06
340-012-0060	3-31-06	Amend	5-1-06	340-238-0060	3-14-06	Amend	4-1-06
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340-012-0074	3-31-06	Amend	5-1-06	340-257-0010	6-29-06	Adopt	8-1-06
340-012-0079	3-31-06	Amend	5-1-06	340-257-0010(T)	6-29-06	Repeal	8-1-06
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340-012-0082	3-31-06	Amend	5-1-06	340-257-0020	6-29-06	Adopt	8-1-06
340-012-0083	3-31-06	Amend	5-1-06	340-257-0020(T)	6-29-06	Repeal	8-1-06
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340-012-0125	6-29-06	Amend	8-1-06	340-257-0030	6-29-06	Adopt	8-1-06
340-012-0130	3-31-06	Amend	5-1-06	340-257-0030(T)	6-29-06	Repeal	8-1-06
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340-012-0140	3-31-06	Amend	5-1-06	340-257-0040(T)	6-29-06	Repeal	8-1-06
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340-012-0155	3-31-06	Amend	5-1-06	340-257-0050	6-29-06	Adopt	8-1-06
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340-045-0033	9-1-06	Amend	9-1-06	340-257-0060	1-1-06	Adopt(T)	2-1-06
340-045-0070	8-15-06	Amend	9-1-06	340-257-0060	6-29-06	Adopt	8-1-06
340-045-0075	8-15-06	Amend	9-1-06	340-257-0060(T)	6-29-06	Repeal	8-1-06
340-110-0001	3-15-06	Amend	4-1-06	340-257-0070	1-1-06	Adopt(T)	2-1-06
340-110-0020	3-15-06	Amend	4-1-06	340-257-0070	6-29-06	Adopt	8-1-06
340-110-0061	3-15-06	Amend	4-1-06	340-257-0070(T)	6-29-06	Repeal	8-1-06
340-122-0040	3-17-06	Amend	5-1-06	340-257-0080	1-1-06	Adopt(T)	2-1-06
340-122-0045	3-17-06	Repeal	5-1-06	340-257-0080	6-29-06	Adopt	8-1-06
340-122-0115	3-17-06	Amend	5-1-06	340-257-0080(T)	6-29-06	Repeal	8-1-06
340-135-0000	8-15-06	Amend	9-1-06	340-257-0090	1-1-06	Adopt(T)	2-1-06
340-135-0010	8-15-06	Amend	9-1-06	340-257-0090	6-29-06	Adopt	8-1-06
340-135-0020	8-15-06	Amend	9-1-06	340-257-0090(T)	6-29-06	Repeal	8-1-06
340-135-0030	8-15-06	Amend	9-1-06	340-257-0100	1-1-06	Adopt(T)	2-1-06
340-135-0040	8-15-06	Amend	9-1-06	340-257-0100	6-29-06	Adopt	8-1-06
340-135-0042	8-15-06	Repeal	9-1-06	340-257-0100(T)	6-29-06	Repeal	8-1-06
340-135-0044	8-15-06	Repeal	9-1-06	340-257-0110	1-1-06	Adopt(T)	2-1-06
340-135-0046	8-15-06	Repeal	9-1-06	340-257-0110	6-29-06	Adopt	8-1-06

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340-257-0120	1-1-06	Adopt(T)	2-1-06	407-045-0050	6-1-06	Adopt	7-1-06
340-257-0120	6-29-06	Adopt	8-1-06	407-045-0060	6-1-06	Adopt	7-1-06
340-257-0120(T)	6-29-06	Repeal	8-1-06	407-045-0070	6-1-06	Adopt	7-1-06
340-257-0130	1-1-06	Adopt(T)	2-1-06	407-045-0080	6-1-06	Adopt	7-1-06
340-257-0130	6-29-06	Adopt	8-1-06	407-045-0090	6-1-06	Adopt	7-1-06
340-257-0130(T)	6-29-06	Repeal	8-1-06	407-045-0100	6-1-06	Adopt	7-1-06
340-257-0140	6-29-06	Adopt	8-1-06	407-045-0110	6-1-06	Adopt	7-1-06
340-257-0150	1-1-06	Adopt(T)	2-1-06	407-050-0000	11-28-05	Adopt(T)	1-1-06
340-257-0150	6-29-06	Adopt	8-1-06	407-050-0000	5-26-06	Adopt	7-1-06
340-257-0150(T)	6-29-06	Repeal	8-1-06	407-050-0005	11-28-05	Adopt(T)	1-1-06
340-257-0160	1-1-06	Adopt(T)	2-1-06	407-050-0005	5-26-06	Adopt	7-1-06
340-257-0160	6-29-06	Adopt	8-1-06	407-050-0010	11-28-05	Adopt(T)	1-1-06
340-257-0160(T)	6-29-06	Repeal	8-1-06	407-050-0010	5-26-06	Adopt	7-1-06
350-011-0004	5-1-06	Amend	5-1-06	409-030-0060	7-25-06	Adopt(T)	9-1-06
350-012-0006	5-1-06	Amend	5-1-06	410-001-0000	6-1-06	Amend	6-1-06
350-012-0007	5-1-06	Amend	5-1-06	410-001-0005	6-1-06	Amend	6-1-06
350-012-0008	5-1-06	Amend	5-1-06	410-001-0010	6-1-06	Repeal	6-1-06
350-012-0009	5-1-06	Adopt	5-1-06	410-001-0020	6-1-06	Amend	6-1-06
350-013-0001	5-1-06	Amend	5-1-06	410-001-0030	6-1-06	Repeal	6-1-06
350-016-0004	5-1-06	Amend	5-1-06	410-002-0000	6-1-06	Repeal	6-1-06
350-050-0030	5-1-06	Amend	5-1-06	410-011-0000	1-1-06	Am. & Ren.	1-1-06
350-050-0035	5-1-06	Adopt	5-1-06	410-011-0010	1-1-06	Am. & Ren.	1-1-06
350-050-0040	5-1-06	Amend	5-1-06	410-011-0020	1-1-06	Am. & Ren.	1-1-06
350-050-0045	5-1-06	Adopt	5-1-06	410-011-0030	1-1-06	Am. & Ren.	1-1-06
350-050-0050	5-1-06	Amend	5-1-06	410-011-0040	1-1-06	Am. & Ren.	1-1-06
350-050-0060	5-1-06	Amend	5-1-06	410-011-0050	1-1-06	Am. & Ren.	1-1-06
350-050-0070	5-1-06	Amend	5-1-06	410-011-0060	1-1-06	Am. & Ren.	1-1-06
350-050-0075	5-1-06	Repeal	5-1-06	410-011-0070	1-1-06	Am. & Ren.	1-1-06
350-050-0080	5-1-06	Amend	5-1-06	410-011-0080	1-1-06	Am. & Ren.	1-1-06
350-050-0085	5-1-06	Amend	5-1-06	410-011-0090	1-1-06	Am. & Ren.	1-1-06
350-050-0090	5-1-06	Amend	5-1-06	410-011-0100	1-1-06	Am. & Ren.	1-1-06
350-050-0100	5-1-06	Amend	5-1-06	410-011-0110	1-1-06	Am. & Ren.	1-1-06
350-050-0110	5-1-06	Repeal	5-1-06	410-011-0120	1-1-06	Am. & Ren.	1-1-06
350-081-0108	8-1-06	Amend	8-1-06	410-015-0000	7-14-06	Re number	8-1-06
350-081-0114	8-1-06	Adopt	8-1-06	410-015-0010	7-14-06	Re number	8-1-06
350-081-0190	8-1-06	Amend	8-1-06	410-015-0020	7-14-06	Re number	8-1-06
350-081-0270	8-1-06	Amend	8-1-06	410-015-0030	7-14-06	Re number	8-1-06
350-081-0370	8-1-06	Amend	8-1-06	410-015-0040	7-14-06	Re number	8-1-06
350-081-0450	8-1-06	Amend	8-1-06	410-050-0431	8-7-06	Amend(T)	9-1-06
350-081-0490	8-1-06	Amend	8-1-06	410-050-0861	7-1-06	Amend	7-1-06
407-001-0000	6-1-06	Adopt	6-1-06	410-120-0000	1-1-06	Amend	1-1-06
407-001-0005	6-1-06	Adopt	6-1-06	410-120-0000	7-1-06	Amend	7-1-06
407-001-0010	6-1-06	Adopt	6-1-06	410-120-0250	1-1-06	Amend	2-1-06
407-005-0000	3-1-06	Adopt	4-1-06	410-120-1180	7-1-06	Amend	7-1-06
407-005-0005	3-1-06	Adopt	4-1-06	410-120-1200	1-1-06	Amend	1-1-06
407-005-0010	3-1-06	Adopt	4-1-06	410-120-1200	7-1-06	Amend	7-1-06
407-005-0015	3-1-06	Adopt	4-1-06	410-120-1210	1-1-06	Amend	1-1-06
407-005-0020	3-1-06	Adopt	4-1-06	410-120-1210	7-1-06	Amend	7-1-06
407-005-0025	3-1-06	Adopt	4-1-06	410-120-1230	7-1-06	Amend	7-1-06
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407-045-0020	6-1-06	Adopt	7-1-06	410-120-1295	1-1-06	Amend(T)	1-1-06
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410-120-1295(T)	6-23-06	Repeal	8-1-06	410-122-0630	10-1-06	Amend	10-1-06
410-120-1340	7-1-06	Amend	7-1-06	410-122-0660	10-1-06	Amend	10-1-06
410-120-1400	7-1-06	Amend	7-1-06	410-122-0700	7-1-06	Amend	7-1-06
410-120-1460	7-1-06	Amend	7-1-06	410-125-0090	1-1-06	Amend	2-1-06
410-120-1560	7-1-06	Amend	7-1-06	410-125-0141	1-1-06	Amend	2-1-06
410-120-1855	7-1-06	Amend	7-1-06	410-125-0141	7-1-06	Amend	7-1-06
410-120-1960	7-1-06	Amend	7-1-06	410-125-0142	7-1-06	Amend	7-1-06
410-121-0030	7-1-06	Amend	7-1-06	410-125-0146	9-1-06	Adopt	10-1-06
410-121-0030	9-1-06	Amend	10-1-06	410-125-0155	7-1-06	Amend	7-1-06
410-121-0040	3-15-06	Amend(T)	4-1-06	410-125-0181	1-1-06	Amend	2-1-06
410-121-0040	9-1-06	Amend	10-1-06	410-125-0181	7-1-06	Amend	7-1-06
410-121-0040(T)	9-1-06	Repeal	10-1-06	410-125-0190	1-1-06	Amend	2-1-06
410-121-0060	7-1-06	Amend	7-1-06	410-125-0190	7-1-06	Amend	7-1-06
410-121-0100	7-1-06	Amend	7-1-06	410-125-0195	1-1-06	Amend	2-1-06
410-121-0140	7-1-06	Amend	7-1-06	410-125-0195	7-1-06	Amend	7-1-06
410-121-0147	1-1-06	Amend	1-1-06	410-125-0201	1-1-06	Amend	2-1-06
410-121-0147	7-1-06	Amend	7-1-06	410-125-0210	1-1-06	Amend	2-1-06
410-121-0149	1-18-06	Adopt(T)	3-1-06	410-125-0220	7-1-06	Amend	7-1-06
410-121-0149	6-29-06	Adopt	8-1-06	410-125-0221	7-1-06	Amend	7-1-06
410-121-0150	7-1-06	Amend	7-1-06	410-125-0600	7-1-06	Amend	7-1-06
410-121-0155	7-1-06	Amend	7-1-06	410-125-0720	7-1-06	Amend	7-1-06
410-121-0157	4-1-06	Amend	5-1-06	410-125-1020	1-1-06	Amend	2-1-06
410-121-0157	4-1-06	Amend(T)	5-1-06	410-125-1060	1-1-06	Amend	2-1-06
410-121-0157	6-1-06	Amend	7-1-06	410-125-2080	7-1-06	Amend	7-1-06
410-121-0160	7-1-06	Amend	7-1-06	410-129-0200	7-1-06	Amend	7-1-06
410-121-0190	12-1-05	Amend	1-1-06	410-129-0240	7-1-06	Amend	7-1-06
410-121-0300	1-1-06	Amend	2-1-06	410-129-0260	7-1-06	Amend	7-1-06
410-121-0300	4-1-06	Amend(T)	5-1-06	410-129-0280	7-1-06	Amend	7-1-06
410-121-0300	6-1-06	Amend	7-1-06	410-130-0180	7-1-06	Amend	7-1-06
410-121-0320	1-1-06	Amend	2-1-06	410-130-0190	7-1-06	Amend	7-1-06
410-122-0010	7-1-06	Amend	7-1-06	410-130-0200	7-1-06	Amend	7-1-06
410-122-0040	7-1-06	Amend	7-1-06	410-130-0220	7-1-06	Amend	7-1-06
410-122-0055	10-1-06	Amend	10-1-06	410-130-0225	7-1-06	Amend	7-1-06
410-122-0080	7-1-06	Amend	7-1-06	410-130-0240	7-1-06	Amend	7-1-06
410-122-0180	7-1-06	Amend	7-1-06	410-130-0255	7-1-06	Amend	7-1-06
410-122-0190	12-1-05	Amend	1-1-06	410-130-02580	7-1-06	Amend	7-1-06
410-122-0200	10-1-06	Amend	10-1-06	410-130-0585	7-1-06	Amend	7-1-06
410-122-0202	10-1-06	Amend	10-1-06	410-130-0587	7-1-06	Amend	7-1-06
410-122-0204	7-1-06	Amend	7-1-06	410-130-0595	7-1-06	Amend	7-1-06
410-122-0205	10-1-06	Amend	10-1-06	410-130-0670	7-1-06	Amend	7-1-06
410-122-0210	10-1-06	Amend	10-1-06	410-130-0680	7-1-06	Amend	7-1-06
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410-122-0300	7-1-06	Amend	7-1-06	410-131-0280	7-1-06	Amend	7-1-06
410-122-0320	7-1-06	Amend	7-1-06	410-132-0140	12-1-05	Repeal	1-1-06
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410-122-0330	7-1-06	Amend	7-1-06	410-136-0340	7-1-06	Amend	7-1-06
410-122-0340	7-1-06	Amend	7-1-06	410-136-0350	7-1-06	Amend	7-1-06
410-122-0400	7-1-06	Amend	7-1-06	410-136-0360	7-1-06	Amend	7-1-06
410-122-0510	7-1-06	Amend	7-1-06	410-136-0420	12-1-05	Amend	1-1-06
410-122-0515	7-1-06	Adopt	7-1-06	410-136-0420	7-1-06	Amend	7-1-06
410-122-0520	10-1-06	Amend	10-1-06	410-138-0600	2-7-06	Adopt(T)	3-1-06
410-122-0525	7-1-06	Amend	7-1-06	410-138-0600	7-1-06	Adopt	7-1-06
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410-138-0620	7-1-06	Adopt	7-1-06	410-147-0060	7-1-06	Amend	7-1-06
410-138-0640	2-7-06	Adopt(T)	3-1-06	410-147-0080	7-1-06	Amend	7-1-06
410-138-0640	7-1-06	Adopt	7-1-06	410-147-0085	7-1-06	Amend	7-1-06
410-138-0660	2-7-06	Adopt(T)	3-1-06	410-147-0120	7-1-06	Amend	7-1-06
410-138-0660	7-1-06	Adopt	7-1-06	410-147-0125	7-1-06	Amend	7-1-06
410-138-0680	2-7-06	Adopt(T)	3-1-06	410-147-0140	7-1-06	Amend	7-1-06
410-138-0680	7-1-06	Adopt	7-1-06	410-147-0160	7-1-06	Amend	7-1-06
410-138-0700	2-7-06	Adopt(T)	3-1-06	410-147-0180	7-1-06	Amend	7-1-06
410-138-0700	7-1-06	Adopt	7-1-06	410-147-0200	7-1-06	Amend	7-1-06
410-138-0710	2-7-06	Adopt(T)	3-1-06	410-147-0220	7-1-06	Amend	7-1-06
410-138-0710	7-1-06	Adopt	7-1-06	410-147-0240	7-1-06	Amend	7-1-06
410-138-0720	2-7-06	Adopt(T)	3-1-06	410-147-0280	7-1-06	Amend	7-1-06
410-138-0720	7-1-06	Adopt	7-1-06	410-147-0320	7-1-06	Amend	7-1-06
410-138-0740	2-7-06	Adopt(T)	3-1-06	410-147-0360	7-1-06	Amend	7-1-06
410-138-0740	7-1-06	Adopt	7-1-06	410-147-0365	1-1-06	Amend	1-1-06
410-138-0760	2-7-06	Adopt(T)	3-1-06	410-147-0400	7-1-06	Amend	7-1-06
410-138-0760	7-1-06	Adopt	7-1-06	410-147-0460	7-1-06	Amend	7-1-06
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410-141-0000	7-1-06	Amend	7-1-06	411-001-0010	6-1-06	Amend	6-1-06
410-141-0010	3-1-06	Adopt	3-1-06	411-001-0100	6-1-06	Amend	6-1-06
410-141-0010(T)	3-1-06	Repeal	3-1-06	411-001-0110	6-1-06	Amend	6-1-06
410-141-0050	6-1-06	Adopt(T)	8-1-06	411-001-0120	6-1-06	Amend	6-1-06
410-141-0060	1-1-06	Amend	1-1-06	411-005-0000	7-1-06	Repeal	8-1-06
410-141-0060	5-4-06	Amend(T)	6-1-06	411-005-0005	7-1-06	Repeal	8-1-06
410-141-0060	7-1-06	Amend	7-1-06	411-005-0010	7-1-06	Amend	8-1-06
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410-141-0070	7-1-06	Amend	7-1-06	411-005-0020	7-1-06	Amend	8-1-06
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410-141-0085	7-1-06	Amend	7-1-06	411-005-0030	7-1-06	Repeal	8-1-06
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410-141-0480	7-1-06	Amend	7-1-06	411-015-0006	6-1-06	Adopt	7-1-06
410-141-0520	12-1-05	Amend	1-1-06	411-015-0007	5-1-06	Adopt	6-1-06
410-141-0520	1-1-06	Amend	2-1-06	411-015-0008	6-1-06	Adopt	7-1-06
410-141-0520	4-1-06	Amend	5-1-06	411-015-0010	6-1-06	Amend	7-1-06
410-141-0860	7-1-06	Amend	7-1-06	411-015-0015	2-1-06	Amend	3-1-06
410-142-0060	10-1-06	Amend	10-1-06	411-015-0015	6-1-06	Amend	7-1-06
410-142-0300	10-1-06	Amend	10-1-06	411-015-0100	12-29-05	Amend	2-1-06
410-146-0100	12-1-05	Amend	1-1-06	411-015-0100	6-1-06	Amend	7-1-06
410-147-0020	7-1-06	Amend	7-1-06	411-018-0000	12-12-05	Amend	1-1-06

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411-018-0020	12-12-05	Amend	1-1-06	411-065-0049	9-1-06	Amend	10-1-06
411-020-0002	4-1-06	Amend	5-1-06	411-065-0050	9-1-06	Amend	10-1-06
411-020-0010	4-1-06	Amend	5-1-06	411-070-0005	2-1-06	Amend	3-1-06
411-020-0015	4-1-06	Amend	5-1-06	411-070-0010	2-1-06	Amend	3-1-06
411-020-0020	4-1-06	Amend	5-1-06	411-070-0015	2-1-06	Amend	3-1-06
411-020-0030	4-1-06	Amend	5-1-06	411-070-0020	2-1-06	Amend	3-1-06
411-021-0000	4-1-06	Amend	5-1-06	411-070-0025	2-1-06	Amend	3-1-06
411-021-0005	4-1-06	Amend	5-1-06	411-070-0027	2-1-06	Amend	3-1-06
411-021-0010	4-1-06	Amend	5-1-06	411-070-0029	2-1-06	Amend	3-1-06
411-021-0015	4-1-06	Amend	5-1-06	411-070-0035	2-1-06	Amend	3-1-06
411-021-0020	4-1-06	Amend	5-1-06	411-070-0040	2-1-06	Amend	3-1-06
411-021-0025	4-1-06	Amend	5-1-06	411-070-0043	2-1-06	Amend	3-1-06
411-030-0020	12-21-05	Amend(T)	2-1-06	411-070-0045	2-1-06	Amend	3-1-06
411-030-0020	6-1-06	Amend	7-1-06	411-070-0050	2-1-06	Amend	3-1-06
411-030-0033	12-21-05	Amend(T)	2-1-06	411-070-0080	2-1-06	Amend	3-1-06
411-030-0033	6-1-06	Amend	7-1-06	411-070-0085	2-1-06	Amend	3-1-06
411-030-0040	12-21-05	Amend(T)	2-1-06	411-070-0091	2-1-06	Amend	3-1-06
411-030-0040	1-13-06	Amend(T)	2-1-06	411-070-0095	2-1-06	Amend	3-1-06
411-030-0040	6-1-06	Amend	7-1-06	411-070-0100	2-1-06	Amend	3-1-06
411-030-0050	12-21-05	Amend(T)	2-1-06	411-070-0105	2-1-06	Amend	3-1-06
411-030-0050	6-1-06	Amend	7-1-06	411-070-0110	2-1-06	Amend	3-1-06
411-030-0055	12-21-05	Adopt(T)	2-1-06	411-070-0115	2-1-06	Amend	3-1-06
411-030-0055	6-1-06	Adopt	7-1-06	411-070-0120	2-1-06	Amend	3-1-06
411-030-0055(T)	6-1-06	Repeal	7-1-06	411-070-0125	2-1-06	Amend	3-1-06
411-030-0070	12-21-05	Amend(T)	2-1-06	411-070-0130	2-1-06	Amend	3-1-06
411-030-0070	6-1-06	Amend	7-1-06	411-070-0140	2-1-06	Amend	3-1-06
411-030-0080	6-1-06	Amend	7-1-06	411-070-0300	2-1-06	Amend	3-1-06
411-030-0090	6-1-06	Amend	7-1-06	411-070-0302	2-1-06	Amend	3-1-06
411-031-0020	11-16-05	Amend(T)	1-1-06	411-070-0305	2-1-06	Amend	3-1-06
411-031-0020	5-1-06	Amend	6-1-06	411-070-0310	2-1-06	Amend	3-1-06
411-031-0020(T)	5-1-06	Repeal	6-1-06	411-070-0315	2-1-06	Amend	3-1-06
411-031-0040	5-1-06	Amend	6-1-06	411-070-0330	2-1-06	Amend	3-1-06
411-031-0050	11-16-05	Amend(T)	1-1-06	411-070-0335	2-1-06	Amend	3-1-06
411-031-0050	5-1-06	Amend	6-1-06	411-070-0340	2-1-06	Amend	3-1-06
411-031-0050(T)	5-1-06	Repeal	6-1-06	411-070-0345	2-1-06	Amend	3-1-06
411-055-0003	2-1-06	Amend	3-1-06	411-070-0350	2-1-06	Amend	3-1-06
411-055-0003(T)	2-1-06	Repeal	3-1-06	411-070-0359	2-1-06	Amend	3-1-06
411-055-0190	1-18-06	Amend(T)	3-1-06	411-070-0365	2-1-06	Amend	3-1-06
411-055-0190	7-1-06	Amend	8-1-06	411-070-0370	2-1-06	Amend	3-1-06
411-055-0190(T)	7-1-06	Repeal	8-1-06	411-070-0375	2-1-06	Amend	3-1-06
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411-056-0007(T)	2-1-06	Repeal	3-1-06	411-070-0400	2-1-06	Amend	3-1-06
411-056-0020	1-18-06	Amend(T)	3-1-06	411-070-0415	2-1-06	Amend	3-1-06
411-056-0020	7-1-06	Amend	8-1-06	411-070-0420	2-1-06	Amend	3-1-06
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411-065-0005	9-1-06	Amend	10-1-06	411-070-0428	2-1-06	Amend	3-1-06
411-065-0015	9-1-06	Amend	10-1-06	411-070-0430	2-1-06	Amend	3-1-06
411-065-0020	9-1-06	Amend	10-1-06	411-070-0435	2-1-06	Amend	3-1-06
411-065-0025	9-1-06	Amend	10-1-06	411-070-0452	2-1-06	Amend	3-1-06
411-065-0030	9-1-06	Amend	10-1-06	411-070-0458	2-1-06	Repeal	3-1-06
411-065-0035	9-1-06	Amend	10-1-06	411-070-0462	2-1-06	Amend	3-1-06
411-065-0040	9-1-06	Amend	10-1-06	411-070-0464	2-1-06	Amend	3-1-06
411-065-0045	9-1-06	Amend	10-1-06	411-070-0465	2-1-06	Amend	3-1-06
411-065-0046	9-1-06	Amend	10-1-06	411-070-0470	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
411-310-0010	4-5-06	Amend	5-1-06	411-320-0170	2-1-06	Amend	3-1-06
411-310-0020	4-5-06	Amend	5-1-06	411-320-0170(T)	2-1-06	Repeal	3-1-06
411-310-0030	4-5-06	Amend	5-1-06	411-340-0020	5-1-06	Amend	6-1-06
411-310-0040	4-5-06	Amend	5-1-06	411-340-0030	5-1-06	Amend	6-1-06
411-310-0050	4-5-06	Amend	5-1-06	411-340-0040	5-1-06	Amend	6-1-06
411-310-0060	4-5-06	Amend	5-1-06	411-340-0050	5-1-06	Amend	6-1-06
411-310-0070	4-5-06	Amend	5-1-06	411-340-0060	5-1-06	Amend	6-1-06
411-315-0010	4-5-06	Amend	5-1-06	411-340-0110	5-1-06	Amend	6-1-06
411-315-0020	4-5-06	Amend	5-1-06	411-340-0120	5-1-06	Amend	6-1-06
411-315-0030	4-5-06	Amend	5-1-06	411-340-0130	5-1-06	Amend	6-1-06
411-315-0050	4-5-06	Amend	5-1-06	411-340-0140	5-1-06	Amend	6-1-06
411-315-0060	4-5-06	Amend	5-1-06	411-340-0150	5-1-06	Amend	6-1-06
411-315-0070	4-5-06	Amend	5-1-06	411-340-0160	5-1-06	Amend	6-1-06
411-315-0080	4-5-06	Amend	5-1-06	411-340-0170	5-1-06	Amend	6-1-06
411-315-0090	4-5-06	Amend	5-1-06	411-340-0180	5-1-06	Amend	6-1-06
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411-320-0030(T)	2-1-06	Repeal	3-1-06	413-010-0082	8-1-06	Adopt	9-1-06
411-320-0040	11-23-05	Amend(T)	1-1-06	413-010-0083	2-6-06	Adopt(T)	3-1-06
411-320-0040	2-1-06	Amend	3-1-06	413-010-0083	8-1-06	Adopt	9-1-06
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411-320-0050	2-1-06	Amend	3-1-06	413-010-0085	2-6-06	Adopt(T)	3-1-06
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411-320-0080	11-23-05	Amend(T)	1-1-06	413-015-0115	7-1-06	Amend	8-1-06
411-320-0080	2-1-06	Amend	3-1-06	413-015-0200	12-1-05	Amend	1-1-06
411-320-0080(T)	2-1-06	Repeal	3-1-06	413-015-0205	12-1-05	Amend	1-1-06
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411-320-0090	2-1-06	Amend	3-1-06	413-015-0211	12-1-05	Adopt	1-1-06
411-320-0090(T)	2-1-06	Repeal	3-1-06	413-015-0212	12-1-05	Adopt	1-1-06
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411-320-0110	2-1-06	Amend	3-1-06	413-015-0300	7-1-06	Amend	8-1-06
411-320-0110(T)	2-1-06	Repeal	3-1-06	413-015-0302	1-1-06	Adopt(T)	2-1-06
411-320-0120	11-23-05	Amend(T)	1-1-06	413-015-0302	7-1-06	Adopt	8-1-06
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413-015-0513(T)	3-1-06	Repeal	4-1-06	413-090-0380	2-1-06	Amend	3-1-06
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413-090-0100	10-13-06	Amend(T)	11-1-06	414-350-0050	1-1-06	Amend(T)	2-1-06
413-090-0110	10-13-06	Amend(T)	11-1-06	414-350-0050	6-13-06	Amend	7-1-06
413-090-0120	10-13-06	Amend(T)	11-1-06	414-350-0050	8-25-06	Amend(T)	10-1-06

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414-350-0100	6-13-06	Amend	7-1-06	417-001-0001	6-1-06	Amend	7-1-06
414-350-0100	8-25-06	Amend(T)	10-1-06	436-001-0003	1-17-06	Amend	2-1-06
414-350-0110	8-25-06	Amend(T)	10-1-06	436-001-0005	1-17-06	Amend	2-1-06
414-350-0120	1-1-06	Amend(T)	2-1-06	436-009-0004	4-1-06	Amend	4-1-06
414-350-0120	6-13-06	Amend	7-1-06	436-009-0005	4-1-06	Amend	4-1-06
414-350-0120	8-25-06	Amend(T)	10-1-06	436-009-0006	4-1-06	Amend	4-1-06
414-350-0140	1-1-06	Amend(T)	2-1-06	436-009-0008	4-1-06	Amend	4-1-06
414-350-0140	6-13-06	Amend	7-1-06	436-009-0010	4-1-06	Amend	4-1-06
414-350-0160	1-1-06	Amend(T)	2-1-06	436-009-0015	4-1-06	Amend	4-1-06
414-350-0160	6-13-06	Amend	7-1-06	436-009-0020	4-1-06	Amend	4-1-06
414-350-0170	1-1-06	Amend(T)	2-1-06	436-009-0022	4-1-06	Amend	4-1-06
414-350-0170	6-13-06	Amend	7-1-06	436-009-0025	4-1-06	Amend	4-1-06
414-350-0220	1-1-06	Amend(T)	2-1-06	436-009-0030	4-1-06	Amend	4-1-06
414-350-0220	6-13-06	Amend	7-1-06	436-009-0035	4-1-06	Amend	4-1-06
414-350-0235	1-1-06	Amend(T)	2-1-06	436-009-0040	4-1-06	Amend	4-1-06
414-350-0235	6-13-06	Amend	7-1-06	436-009-0050	4-1-06	Amend	4-1-06
414-350-0250	1-1-06	Amend(T)	2-1-06	436-009-0060	4-1-06	Amend	4-1-06
414-350-0250	6-13-06	Amend	7-1-06	436-009-0070	4-1-06	Amend	4-1-06
414-700-0060	12-15-05	Amend(T)	1-1-06	436-009-0080	4-1-06	Amend	4-1-06
414-700-0060	4-23-06	Amend	6-1-06	436-009-0090	4-1-06	Amend	4-1-06
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415-001-0010	6-1-06	Repeal	6-1-06	436-010-0005	7-1-06	Amend	7-1-06
416-100-0000	10-9-06	Amend	11-1-06	436-010-0008	1-1-06	Amend	1-1-06
416-100-0005	10-9-06	Adopt	11-1-06	436-010-0210	1-1-06	Amend	1-1-06
416-100-0010	10-9-06	Amend	11-1-06	436-010-0210	7-1-06	Amend	7-1-06
416-100-0050	10-9-06	Amend	11-1-06	436-010-0220	1-1-06	Amend	1-1-06
416-100-0060	10-9-06	Amend	11-1-06	436-010-0220	7-1-06	Amend	7-1-06
416-100-0070	10-9-06	Amend	11-1-06	436-010-0230	1-1-06	Amend	1-1-06
416-310-0000	2-7-06	Repeal	3-1-06	436-010-0230	7-1-06	Amend	7-1-06
416-310-0010	2-7-06	Repeal	3-1-06	436-010-0240	1-1-06	Amend	1-1-06
416-310-0020	2-7-06	Repeal	3-1-06	436-010-0240	7-1-06	Amend	7-1-06
416-310-0030	2-7-06	Repeal	3-1-06	436-010-0250	1-1-06	Amend	1-1-06
416-425-0000	11-22-05	Adopt	1-1-06	436-010-0265	1-1-06	Amend	1-1-06
416-425-0010	11-22-05	Adopt	1-1-06	436-010-0265	7-1-06	Amend	7-1-06
416-425-0020	11-22-05	Adopt	1-1-06	436-010-0270	1-1-06	Amend	1-1-06
416-480-0000	2-17-06	Amend	4-1-06	436-010-0275	7-1-06	Amend	7-1-06
416-480-0010	2-17-06	Amend	4-1-06	436-010-0280	1-1-06	Amend	1-1-06
416-480-0020	2-17-06	Amend	4-1-06	436-010-0280	7-1-06	Amend	7-1-06
416-480-0040	2-17-06	Amend	4-1-06	436-010-0290	1-1-06	Amend	1-1-06
416-480-0060	2-17-06	Amend	4-1-06	436-010-0300	1-1-06	Amend	1-1-06
416-480-0070	2-17-06	Amend	4-1-06	436-010-0340	1-1-06	Amend	1-1-06
416-480-0080	2-17-06	Amend	4-1-06	436-015-0005	6-1-06	Amend(T)	6-1-06
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416-530-0040	3-20-06	Amend	5-1-06	436-015-0030	1-1-06	Amend	1-1-06
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416-600-0020	2-17-06	Amend	4-1-06	436-015-0040	6-1-06	Amend(T)	6-1-06
416-600-0030	2-17-06	Amend	4-1-06	436-015-0070	1-1-06	Amend	1-1-06
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416-650-0010	2-7-06	Repeal	3-1-06	436-030-0005	1-1-06	Amend	1-1-06
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416-650-0030	2-7-06	Repeal	3-1-06	436-030-0009	1-1-06	Amend	1-1-06
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436-030-0034	1-1-06	Amend	1-1-06	436-060-0020	1-1-06	Amend	1-1-06
436-030-0055	1-1-06	Amend	1-1-06	436-060-0025	1-1-06	Amend	1-1-06
436-030-0065	1-1-06	Amend	1-1-06	436-060-0030	1-1-06	Amend	1-1-06
436-030-0115	1-1-06	Amend	1-1-06	436-060-0035	1-1-06	Amend	1-1-06
436-030-0155	1-1-06	Amend	1-1-06	436-060-0035	7-1-06	Amend	7-1-06
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436-030-0175	1-1-06	Amend	1-1-06	436-060-0055	1-1-06	Amend	1-1-06
436-030-0185	1-1-06	Amend	1-1-06	436-060-0060	1-1-06	Amend	1-1-06
436-030-0575	1-1-06	Amend	1-1-06	436-060-0095	1-1-06	Amend	1-1-06
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436-035-0005	1-1-06	Amend	1-1-06	436-060-0105	1-1-06	Amend	1-1-06
436-035-0007	1-1-06	Amend	1-1-06	436-060-0135	1-1-06	Amend	1-1-06
436-035-0008	1-1-06	Amend	1-1-06	436-060-0137	1-1-06	Adopt	1-1-06
436-035-0009	1-1-06	Amend	1-1-06	436-060-0140	1-1-06	Amend	1-1-06
436-035-0011	1-1-06	Amend	1-1-06	436-060-0147	1-1-06	Amend	1-1-06
436-035-0012	1-1-06	Amend	1-1-06	436-060-0150	1-1-06	Amend	1-1-06
436-035-0016	1-1-06	Amend	1-1-06	436-060-0155	1-1-06	Amend	1-1-06
436-035-0017	1-1-06	Amend	1-1-06	436-060-0180	1-1-06	Amend	1-1-06
436-035-0019	1-1-06	Amend	1-1-06	436-060-0190	1-1-06	Amend	1-1-06
436-035-0110	1-1-06	Amend	1-1-06	436-060-0200	1-1-06	Amend	1-1-06
436-035-0190	1-1-06	Amend	1-1-06	436-060-0500	1-1-06	Amend	1-1-06
436-035-0230	1-1-06	Amend	1-1-06	436-060-0510	1-1-06	Adopt	1-1-06
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436-035-0340	1-1-06	Amend	1-1-06	436-070-0020	7-1-06	Amend	7-1-06
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436-035-0360	1-1-06	Amend	1-1-06	436-105-0500	1-1-06	Amend	1-1-06
436-035-0380	1-1-06	Amend	1-1-06	436-110-0002	1-1-06	Amend	1-1-06
436-035-0390	1-1-06	Amend	1-1-06	436-110-0005	1-1-06	Amend	1-1-06
436-035-0395	1-1-06	Amend	1-1-06	436-110-0310	1-1-06	Amend	1-1-06
436-035-0400	1-1-06	Amend	1-1-06	436-110-0326	1-1-06	Amend	1-1-06
436-035-0410	1-1-06	Amend	1-1-06	436-110-0327	1-1-06	Amend	1-1-06
436-035-0420	1-1-06	Amend	1-1-06	436-110-0335	1-1-06	Amend	1-1-06
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436-050-0003	1-1-06	Amend	1-1-06	436-120-0008	1-1-06	Amend	1-1-06
436-050-0008	1-1-06	Amend	1-1-06	436-120-0320	1-1-06	Amend	1-1-06
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436-050-0110	1-1-06	Amend	1-1-06	436-120-0900	1-1-06	Amend	1-1-06
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437-002-0100	12-14-05	Amend	1-1-06	441-780-0020	1-9-06	Repeal	2-1-06
437-002-0100	7-24-06	Amend	9-1-06	441-780-0030	1-9-06	Repeal	2-1-06
437-002-0120	7-24-06	Amend	9-1-06	441-780-0040	1-9-06	Repeal	2-1-06
437-002-0220	7-24-06	Amend	9-1-06	441-780-0050	1-9-06	Repeal	2-1-06
437-002-0260	12-14-05	Amend	1-1-06	441-780-0060	1-9-06	Repeal	2-1-06
437-002-0280	12-14-05	Amend	1-1-06	441-780-0070	1-9-06	Repeal	2-1-06
437-002-0300	12-14-05	Amend	1-1-06	441-780-0080	1-9-06	Repeal	2-1-06
437-002-0340	7-24-06	Amend	9-1-06	441-780-0090	1-9-06	Repeal	2-1-06
437-002-0360	7-24-06	Amend	9-1-06	441-910-0000	1-1-06	Amend	1-1-06
437-002-0360	8-30-06	Amend	10-1-06	441-910-0010	1-1-06	Amend	1-1-06
437-002-0382	8-30-06	Amend	10-1-06	441-910-0020	1-1-06	Amend	1-1-06
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437-003-0001	7-24-06	Amend	9-1-06	441-910-0040	1-1-06	Amend	1-1-06
437-003-0001	8-30-06	Amend	10-1-06	441-910-0050	1-1-06	Amend	1-1-06
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437-004-0099	9-22-06	Amend	11-1-06	441-910-0080	1-1-06	Amend	1-1-06
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437-004-1030	9-22-06	Amend	11-1-06	441-910-0130	1-1-06	Repeal	1-1-06
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437-005-0003	8-30-06	Amend	10-1-06	441-930-0320	2-22-06	Amend	4-1-06
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440-001-0005	2-14-06	Amend	3-1-06	441-930-0340	2-22-06	Amend	4-1-06
441-001-0005	5-17-06	Amend	7-1-06	441-930-0350	2-22-06	Amend	4-1-06
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442-004-0010	1-17-06	Amend(T)	3-1-06	442-005-0280	6-1-06	Adopt	7-1-06
442-004-0010	6-1-06	Repeal	7-1-06	442-005-0290	6-1-06	Adopt	7-1-06
442-004-0020	6-1-06	Repeal	7-1-06	442-005-0300	6-1-06	Adopt	7-1-06
442-004-0030	6-1-06	Repeal	7-1-06	442-005-0310	6-1-06	Adopt	7-1-06
442-004-0040	6-1-06	Repeal	7-1-06	442-005-0320	6-1-06	Adopt	7-1-06
442-004-0050	6-1-06	Repeal	7-1-06	442-005-0330	6-1-06	Adopt	7-1-06
442-004-0060	6-1-06	Repeal	7-1-06	442-005-0340	6-1-06	Adopt	7-1-06
442-004-0070	6-1-06	Repeal	7-1-06	442-005-0350	6-1-06	Adopt	7-1-06
442-004-0080	1-17-06	Amend(T)	3-1-06	443-002-0010	1-1-06	Amend	2-1-06
442-004-0080	6-1-06	Repeal	7-1-06	443-002-0030	1-1-06	Amend	2-1-06
442-004-0085	1-17-06	Amend(T)	3-1-06	443-002-0060	1-1-06	Amend	2-1-06
442-004-0085	6-1-06	Repeal	7-1-06	443-002-0070	1-1-06	Amend	2-1-06
442-004-0090	6-1-06	Repeal	7-1-06	443-002-0080	1-1-06	Amend	2-1-06
442-004-0100	6-1-06	Repeal	7-1-06	443-002-0090	1-1-06	Amend	2-1-06
442-004-0110	6-1-06	Repeal	7-1-06	443-002-0095	1-1-06	Adopt	2-1-06
442-004-0115	6-1-06	Repeal	7-1-06	443-002-0110	1-1-06	Amend	2-1-06
442-004-0117	6-1-06	Repeal	7-1-06	443-002-0120	1-1-06	Amend	2-1-06
442-004-0120	6-1-06	Repeal	7-1-06	445-050-0115	12-29-05	Amend(T)	2-1-06
442-004-0130	1-17-06	Amend(T)	3-1-06	445-050-0115	6-15-06	Amend	7-1-06
442-004-0130	6-1-06	Repeal	7-1-06	445-050-0125	12-29-05	Amend(T)	2-1-06
442-004-0140	6-1-06	Repeal	7-1-06	445-050-0125	6-15-06	Amend	7-1-06
442-004-0150	1-17-06	Amend(T)	3-1-06	445-050-0135	12-29-05	Amend(T)	2-1-06
442-004-0150	6-1-06	Repeal	7-1-06	445-050-0135	6-15-06	Amend	7-1-06
442-004-0160	1-17-06	Amend(T)	3-1-06	459-001-0005	6-26-06	Amend	8-1-06
442-004-0160	6-1-06	Repeal	7-1-06	459-001-0035	6-26-06	Amend	8-1-06
442-004-0170	1-17-06	Amend(T)	3-1-06	459-001-0040	6-26-06	Amend	8-1-06
442-004-0170	6-1-06	Repeal	7-1-06	459-005-0001	4-5-06	Amend	5-1-06
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442-005-0010	6-1-06	Adopt	7-1-06	459-007-0001	2-1-06	Amend	3-1-06
442-005-0020	6-1-06	Adopt	7-1-06	459-007-0001(T)	2-1-06	Repeal	3-1-06
442-005-0030	6-1-06	Adopt	7-1-06	459-007-0003	2-1-06	Amend	3-1-06
442-005-0040	6-1-06	Adopt	7-1-06	459-007-0003(T)	2-1-06	Repeal	3-1-06
442-005-0050	6-1-06	Adopt	7-1-06	459-007-0005	2-1-06	Amend	3-1-06
442-005-0060	6-1-06	Adopt	7-1-06	459-007-0005(T)	2-1-06	Repeal	3-1-06
442-005-0070	6-1-06	Adopt	7-1-06	459-007-0015	12-7-05	Amend	1-1-06
442-005-0080	6-1-06	Adopt	7-1-06	459-007-0090	2-1-06	Amend	3-1-06
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442-005-0200	6-1-06	Adopt	7-1-06	459-070-0001	1-1-06	Amend	2-1-06
442-005-0210	6-1-06	Adopt	7-1-06	459-070-0001	4-5-06	Amend	5-1-06
442-005-0220	6-1-06	Adopt	7-1-06	459-070-0900	9-26-06	Repeal	11-1-06
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461-007-0124	10-1-06	Repeal	11-1-06	461-135-0095	4-1-06	Amend	5-1-06
461-025-0300	10-1-06	Amend	11-1-06	461-135-0095	4-1-06	Amend(T)	5-1-06
461-025-0305	10-1-06	Amend	11-1-06	461-135-0095	7-1-06	Amend	8-1-06
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461-025-0310	10-1-06	Amend	11-1-06	461-135-0096	4-1-06	Amend(T)	5-1-06
461-025-0311	10-1-06	Amend	11-1-06	461-135-0096	7-1-06	Amend	8-1-06
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461-025-0371	10-1-06	Amend	11-1-06	461-135-0505	7-1-06	Amend	8-1-06
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461-110-0110	4-1-06	Amend	5-1-06	461-135-0835	4-1-06	Amend	5-1-06
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461-140-0295(T)	7-1-06	Repeal	8-1-06	461-155-0175	7-1-06	Adopt	8-1-06
461-140-0296	1-1-06	Amend	2-1-06	461-155-0175(T)	7-1-06	Repeal	8-1-06
461-140-0296	7-1-06	Amend	8-1-06	461-155-0180	7-1-06	Adopt	8-1-06
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584-100-0026	2-3-06	Amend(T)	3-1-06	603-024-0547	3-10-06	Amend	4-1-06
584-100-0026	6-1-06	Amend	6-1-06	603-025-0010	3-10-06	Amend	4-1-06
584-100-0031	2-3-06	Amend(T)	3-1-06	603-025-0030	3-10-06	Amend	4-1-06
584-100-0031	6-1-06	Amend	6-1-06	603-025-0040	3-10-06	Repeal	4-1-06
584-100-0036	2-3-06	Amend(T)	3-1-06	603-025-0150	1-3-06	Amend(T)	2-1-06
584-100-0036	6-1-06	Amend	6-1-06	603-025-0150	6-21-06	Amend	8-1-06
584-100-0037	2-10-06	Repeal	3-1-06	603-025-0190	3-10-06	Amend	4-1-06
584-100-0038	2-3-06	Adopt(T)	3-1-06	603-025-0210	3-10-06	Repeal	4-1-06
584-100-0038	6-1-06	Adopt	6-1-06	603-027-0410	9-26-06	Amend	11-1-06
584-100-0041	2-3-06	Amend(T)	3-1-06	603-027-0420	9-26-06	Amend	11-1-06
584-100-0041	6-1-06	Amend	6-1-06	603-027-0430	9-26-06	Amend	11-1-06
584-100-0051	2-3-06	Amend(T)	3-1-06	603-027-0440	9-26-06	Amend	11-1-06
584-100-0051	6-1-06	Amend	6-1-06	603-027-0490	9-26-06	Amend	11-1-06
584-100-0056	2-3-06	Amend(T)	3-1-06	603-028-0010	3-10-06	Repeal	4-1-06
584-100-0056	6-1-06	Amend	6-1-06	603-028-0500	3-10-06	Amend	4-1-06
584-100-0061	2-3-06	Amend(T)	3-1-06	603-052-0116	1-13-06	Amend	2-1-06
584-100-0061	6-1-06	Amend	6-1-06	603-052-0117	1-13-06	Amend	2-1-06
584-100-0066	2-3-06	Amend(T)	3-1-06	603-052-0127	3-22-06	Amend	5-1-06
584-100-0066	6-1-06	Amend	6-1-06	603-052-0129	1-13-06	Amend	2-1-06
584-100-0071	2-3-06	Amend(T)	3-1-06	603-052-0146	3-22-06	Repeal	5-1-06
584-100-0071	6-1-06	Amend	6-1-06	603-052-0150	1-13-06	Amend	2-1-06
584-100-0091	2-3-06	Amend(T)	3-1-06	603-052-0349	1-13-06	Repeal	2-1-06
584-100-0091	6-1-06	Amend	6-1-06	603-052-0355	1-13-06	Amend	2-1-06
584-100-0096	2-3-06	Amend(T)	3-1-06	603-052-0360	1-13-06	Amend	2-1-06
584-100-0096	6-1-06	Amend	6-1-06	603-052-0385	1-13-06	Amend	2-1-06
584-100-0101	2-3-06	Amend(T)	3-1-06	603-052-1150	3-22-06	Amend	5-1-06
584-100-0101	6-1-06	Amend	6-1-06	603-052-1200	1-13-06	Amend	2-1-06
584-100-0106	2-3-06	Amend(T)	3-1-06	603-052-1221	1-13-06	Amend	2-1-06
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603-057-0413	4-12-06	Amend	5-1-06	629-041-0535	7-1-06	Repeal	1-1-06
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603-090-0040	9-15-06	Amend	10-1-06	629-605-0100(T)	1-1-06	Repeal	1-1-06
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629-640-0100	6-27-06	Amend	8-1-06	629-672-0310(T)	1-1-06	Repeal	1-1-06
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635-006-1015	8-7-06	Amend	9-1-06	635-017-0095	1-1-06	Amend	1-1-06
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635-006-1015	9-9-06	Amend(T)	10-1-06	635-017-0095	2-15-06	Amend	3-1-06
635-006-1015	12-1-06	Amend	8-1-06	635-017-0095	1-1-07	Amend	9-1-06
635-006-1025	1-1-06	Amend	1-1-06	635-018-0080	1-1-06	Amend	1-1-06
635-006-1025	1-1-06	Amend	1-1-06	635-018-0080	1-1-07	Amend	9-1-06
635-006-1035	1-1-06	Amend	1-1-06	635-018-0090	1-1-06	Amend	1-1-06
635-006-1035	1-1-06	Amend	1-1-06	635-018-0090	8-1-06	Amend(T)	8-1-06
635-006-1035	8-7-06	Amend	9-1-06	635-018-0090	1-1-07	Amend	9-1-06
635-006-1065	1-1-06	Amend	1-1-06	635-019-0080	1-1-06	Amend	1-1-06
635-006-1065	1-1-06	Amend	1-1-06	635-019-0080	1-1-07	Amend	9-1-06
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635-006-1085	1-1-06	Amend	1-1-06	635-021-0090	1-1-06	Amend	1-1-06
635-006-1095	1-1-06	Amend	1-1-06	635-021-0090	1-1-07	Amend	9-1-06
635-006-1095	1-1-06	Amend	1-1-06	635-023-0080	1-1-06	Amend	1-1-06
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635-008-0075	8-11-06	Amend	9-1-06	635-023-0095	1-1-06	Amend	1-1-06
635-008-0085	8-11-06	Amend	9-1-06	635-023-0095	1-1-06	Amend(T)	2-1-06
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635-023-0130	10-13-06	Amend(T)	11-1-06	635-042-0060	9-25-06	Amend(T)	11-1-06
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635-039-0090	12-30-05	Amend(T)	1-1-06	635-042-0130	3-9-06	Amend(T)	4-1-06
635-039-0090	1-1-06	Amend	1-1-06	635-042-0133	1-1-06	Amend(T)	2-1-06
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660-025-0020	5-15-06	Amend	6-1-06	690-002-0105	10-6-06	Amend	11-1-06
660-025-0030	5-15-06	Amend	6-1-06	690-002-0110	10-6-06	Repeal	11-1-06
660-025-0035	5-15-06	Adopt	6-1-06	690-002-0120	10-6-06	Repeal	11-1-06
660-025-0040	5-15-06	Amend	6-1-06	690-002-0130	10-6-06	Repeal	11-1-06
660-025-0050	5-15-06	Amend	6-1-06	690-002-0140	10-6-06	Repeal	11-1-06
660-025-0060	5-15-06	Amend	6-1-06	690-002-0150	10-6-06	Repeal	11-1-06
660-025-0070	5-15-06	Amend	6-1-06	690-002-0160	10-6-06	Repeal	11-1-06
660-025-0080	5-15-06	Amend	6-1-06	690-002-0170	10-6-06	Repeal	11-1-06
660-025-0085	5-15-06	Adopt	6-1-06	690-002-0175	10-6-06	Amend	11-1-06
660-025-0090	5-15-06	Amend	6-1-06	690-002-0180	10-6-06	Repeal	11-1-06
660-025-0100	5-15-06	Amend	6-1-06	690-002-0190	10-6-06	Adopt	11-1-06
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660-025-0120	5-15-06	Repeal	6-1-06	690-003-0120	10-6-06	Adopt	11-1-06
660-025-0130	5-15-06	Amend	6-1-06	690-003-0140	10-6-06	Adopt	11-1-06
660-025-0140	5-15-06	Amend	6-1-06	690-003-0160	10-6-06	Adopt	11-1-06
660-025-0150	5-15-06	Amend	6-1-06	690-003-0180	10-6-06	Adopt	11-1-06
660-025-0160	5-15-06	Amend	6-1-06	690-003-0200	10-6-06	Adopt	11-1-06
660-025-0170	5-15-06	Amend	6-1-06	690-003-0220	10-6-06	Adopt	11-1-06
660-025-0175	5-15-06	Amend	6-1-06	690-003-0240	10-6-06	Adopt	11-1-06
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660-025-0210	5-15-06	Amend	6-1-06	690-077-0000	10-2-06	Amend	11-1-06
660-025-0220	5-15-06	Amend	6-1-06	690-077-0010	10-2-06	Amend	11-1-06
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690-077-0075	10-2-06	Amend	11-1-06	690-315-0090	11-22-05	Amend	1-1-06
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690-077-0080	10-2-06	Amend	11-1-06	690-380-2120	10-6-06	Amend	11-1-06
690-077-0100	10-2-06	Amend	11-1-06	690-380-2130	10-6-06	Amend	11-1-06
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690-205-0020	6-20-06	Amend	8-1-06	690-380-2300	10-6-06	Amend	11-1-06
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731-035-0030	11-21-05	Adopt(T)	1-1-06	735-024-0015	1-1-06	Amend(T)	1-1-06
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735-062-0120	11-18-05	Amend	1-1-06	735-076-0035	5-25-06	Adopt	7-1-06
735-062-0120(T)	11-18-05	Repeal	1-1-06	735-076-0040	5-25-06	Repeal	7-1-06
735-062-0130	1-1-06	Amend(T)	1-1-06	735-076-0050	5-25-06	Amend	7-1-06
735-062-0130	2-15-06	Amend	3-1-06	735-076-0052	5-25-06	Adopt	7-1-06
735-062-0130(T)	2-15-06	Repeal	3-1-06	735-102-0030	9-22-06	Amend	11-1-06
735-062-0135	11-18-05	Amend	1-1-06	735-150-0005	1-1-06	Amend(T)	1-1-06
735-062-0135(T)	11-18-05	Repeal	1-1-06	735-150-0005	5-25-06	Amend	7-1-06
735-062-0140	8-25-06	Amend(T)	10-1-06	735-150-0005(T)	5-25-06	Repeal	7-1-06
735-062-0190	12-14-05	Amend	1-1-06	735-150-0010	1-1-06	Amend	1-1-06
735-062-0190	8-1-06	Amend(T)	9-1-06	735-150-0010	1-1-06	Amend(T)	1-1-06
735-062-0190	8-25-06	Amend	10-1-06	735-150-0010	5-25-06	Amend	7-1-06
735-062-0190(T)	12-14-05	Repeal	1-1-06	735-150-0010(T)	5-25-06	Repeal	7-1-06
735-062-0190(T)	8-25-06	Repeal	10-1-06	735-150-0033	1-1-06	Adopt	1-1-06
735-062-0320	12-14-05	Amend	1-1-06	735-150-0040	1-1-06	Amend	1-1-06
735-064-0005	2-15-06	Amend	3-1-06	735-150-0050	1-1-06	Amend	1-1-06
735-064-0040	2-15-06	Amend	3-1-06	735-150-0055	1-1-06	Amend	1-1-06
735-064-0090	2-15-06	Amend	3-1-06	735-150-0110	1-1-06	Amend	1-1-06
735-064-0100	2-15-06	Amend	3-1-06	735-150-0120	1-1-06	Amend	1-1-06
735-064-0110	2-15-06	Amend	3-1-06	735-150-0130	1-1-06	Amend	1-1-06
735-064-0220	12-14-05	Amend	1-1-06	735-150-0140	1-1-06	Amend	1-1-06
735-064-0220(T)	12-14-05	Repeal	1-1-06	735-152-0000	1-1-06	Amend(T)	1-1-06
735-064-0235	12-14-05	Amend	1-1-06	735-152-0000	5-25-06	Amend	7-1-06
735-070-0010	11-18-05	Amend	1-1-06	735-152-0000(T)	5-25-06	Repeal	7-1-06
735-070-0010	1-1-06	Amend	1-1-06	735-152-0005	1-1-06	Amend(T)	1-1-06
735-070-0010	10-2-06	Amend	11-1-06	735-152-0005	5-25-06	Amend	7-1-06
735-070-0010(T)	11-18-05	Repeal	1-1-06	735-152-0005(T)	5-25-06	Repeal	7-1-06
735-070-0015	10-2-06	Adopt	11-1-06	735-152-0010	1-1-06	Amend(T)	1-1-06
735-070-0020	12-14-05	Amend	1-1-06	735-152-0010	5-25-06	Amend	7-1-06
735-070-0020(T)	12-14-05	Repeal	1-1-06	735-152-0010(T)	5-25-06	Repeal	7-1-06
735-070-0030	12-14-05	Amend	1-1-06	735-152-0020	1-1-06	Amend(T)	1-1-06
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735-152-0025	5-25-06	Adopt	7-1-06	736-053-0125	2-27-06	Amend	4-1-06
735-152-0025(T)	5-25-06	Repeal	7-1-06	736-053-0130	2-27-06	Amend	4-1-06
735-152-0030	1-1-06	Suspend	1-1-06	736-053-0135	2-27-06	Adopt	4-1-06
735-152-0030	5-25-06	Repeal	7-1-06	736-053-0140	2-27-06	Adopt	4-1-06
735-152-0031	1-1-06	Adopt(T)	1-1-06	738-014-0010	7-1-06	Adopt	8-1-06
735-152-0031	5-25-06	Adopt	7-1-06	738-014-0020	7-1-06	Adopt	8-1-06
735-152-0031(T)	5-25-06	Repeal	7-1-06	738-014-0030	7-1-06	Adopt	8-1-06
735-152-0034	1-1-06	Adopt(T)	1-1-06	738-014-0035	7-1-06	Adopt	8-1-06
735-152-0034	5-25-06	Adopt	7-1-06	738-014-0040	7-1-06	Adopt	8-1-06
735-152-0034(T)	5-25-06	Repeal	7-1-06	738-014-0050	7-1-06	Adopt	8-1-06
735-152-0037	1-1-06	Adopt(T)	1-1-06	738-014-0060	7-1-06	Adopt	8-1-06
735-152-0037	5-25-06	Adopt	7-1-06	738-015-0005	1-27-06	Amend	3-1-06
735-152-0037(T)	5-25-06	Repeal	7-1-06	738-015-0075	1-27-06	Amend	3-1-06
735-152-0040	1-1-06	Amend(T)	1-1-06	740-010-0020	12-14-05	Adopt	1-1-06
735-152-0040	5-25-06	Amend	7-1-06	740-010-0020(T)	12-14-05	Repeal	1-1-06
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735-152-0045	1-1-06	Adopt(T)	1-1-06	740-050-0610	12-14-05	Amend	1-1-06
735-152-0045	5-25-06	Adopt	7-1-06	740-055-0300	12-14-05	Repeal	1-1-06
735-152-0045(T)	5-25-06	Repeal	7-1-06	740-055-0320	12-14-05	Amend	1-1-06
735-152-0050	1-1-06	Amend(T)	1-1-06	740-100-0010	4-1-06	Amend	5-1-06
735-152-0050	5-25-06	Amend	7-1-06	740-100-0010(T)	4-1-06	Repeal	5-1-06
735-152-0050(T)	5-25-06	Repeal	7-1-06	740-100-0060	4-1-06	Amend	5-1-06
735-152-0060	1-1-06	Adopt(T)	1-1-06	740-100-0070	4-1-06	Amend	5-1-06
735-152-0060	5-25-06	Adopt	7-1-06	740-100-0080	4-1-06	Amend	5-1-06
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735-152-0070	1-1-06	Adopt(T)	1-1-06	740-100-0100	4-1-06	Amend	5-1-06
735-152-0070	5-25-06	Adopt	7-1-06	740-110-0010	4-1-06	Amend	5-1-06
735-152-0070(T)	5-25-06	Repeal	7-1-06	740-200-0045	2-16-06	Adopt	4-1-06
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735-152-0080	5-25-06	Adopt	7-1-06	741-300-0021	8-28-06	Amend	10-1-06
735-152-0080(T)	5-25-06	Repeal	7-1-06	741-300-0041	8-28-06	Amend	10-1-06
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741-335-0040	8-28-06	Amend	10-1-06	808-002-0150	1-1-06	Adopt	2-1-06
741-335-0050	8-28-06	Amend	10-1-06	808-002-0200	1-1-06	Amend	2-1-06
741-335-0060	8-28-06	Repeal	10-1-06	808-002-0250	1-1-06	Amend	2-1-06
741-335-0070	8-28-06	Amend	10-1-06	808-002-0298	1-1-06	Repeal	2-1-06
741-335-0080	8-28-06	Amend	10-1-06	808-002-0328	1-1-06	Adopt	2-1-06
741-335-0090	8-28-06	Amend	10-1-06	808-002-0328	8-2-06	Amend	9-1-06
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801-001-0055	1-1-06	Adopt	1-1-06	808-002-0360	1-1-06	Amend	2-1-06
801-005-0010	1-1-06	Amend	1-1-06	808-002-0455	1-1-06	Adopt	2-1-06
801-010-0050	1-1-06	Amend	1-1-06	808-002-0460	1-1-06	Repeal	2-1-06
801-010-0080	1-1-06	Amend	1-1-06	808-002-0480	8-2-06	Amend	9-1-06
801-020-0720	1-1-06	Amend	1-1-06	808-002-0490	1-1-06	Adopt	2-1-06
801-030-0005	1-1-06	Amend	1-1-06	808-002-0495	1-1-06	Adopt	2-1-06
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801-050-0050	12-15-05	Repeal	1-1-06	808-002-0875	1-1-06	Adopt	2-1-06
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801-050-0070	12-15-05	Amend	1-1-06	808-003-0015	1-1-06	Amend	2-1-06
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804-035-0030	6-26-06	Am. & Ren.	8-1-06	808-003-0225	1-1-06	Adopt	2-1-06
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808-004-0600	1-1-06	Amend	2-1-06	812-002-0555	1-1-06	Repeal	1-1-06
808-004-0600	8-2-06	Amend	9-1-06	812-002-0640	1-1-06	Amend	1-1-06
808-005-0020	1-1-06	Amend	2-1-06	812-002-0670	1-1-06	Amend	1-1-06
809-010-0001	12-7-05	Amend	1-1-06	812-002-0675	1-1-06	Amend	1-1-06
809-015-0000	12-14-05	Amend	1-1-06	812-002-0700	1-1-06	Amend	1-1-06
809-015-0005	12-14-05	Amend	1-1-06	812-002-0720	1-1-06	Amend	1-1-06
809-030-0025	3-17-06	Amend	5-1-06	812-002-0740	1-1-06	Amend	1-1-06
809-050-0000	6-26-06	Amend	8-1-06	812-002-0780	1-1-06	Amend	1-1-06
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811-010-0093	3-27-06	Amend	5-1-06	812-003-0175	9-5-06	Adopt	10-1-06
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812-001-0200(T)	3-30-06	Repeal	5-1-06	812-004-0195	1-1-06	Amend	1-1-06
812-001-0300	1-1-06	Am. & Ren.	1-1-06	812-004-0240	1-1-06	Amend	1-1-06
812-001-0305	1-1-06	Am. & Ren.	1-1-06	812-004-0250	1-1-06	Amend	1-1-06
812-001-0310	1-1-06	Am. & Ren.	1-1-06	812-004-0260	1-1-06	Amend	1-1-06
812-001-0500	1-1-06	Am. & Ren.	1-1-06	812-004-0300	1-1-06	Amend	1-1-06
812-001-0510	1-1-06	Am. & Ren.	1-1-06	812-004-0320	1-1-06	Amend	1-1-06
812-002-0040	1-1-06	Amend	1-1-06	812-004-0325	1-1-06	Repeal	1-1-06
812-002-0060	1-1-06	Amend	1-1-06	812-004-0340	1-1-06	Amend	1-1-06
812-002-0100	1-1-06	Amend	1-1-06	812-004-0360	1-1-06	Amend	1-1-06
812-002-0160	1-1-06	Amend	1-1-06	812-004-0420	1-1-06	Amend	1-1-06
812-002-0190	1-1-06	Amend	1-1-06	812-004-0440	1-1-06	Amend	1-1-06
812-002-0260	1-1-06	Amend	1-1-06	812-004-0450	1-1-06	Amend	1-1-06
812-002-0260	6-1-06	Amend	7-1-06	812-004-0460	1-1-06	Amend	1-1-06
812-002-0325	1-1-06	Amend	1-1-06	812-004-0470	1-1-06	Amend	1-1-06
812-002-0340	1-1-06	Repeal	1-1-06	812-004-0480	1-1-06	Amend	1-1-06
812-002-0345	10-1-06	Adopt	10-1-06	812-004-0500	1-1-06	Amend	1-1-06
812-002-0350	1-1-06	Adopt	1-1-06	812-004-0530	1-1-06	Amend	1-1-06
812-002-0360	1-1-06	Amend	1-1-06	812-004-0590	1-1-06	Amend	1-1-06
812-002-0420	1-1-06	Amend	1-1-06	812-005-0100	1-1-06	Am. & Ren.	1-1-06
812-002-0430	1-1-06	Amend	1-1-06	812-005-0110	1-1-06	Am. & Ren.	1-1-06
812-002-0443	1-1-06	Amend	1-1-06	812-005-0120	1-1-06	Am. & Ren.	1-1-06
812-002-0520	1-1-06	Amend	1-1-06	812-005-0130	1-1-06	Am. & Ren.	1-1-06
812-002-0533	1-1-06	Adopt	1-1-06	812-005-0140	1-1-06	Am. & Ren.	1-1-06
812-002-0533	6-1-06	Amend	7-1-06	812-005-0150	1-1-06	Am. & Ren.	1-1-06
812-002-0537	1-1-06	Adopt	1-1-06	812-005-0160	1-1-06	Am. & Ren.	1-1-06

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812-005-0180	1-1-06	Am. & Ren.	1-1-06	813-001-0069	1-31-06	Repeal	3-1-06
812-005-0200	1-1-06	Am. & Ren.	1-1-06	813-001-0080	1-31-06	Repeal	3-1-06
812-005-0210	1-1-06	Am. & Ren.	1-1-06	813-001-0090	1-31-06	Repeal	3-1-06
812-005-0210	9-5-06	Amend	10-1-06	813-005-0001	1-31-06	Adopt	3-1-06
812-005-0250	9-5-06	Adopt	10-1-06	813-005-0001(T)	1-31-06	Repeal	3-1-06
812-005-0500	1-1-06	Am. & Ren.	1-1-06	813-005-0005	1-31-06	Amend	3-1-06
812-005-0800	1-1-06	Am. & Ren.	1-1-06	813-005-0005(T)	1-31-06	Repeal	3-1-06
812-005-0800	1-26-06	Amend	3-1-06	813-005-0010	1-31-06	Repeal	3-1-06
812-005-210	6-23-06	Amend	8-1-06	813-005-0015	1-31-06	Repeal	3-1-06
812-005-800	6-23-06	Amend	8-1-06	813-005-0016	1-31-06	Adopt	3-1-06
812-006-0010	6-1-06	Amend	7-1-06	813-005-0016(T)	1-31-06	Repeal	3-1-06
812-006-0010	10-1-06	Repeal	10-1-06	813-005-0020	1-31-06	Repeal	3-1-06
812-006-0011	6-1-06	Amend	7-1-06	813-005-0025	1-31-06	Repeal	3-1-06
812-006-0012	1-1-06	Amend	1-1-06	813-005-0030	1-31-06	Repeal	3-1-06
812-006-0012	6-23-06	Amend	8-1-06	813-009-0001	2-10-06	Amend(T)	3-1-06
812-006-0015	1-1-06	Adopt	1-1-06	813-009-0001	8-28-06	Amend	10-1-06
812-006-0015	6-23-06	Amend	8-1-06	813-009-0005	2-10-06	Amend(T)	3-1-06
812-006-0020	6-1-06	Amend	7-1-06	813-009-0005	8-28-06	Amend	10-1-06
812-006-0030	1-1-06	Amend	1-1-06	813-009-0010	2-10-06	Amend(T)	3-1-06
812-006-0030	6-23-06	Amend	8-1-06	813-009-0010	8-28-06	Amend	10-1-06
812-006-0050	6-1-06	Amend	7-1-06	813-009-0015	2-10-06	Amend(T)	3-1-06
812-006-0100	10-1-06	Am. & Ren.	10-1-06	813-009-0015	8-28-06	Amend	10-1-06
812-006-0150	10-1-06	Adopt	10-1-06	813-009-0020	2-10-06	Amend(T)	3-1-06
812-006-0200	10-1-06	Am. & Ren.	10-1-06	813-009-0020	8-28-06	Amend	10-1-06
812-006-0250	10-1-06	Am. & Ren.	10-1-06	813-009-0030	2-10-06	Adopt(T)	3-1-06
812-006-0300	10-1-06	Am. & Ren.	10-1-06	813-009-0035	8-28-06	Adopt	10-1-06
812-006-0350	10-1-06	Am. & Ren.	10-1-06	813-013-0001	1-5-06	Adopt(T)	2-1-06
812-006-0400	10-1-06	Adopt	10-1-06	813-013-0001	6-28-06	Adopt	8-1-06
812-006-0450	10-1-06	Am. & Ren.	10-1-06	813-013-0001(T)	6-28-06	Repeal	8-1-06
812-008-0020	6-23-06	Amend	8-1-06	813-013-0005	1-5-06	Adopt(T)	2-1-06
812-008-0050	3-2-06	Amend	4-1-06	813-013-0005	6-28-06	Adopt	8-1-06
812-008-0070	1-26-06	Amend	3-1-06	813-013-0005(T)	6-28-06	Repeal	8-1-06
812-008-0072	1-26-06	Amend	3-1-06	813-013-0010	1-5-06	Adopt(T)	2-1-06
812-008-0074	6-1-06	Amend	7-1-06	813-013-0010	6-28-06	Adopt	8-1-06
812-008-0078	1-26-06	Repeal	3-1-06	813-013-0010(T)	6-28-06	Repeal	8-1-06
812-008-0090	3-2-06	Amend	4-1-06	813-013-0015	1-5-06	Adopt(T)	2-1-06
812-008-0110	1-1-06	Amend	1-1-06	813-013-0015	6-28-06	Adopt	8-1-06
812-008-0202	3-2-06	Amend	4-1-06	813-013-0015(T)	6-28-06	Repeal	8-1-06
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812-009-0400	1-1-06	Amend	1-1-06	813-013-0020(T)	6-28-06	Repeal	8-1-06
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812-009-0430	1-1-06	Amend	1-1-06	813-013-0025	6-28-06	Adopt	8-1-06
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813-001-0002(T)	1-31-06	Repeal	3-1-06	813-013-0030	6-28-06	Adopt	8-1-06
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813-001-0008	1-31-06	Repeal	3-1-06	813-013-0040	6-28-06	Adopt	8-1-06
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813-013-0050	6-28-06	Adopt	8-1-06	813-110-0035	5-17-06	Amend	7-1-06
813-013-0050(T)	6-28-06	Repeal	8-1-06	813-110-0035	8-4-06	Amend(T)	9-1-06
813-013-0054	6-28-06	Adopt	8-1-06	813-110-0040	5-17-06	Amend	7-1-06
813-013-0055	1-5-06	Adopt(T)	2-1-06	813-110-0050	5-17-06	Adopt	7-1-06
813-013-0060	1-5-06	Adopt(T)	2-1-06	813-120-0080	8-4-06	Amend(T)	9-1-06
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813-013-0065	6-28-06	Adopt	8-1-06	813-130-0000	8-4-06	Amend(T)	9-1-06
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813-040-0005	10-3-06	Amend	11-1-06	813-130-0020	8-4-06	Amend(T)	9-1-06
813-040-0010	4-13-06	Amend(T)	5-1-06	813-130-0030	8-4-06	Amend(T)	9-1-06
813-040-0010	10-3-06	Amend	11-1-06	813-130-0040	8-4-06	Amend(T)	9-1-06
813-040-0015	4-13-06	Amend(T)	5-1-06	813-130-0050	8-4-06	Amend(T)	9-1-06
813-040-0015	10-3-06	Amend	11-1-06	813-130-0060	8-4-06	Amend(T)	9-1-06
813-040-0020	4-13-06	Amend(T)	5-1-06	813-130-0070	8-4-06	Amend(T)	9-1-06
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813-205-0130	8-4-06	Adopt(T)	9-1-06	820-010-0255	12-13-05	Amend	1-1-06
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817-090-0080	3-15-06	Amend	4-1-06	836-014- 0280	7-27-06	Amend	9-1-06
817-090-0085	3-15-06	Amend	4-1-06	836-014-0015	9-26-06	Amend	11-1-06
817-090-0090	3-15-06	Amend	4-1-06	836-014-0025	9-26-06	Amend	11-1-06
817-090-0095	3-15-06	Amend	4-1-06	836-014-0030	9-26-06	Amend	11-1-06
817-090-0100	3-15-06	Amend	4-1-06	836-014-0035	9-26-06	Amend	11-1-06
817-090-0105	3-15-06	Amend	4-1-06	836-014-0040	9-26-06	Amend	11-1-06
817-090-0110	3-15-06	Amend	4-1-06	836-014-0042	9-26-06	Amend	11-1-06
817-090-0115	3-15-06	Amend	4-1-06	836-014-0200	7-27-06	Amend	9-1-06
817-100-0005	3-15-06	Amend	4-1-06	836-014-0210	7-27-06	Amend	9-1-06
817-120-0005	3-15-06	Amend	4-1-06	836-014-0220	7-27-06	Amend	9-1-06
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818-012-0030	4-1-06	Amend	5-1-06	836-014-0240	7-27-06	Amend	9-1-06
818-015-0007	4-1-06	Amend	5-1-06	836-014-0250	7-27-06	Amend	9-1-06
818-021-0011	4-1-06	Amend	5-1-06	836-014-0260	7-27-06	Amend	9-1-06
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818-021-0026	4-1-06	Adopt	5-1-06	836-014-0290	7-27-06	Amend	9-1-06
818-026-0080	4-1-06	Amend	5-1-06	836-014-0300	7-27-06	Amend	9-1-06
818-042-0115	4-1-06	Amend	5-1-06	836-014-0310	7-27-06	Amend	9-1-06
818-042-0116	4-1-06	Amend	5-1-06	836-014-0320	7-27-06	Amend	9-1-06
818-042-0117	4-1-06	Amend	5-1-06	836-020-0700	7-20-06	Repeal	9-1-06
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836-020-0715	7-20-06	Repeal	9-1-06	836-024-0185	8-7-06	Adopt	9-1-06
836-020-0720	7-20-06	Repeal	9-1-06	836-024-0190	8-7-06	Adopt	9-1-06
836-020-0725	7-20-06	Repeal	9-1-06	836-024-0200	8-7-06	Adopt	9-1-06
836-020-0730	7-20-06	Repeal	9-1-06	836-024-0205	8-7-06	Adopt	9-1-06
836-020-0735	7-20-06	Repeal	9-1-06	836-024-0210	8-7-06	Adopt	9-1-06
836-020-0740	7-20-06	Repeal	9-1-06	836-024-0215	8-7-06	Adopt	9-1-06
836-020-0745	7-20-06	Repeal	9-1-06	836-024-0220	8-7-06	Adopt	9-1-06
836-020-0750	7-20-06	Repeal	9-1-06	836-027-0030	9-26-06	Amend	11-1-06
836-020-0755	7-20-06	Repeal	9-1-06	836-027-0200	2-13-06	Amend	3-1-06
836-020-0760	7-20-06	Repeal	9-1-06	836-028-0010	9-26-06	Amend	11-1-06
836-020-0765	7-20-06	Repeal	9-1-06	836-028-0035	9-26-06	Amend	11-1-06
836-020-0770	7-20-06	Adopt	9-1-06	836-031-0610	9-26-06	Amend	11-1-06
836-020-0775	7-20-06	Adopt	9-1-06	836-031-0855	6-26-06	Amend	8-1-06
836-020-0780	7-20-06	Adopt	9-1-06	836-042-0001	9-26-06	Amend	11-1-06
836-020-0785	7-20-06	Adopt	9-1-06	836-042-0010	9-26-06	Repeal	11-1-06
836-020-0791	7-20-06	Adopt	9-1-06	836-042-0015	6-9-06	Amend	7-1-06
836-020-0796	7-20-06	Adopt	9-1-06	836-042-0045	6-9-06	Amend	7-1-06
836-020-0801	7-20-06	Adopt	9-1-06	836-042-0400	9-26-06	Amend	11-1-06
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836-024-0006	8-7-06	Amend	9-1-06	836-050-0120	9-26-06	Repeal	11-1-06
836-024-0008	8-7-06	Adopt	9-1-06	836-051-0005	9-26-06	Amend	11-1-06
836-024-0011	8-7-06	Repeal	9-1-06	836-051-0010	9-26-06	Amend	11-1-06
836-024-0013	8-7-06	Repeal	9-1-06	836-051-0015	9-26-06	Amend	11-1-06
836-024-0016	8-7-06	Repeal	9-1-06	836-051-0020	9-26-06	Amend	11-1-06
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836-080-0438	3-10-06	Amend	4-1-06	837-040-0010	6-12-06	Amend	7-1-06
836-080-0501	6-26-06	Amend	8-1-06	837-040-0010(T)	6-12-06	Repeal	7-1-06
836-080-0501	9-26-06	Amend	11-1-06	837-040-0020	2-1-06	Adopt(T)	2-1-06
836-081-0005	9-26-06	Amend	11-1-06	837-040-0020	6-12-06	Adopt	7-1-06
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836-081-0020	9-26-06	Amend	11-1-06	837-040-0140	2-1-06	Amend(T)	2-1-06
836-081-0030	9-26-06	Amend	11-1-06	837-040-0140	6-12-06	Amend	7-1-06
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837-001-0005	6-21-06	Amend	8-1-06	839-003-0020	7-7-06	Amend(T)	8-1-06
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837-012-0555	3-10-06	Amend	4-1-06	839-006-0131	3-17-06	Amend(T)	5-1-06
837-012-0620	3-10-06	Amend	4-1-06	839-006-0131	10-4-06	Amend	11-1-06
837-012-0625	2-13-06	Amend(T)	2-1-06	839-006-0136	3-20-06	Amend	5-1-06
837-012-0625	3-10-06	Amend	4-1-06	839-006-0136(T)	3-20-06	Repeal	5-1-06
837-012-0750	2-13-06	Amend(T)	2-1-06	839-006-0145	3-20-06	Amend	5-1-06
837-012-0750	3-10-06	Amend	4-1-06	839-006-0205	3-20-06	Amend	5-1-06
837-012-0855	3-10-06	Amend	4-1-06	839-006-0305	3-20-06	Amend	5-1-06
837-012-0900	3-10-06	Amend	4-1-06	839-006-0405	3-20-06	Amend	5-1-06
837-012-0910	3-10-06	Amend	4-1-06	839-009-0210	10-4-06	Amend	11-1-06
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837-012-1220	6-15-06	Amend(T)	7-1-06	839-011-0084	4-18-06	Amend	6-1-06
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837-012-1250	6-15-06	Amend(T)	7-1-06	839-014-0100	1-1-06	Amend	2-1-06
837-012-1260	6-15-06	Amend(T)	7-1-06	839-014-0105	1-1-06	Amend	2-1-06
837-012-1270	6-15-06	Amend(T)	7-1-06	839-014-0200	1-1-06	Amend	2-1-06
837-012-1280	6-15-06	Amend(T)	7-1-06	839-014-0380	1-1-06	Amend	2-1-06
837-012-1290	6-15-06	Amend(T)	7-1-06	839-014-0630	1-1-06	Amend	2-1-06
837-012-1300	6-15-06	Amend(T)	7-1-06	839-015-0002	3-7-06	Repeal	4-1-06
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837-012-1320	6-15-06	Amend(T)	7-1-06	839-015-0155	1-1-06	Amend	2-1-06
837-012-1330	6-15-06	Amend(T)	7-1-06	839-015-0157	1-1-06	Amend	2-1-06
837-012-1340	6-15-06	Amend(T)	7-1-06	839-015-0160	1-1-06	Amend	2-1-06
837-012-1350	6-15-06	Amend(T)	7-1-06	839-015-0165	1-1-06	Amend	2-1-06
837-012-1360	6-15-06	Amend(T)	7-1-06	839-015-0200	1-1-06	Amend	2-1-06
837-012-1370	6-15-06	Amend(T)	7-1-06	839-015-0230	1-1-06	Amend	2-1-06
837-012-1380	6-15-06	Amend(T)	7-1-06	839-015-0260	1-1-06	Amend	2-1-06
837-012-1390	6-15-06	Amend(T)	7-1-06	839-015-0300	1-1-06	Amend	2-1-06
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839-025-0004	5-15-06	Amend(T)	6-1-06	845-015-0130	8-1-06	Amend	9-1-06
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839-025-0037	5-15-06	Adopt(T)	6-1-06	845-015-0173	8-1-06	Amend	9-1-06
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839-025-0750	3-13-06	Amend	4-1-06	847-023-0000	7-25-06	Adopt	9-1-06
839-025-0750	7-1-06	Amend	8-1-06	847-023-0005	7-25-06	Adopt	9-1-06
839-025-0750	7-18-06	Amend	9-1-06	847-031-0020	2-8-06	Amend	3-1-06
839-025-0750	8-18-06	Amend	10-1-06	847-035-0030	7-25-06	Amend	9-1-06
839-025-0750	9-11-06	Amend	10-1-06	847-050-0010	5-8-06	Amend	6-1-06
839-030-0010	4-7-06	Amend	5-1-06	847-050-0025	5-8-06	Amend	6-1-06
839-050-0010	3-20-06	Amend	5-1-06	847-050-0026	2-8-06	Amend	3-1-06
839-050-0150	3-24-06	Amend	5-1-06	847-050-0041	2-8-06	Amend	3-1-06
839-050-0300	3-24-06	Amend	5-1-06	847-050-0065	2-8-06	Amend	3-1-06
845-003-0340	5-1-06	Amend	6-1-06	847-065-0000	7-25-06	Adopt	9-1-06
845-004-0020	1-1-06	Amend	2-1-06	847-080-0010	7-25-06	Amend	9-1-06
845-004-0105	3-1-06	Adopt	4-1-06	847-080-0017	7-25-06	Amend	9-1-06
845-005-0306	12-1-05	Amend	1-1-06	847-080-0018	7-25-06	Amend	9-1-06
845-005-0355	6-15-06	Amend(T)	7-1-06	848-001-0000	1-1-06	Amend	2-1-06
845-005-0450	7-1-06	Amend	8-1-06	848-005-0020	1-1-06	Amend	2-1-06
845-006-0301	2-1-06	Amend	3-1-06	848-005-0030	1-1-06	Amend	2-1-06
845-006-0335	1-1-06	Amend	1-1-06	848-010-0015	1-1-06	Amend	2-1-06
845-006-0427	5-1-06	Repeal	6-1-06	848-010-0020	1-1-06	Amend	2-1-06
845-006-0430	2-1-06	Amend	3-1-06	848-010-0026	1-1-06	Amend	2-1-06
845-006-0498	10-1-06	Adopt	10-1-06	848-010-0033	1-1-06	Amend	2-1-06
845-009-0140	8-1-06	Amend	9-1-06	848-010-0035	1-1-06	Amend	2-1-06
845-010-0151	1-1-06	Amend	2-1-06	848-010-0044	1-1-06	Amend	2-1-06

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848-015-0030	1-1-06	Amend	2-1-06	851-054-0040	10-5-06	Amend	11-1-06
848-020-0030	1-1-06	Amend	2-1-06	851-054-0050	10-5-06	Amend	11-1-06
848-020-0060	1-1-06	Amend	2-1-06	851-054-0100	10-5-06	Amend	11-1-06
848-030-0000	1-1-06	Repeal	2-1-06	851-056-0000	10-5-06	Adopt	11-1-06
848-030-0010	1-1-06	Repeal	2-1-06	851-056-0004	10-5-06	Adopt	11-1-06
848-035-0010	4-14-06	Adopt	5-1-06	851-056-0006	10-5-06	Adopt	11-1-06
848-035-0015	4-14-06	Adopt	5-1-06	851-056-0008	10-5-06	Adopt	11-1-06
848-035-0020	4-14-06	Adopt	5-1-06	851-056-0010	10-5-06	Adopt	11-1-06
848-035-0030	4-14-06	Adopt	5-1-06	851-056-0012	10-5-06	Adopt	11-1-06
848-035-0040	4-14-06	Adopt	5-1-06	851-056-0014	10-5-06	Adopt	11-1-06
848-040-0105	1-1-06	Amend	2-1-06	851-056-0016	10-5-06	Adopt	11-1-06
848-040-0110	1-1-06	Amend	2-1-06	851-056-0018	10-5-06	Adopt	11-1-06
848-040-0115	1-1-06	Repeal	2-1-06	851-056-0020	10-5-06	Adopt	11-1-06
848-040-0117	1-1-06	Adopt	2-1-06	851-056-0022	10-5-06	Adopt	11-1-06
848-040-0120	1-1-06	Amend	2-1-06	851-056-0024	10-5-06	Adopt	11-1-06
848-040-0147	1-1-06	Adopt	2-1-06	851-056-0026	10-5-06	Adopt	11-1-06
848-045-0010	1-1-06	Amend	2-1-06	851-061-0030	5-8-06	Amend	6-1-06
848-045-0020	1-1-06	Amend	2-1-06	851-061-0080	5-8-06	Amend	6-1-06
850-040-0210	10-13-06	Amend	11-1-06	851-061-0090	12-21-05	Amend	2-1-06
850-040-0230	10-13-06	Adopt	11-1-06	851-061-0090	5-8-06	Amend	6-1-06
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850-060-0225	12-12-05	Amend	1-1-06	851-062-0010	12-21-05	Amend	2-1-06
850-060-0226	12-12-05	Amend	1-1-06	851-063-0040	2-22-06	Amend	4-1-06
851-001-0000	5-8-06	Amend	6-1-06	852-010-0080	7-1-06	Amend	5-1-06
851-001-0005	5-8-06	Amend	6-1-06	852-020-0070	4-1-06	Amend	5-1-06
851-002-0060	5-8-06	Amend	6-1-06	852-050-0006	4-1-06	Amend	5-1-06
851-031-0005	10-5-06	Amend	11-1-06	852-050-0006	7-1-06	Amend	5-1-06
851-031-0006	12-21-05	Amend	2-1-06	852-050-0012	4-1-06	Amend	5-1-06
851-031-0045	12-21-05	Amend	2-1-06	852-050-0014	4-1-06	Amend	5-1-06
851-031-0070	10-5-06	Amend	11-1-06	852-060-0025	12-8-05	Am. & Ren.	1-1-06
851-031-0080	10-5-06	Amend	11-1-06	852-060-0027	12-8-05	Am. & Ren.	1-1-06
851-031-0088	2-22-06	Adopt	4-1-06	852-060-0028	12-8-05	Am. & Ren.	1-1-06
851-045-0025	12-21-05	Amend	2-1-06	852-060-0075	3-8-06	Amend	4-1-06
851-050-0000	10-5-06	Amend	11-1-06	852-080-0030	4-1-06	Amend	5-1-06
851-050-0001	10-5-06	Amend	11-1-06	852-080-0040	4-1-06	Amend	5-1-06
851-050-0005	10-5-06	Amend	11-1-06	852-080-0040	8-2-06	Amend	9-1-06
851-050-0006	10-5-06	Amend	11-1-06	853-010-0010	7-14-06	Amend	8-1-06
851-050-0120	10-5-06	Repeal	11-1-06	853-010-0015	7-14-06	Amend	8-1-06
851-050-0125	10-5-06	Repeal	11-1-06	853-010-0055	8-31-06	Amend	10-1-06
851-050-0130	10-5-06	Repeal	11-1-06	853-010-0060	7-14-06	Amend	8-1-06
851-050-0131	12-21-05	Amend	2-1-06	855-006-0005	6-9-06	Amend	7-1-06
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851-050-0131	10-5-06	Repeal	11-1-06	855-025-0001	6-9-06	Amend	7-1-06
851-050-0138	10-5-06	Amend	11-1-06	855-025-0005	6-9-06	Adopt	7-1-06
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851-050-0155	10-5-06	Repeal	11-1-06	855-025-0015	6-9-06	Adopt	7-1-06
851-050-0160	10-5-06	Repeal	11-1-06	855-025-0020	6-9-06	Adopt	7-1-06
851-050-0162	10-5-06	Repeal	11-1-06	855-025-0025	6-9-06	Adopt	7-1-06
851-050-0163	10-5-06	Repeal	11-1-06	855-025-0030	6-9-06	Adopt	7-1-06
851-050-0164	10-5-06	Repeal	11-1-06	855-025-0035	6-9-06	Adopt	7-1-06
851-050-0170	10-5-06	Repeal	11-1-06	855-025-0040	6-9-06	Adopt	7-1-06
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855-041-0080	6-9-06	Amend	7-1-06	860-021-0510	2-27-06	Amend	4-1-06
855-041-0200	6-9-06	Repeal	7-1-06	860-021-0550	2-27-06	Adopt	4-1-06
855-041-0203	6-9-06	Repeal	7-1-06	860-021-0550(T)	2-27-06	Repeal	4-1-06
855-041-0205	6-9-06	Repeal	7-1-06	860-021-0575	2-27-06	Adopt	4-1-06
855-041-0500	6-9-06	Amend	7-1-06	860-022-0001	11-30-05	Amend	1-1-06
855-041-0510	6-9-06	Amend	7-1-06	860-022-0017	11-30-05	Amend	1-1-06
855-041-0520	6-9-06	Amend	7-1-06	860-022-0040	11-30-05	Amend	1-1-06
855-050-0037	7-1-06	Repeal	7-1-06	860-022-0041	9-18-06	Adopt	11-1-06
855-050-0038	7-1-06	Repeal	7-1-06	860-022-0046	11-30-05	Amend	1-1-06
855-050-0039	7-1-06	Repeal	7-1-06	860-022-0075	11-30-05	Adopt	1-1-06
855-050-0041	7-1-06	Repeal	7-1-06	860-023-0000	12-23-05	Amend	2-1-06
855-050-0042	7-1-06	Repeal	7-1-06	860-023-0001	11-30-05	Amend	1-1-06
855-050-0043	7-1-06	Repeal	7-1-06	860-023-0001	12-23-05	Amend	2-1-06
855-050-0070	7-1-06	Amend	7-1-06	860-023-0005	11-30-05	Amend	1-1-06
855-080-0022	7-1-06	Amend	7-1-06	860-023-0005	12-23-05	Amend	2-1-06
855-080-0023	7-1-06	Amend	7-1-06	860-023-0020	11-30-05	Amend	1-1-06
855-080-0028	7-1-06	Amend	7-1-06	860-023-0054	12-23-05	Adopt	2-1-06
855-080-0028	8-25-06	Amend	10-1-06	860-023-0054	10-12-06	Amend	11-1-06
855-080-0031	7-1-06	Amend	7-1-06	860-023-0055	12-27-05	Amend	2-1-06
855-080-0065	7-1-06	Amend	7-1-06	860-023-0080	11-30-05	Amend	1-1-06
855-080-0070	7-1-06	Amend	7-1-06	860-023-0090	11-30-05	Amend	1-1-06
855-080-0075	7-1-06	Amend	7-1-06	860-023-0100	11-30-05	Amend	1-1-06
855-080-0095	7-1-06	Amend	7-1-06	860-023-0110	11-30-05	Amend	1-1-06
855-080-0105	7-1-06	Amend	7-1-06	860-023-0120	11-30-05	Amend	1-1-06
855-110-0005	6-9-06	Amend	7-1-06	860-023-0130	11-30-05	Amend	1-1-06
855-110-0005	8-25-06	Amend(T)	10-1-06	860-023-0140	11-30-05	Amend	1-1-06
856-010-0010	10-1-06	Amend	11-1-06	860-023-0150	11-30-05	Amend	1-1-06
856-010-0012	11-29-05	Amend	1-1-06	860-023-0160	11-30-05	Amend	1-1-06
856-010-0015	10-6-06	Amend	11-1-06	860-024-0001	9-28-06	Amend	11-1-06
856-010-0026	1-30-06	Adopt	3-1-06	860-024-0011	9-28-06	Adopt	11-1-06
856-010-0060	10-1-06	Adopt	11-1-06	860-024-0012	9-28-06	Adopt	11-1-06
858-010-0030	9-1-06	Amend	10-1-06	860-024-0016	9-28-06	Adopt	11-1-06
858-050-0125	9-1-06	Amend	10-1-06	860-024-0050	9-28-06	Amend	11-1-06
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860-011-0036	11-28-05	Adopt	1-1-06	860-026-0005	11-30-05	Amend	1-1-06
860-011-0080	11-30-05	Amend	1-1-06	860-027-0001	11-30-05	Amend	1-1-06
860-011-0080	12-21-05	Amend	2-1-06	860-027-0045	11-30-05	Amend	1-1-06
860-012-0040	11-30-05	Amend	1-1-06	860-027-0120	11-30-05	Amend	1-1-06
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860-021-0010	11-30-05	Amend	1-1-06	860-030-0005	11-30-05	Amend	1-1-06
860-021-0033	11-30-05	Amend	1-1-06	860-030-0010	11-30-05	Amend	1-1-06
860-021-0045	11-30-05	Amend	1-1-06	860-030-0015	11-30-05	Amend	1-1-06
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860-021-0205	11-30-05	Amend	1-1-06	860-034-0270	2-27-06	Amend	4-1-06
860-021-0326	11-30-05	Amend	1-1-06	860-034-0275	2-27-06	Adopt	4-1-06
860-021-0328	2-17-06	Adopt(T)	4-1-06	860-034-0275(T)	2-27-06	Repeal	4-1-06
860-021-0328	7-6-06	Adopt	8-1-06	860-034-0276	2-27-06	Adopt	4-1-06
860-021-0328(T)	7-6-06	Repeal	8-1-06	860-034-0390	12-27-05	Amend	2-1-06
860-021-0335	11-30-05	Amend	1-1-06	860-038-0005	11-30-05	Amend	1-1-06
860-021-0405	11-30-05	Amend	1-1-06	860-038-0005	5-11-06	Amend	6-1-06
860-021-0405	2-27-06	Amend	4-1-06	860-038-0300	11-30-05	Amend	1-1-06
860-021-0410	11-30-05	Amend	1-1-06	860-038-0400	11-30-05	Amend	1-1-06
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860-038-0560	5-11-06	Amend	6-1-06	875-015-0030	5-11-06	Amend	6-1-06
860-038-0580	5-11-06	Amend	6-1-06	875-015-0050	2-8-06	Amend	3-1-06
860-038-0600	5-11-06	Amend	6-1-06	875-020-0000	2-8-06	Repeal	3-1-06
860-038-0620	5-11-06	Amend	6-1-06	875-020-0010	5-11-06	Amend	6-1-06
860-038-0640	5-11-06	Amend	6-1-06	875-020-0030	2-8-06	Amend	3-1-06
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863-015-0186	6-30-06	Adopt	8-1-06	875-020-0055	2-8-06	Amend	3-1-06
863-015-0225	1-1-06	Adopt(T)	2-1-06	875-030-0010	2-8-06	Amend	3-1-06
863-015-0225	6-30-06	Adopt	8-1-06	875-030-0010	5-11-06	Amend	6-1-06
863-015-0230	1-1-06	Adopt(T)	2-1-06	875-030-0020	2-8-06	Amend	3-1-06
863-015-0230	6-30-06	Adopt	8-1-06	875-030-0025	2-8-06	Amend	3-1-06
863-025-0005	9-15-06	Amend(T)	10-1-06	875-030-0025	5-11-06	Amend	6-1-06
863-025-0025	9-15-06	Amend(T)	10-1-06	875-030-0040	2-8-06	Amend	3-1-06
863-025-0035	9-15-06	Amend(T)	10-1-06	875-030-0040	5-11-06	Amend	6-1-06
863-025-0040	9-15-06	Amend(T)	10-1-06	877-001-0000	12-22-05	Amend	2-1-06
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875-001-0000	2-8-06	Amend	3-1-06	877-020-0009	12-22-05	Amend	2-1-06
875-001-0005	2-8-06	Amend	3-1-06	877-020-0010	12-22-05	Amend	2-1-06
875-001-0005	5-11-06	Amend	6-1-06	877-020-0012	12-22-05	Amend	2-1-06
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875-005-0005	2-8-06	Adopt	3-1-06	877-020-0031	12-22-05	Amend	2-1-06
875-005-0005	5-11-06	Amend	6-1-06	877-020-0046	12-22-05	Amend	2-1-06
875-005-0010	2-8-06	Adopt	3-1-06	877-020-0050	12-22-05	Repeal	2-1-06
875-005-0010	5-11-06	Amend	6-1-06	877-020-0055	12-22-05	Adopt	2-1-06
875-010-0000	2-8-06	Adopt	3-1-06	877-025-0000	12-22-05	Amend	2-1-06
875-010-0000	5-11-06	Amend	6-1-06	877-025-0005	12-22-05	Amend	2-1-06
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875-010-0006	5-11-06	Amend	6-1-06	877-030-0050	12-22-05	Amend	2-1-06
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875-010-0050	2-8-06	Amend	3-1-06	877-040-0015	12-22-05	Amend	2-1-06
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875-010-0070	2-8-06	Repeal	3-1-06	877-040-0060	12-22-05	Repeal	2-1-06
875-010-0075	2-8-06	Repeal	3-1-06	877-040-0065	12-22-05	Repeal	2-1-06
875-010-0080	2-8-06	Repeal	3-1-06	877-040-0070	12-22-05	Repeal	2-1-06
875-010-0085	2-8-06	Repeal	3-1-06	918-001-0010	2-13-06	Amend	3-1-06
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875-010-0095	2-8-06	Adopt	3-1-06	918-008-0000(T)	7-1-06	Repeal	8-1-06
875-011-0005	2-8-06	Adopt	3-1-06	918-008-0010	3-1-06	Amend(T)	4-1-06
875-011-0010	2-8-06	Adopt	3-1-06	918-008-0010	7-1-06	Amend	8-1-06
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918-008-0020	7-1-06	Amend	8-1-06	918-030-0150	10-1-06	Adopt	11-1-06
918-008-0020(T)	7-1-06	Repeal	8-1-06	918-030-0150(T)	10-1-06	Repeal	11-1-06
918-008-0028	7-1-06	Adopt	8-1-06	918-030-0200	7-1-06	Adopt	8-1-06
918-008-0030	3-1-06	Amend(T)	4-1-06	918-030-0200	7-1-06	Amend	8-1-06
918-008-0030	7-1-06	Amend	8-1-06	918-030-0200	10-1-06	Amend	11-1-06
918-008-0030(T)	7-1-06	Repeal	8-1-06	918-030-0200(T)	10-1-06	Repeal	11-1-06
918-008-0060	3-1-06	Amend(T)	4-1-06	918-030-0210	10-1-06	Adopt	11-1-06
918-008-0060	7-1-06	Amend	8-1-06	918-030-0210(T)	10-1-06	Repeal	11-1-06
918-008-0060(T)	7-1-06	Repeal	8-1-06	918-030-0220	7-1-06	Adopt	8-1-06
918-008-0075	1-1-06	Adopt	2-1-06	918-030-0220	10-1-06	Adopt	11-1-06
918-008-0080	1-1-06	Adopt	2-1-06	918-030-0220(T)	10-1-06	Repeal	11-1-06
918-008-0085	1-1-06	Adopt	2-1-06	918-030-0230	7-1-06	Adopt	8-1-06
918-008-0090	1-1-06	Adopt	2-1-06	918-030-0230	10-1-06	Adopt	11-1-06
918-008-0095	1-1-06	Adopt	2-1-06	918-030-0230(T)	10-1-06	Repeal	11-1-06
918-008-0110	1-1-06	Adopt	2-1-06	918-030-0240	7-1-06	Adopt	8-1-06
918-008-0115	1-1-06	Adopt	2-1-06	918-030-0240	10-1-06	Adopt	11-1-06
918-008-0120	1-1-06	Adopt	2-1-06	918-030-0240(T)	10-1-06	Repeal	11-1-06
918-020-0090	1-1-06	Amend	2-1-06	918-030-0250	7-1-06	Adopt	8-1-06
918-030-0000	7-1-06	Adopt	8-1-06	918-030-0250	10-1-06	Adopt	11-1-06
918-030-0000	10-1-06	Adopt	11-1-06	918-030-0250(T)	10-1-06	Repeal	11-1-06
918-030-0000(T)	10-1-06	Repeal	11-1-06	918-030-0410	7-1-06	Adopt	8-1-06
918-030-0010	7-1-06	Adopt	8-1-06	918-030-0410	10-1-06	Adopt	11-1-06
918-030-0010	10-1-06	Adopt	11-1-06	918-030-0410(T)	10-1-06	Repeal	11-1-06
918-030-0010(T)	10-1-06	Repeal	11-1-06	918-030-0910	7-1-06	Adopt	8-1-06
918-030-0020	7-1-06	Adopt	8-1-06	918-030-0910	10-1-06	Adopt	11-1-06
918-030-0020	10-1-06	Adopt	11-1-06	918-030-0910(T)	10-1-06	Repeal	11-1-06
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918-030-0030	7-1-06	Amend	8-1-06	918-030-0920	10-1-06	Adopt	11-1-06
918-030-0030	10-1-06	Amend	11-1-06	918-030-0920(T)	10-1-06	Repeal	11-1-06
918-030-0030(T)	10-1-06	Repeal	11-1-06	918-035-0000	7-1-06	Adopt	8-1-06
918-030-0040	7-1-06	Adopt	8-1-06	918-035-0000	10-1-06	Adopt	11-1-06
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918-030-0120	7-1-06	Adopt	8-1-06	918-035-0040	10-1-06	Adopt	11-1-06
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918-030-0120(T)	10-1-06	Repeal	11-1-06	918-035-0050	7-1-06	Adopt	8-1-06
918-030-0125	7-1-06	Adopt	8-1-06	918-035-0050	10-1-06	Adopt	11-1-06
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918-030-0135	7-1-06	Adopt	8-1-06	918-035-0070	10-1-06	Adopt	11-1-06
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918-035-0090	10-1-06	Adopt	11-1-06	918-225-0920	10-1-06	Repeal	11-1-06
918-035-0090(T)	10-1-06	Repeal	11-1-06	918-225-0930	7-1-06	Suspend	8-1-06
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918-050-0010	1-1-06	Amend	2-1-06	918-225-0940	7-1-06	Suspend	8-1-06
918-050-0020	1-1-06	Amend	2-1-06	918-225-0940	10-1-06	Repeal	11-1-06
918-050-0030	1-1-06	Amend	2-1-06	918-225-0950	7-1-06	Suspend	8-1-06
918-050-0100	1-1-06	Amend	2-1-06	918-225-0950	10-1-06	Repeal	11-1-06
918-050-0110	1-1-06	Amend	2-1-06	918-225-0960	7-1-06	Suspend	8-1-06
918-050-0120	1-1-06	Amend	2-1-06	918-225-0960	10-1-06	Repeal	11-1-06
918-050-0130	1-1-06	Amend	2-1-06	918-225-0970	7-1-06	Suspend	8-1-06
918-050-0140	1-1-06	Amend	2-1-06	918-225-0970	10-1-06	Repeal	11-1-06
918-050-0150	1-1-06	Amend	2-1-06	918-251-0030	1-1-06	Repeal	2-1-06
918-050-0160	1-1-06	Amend	2-1-06	918-251-0040	1-1-06	Repeal	2-1-06
918-050-0170	1-1-06	Amend	2-1-06	918-261-0025	1-1-06	Adopt	2-1-06
918-050-0200	1-1-06	Repeal	2-1-06	918-281-0000	4-1-06	Amend	5-1-06
918-050-0800	1-1-06	Amend	2-1-06	918-281-0010	4-1-06	Amend	5-1-06
918-090-0000	1-1-06	Amend	1-1-06	918-281-0020	4-1-06	Amend	5-1-06
918-090-0010	1-1-06	Amend	1-1-06	918-282-0033	10-1-06	Amend	11-1-06
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918-090-0210	1-1-06	Amend	1-1-06	918-282-0100	10-1-06	Amend	11-1-06
918-098-1000	4-1-06	Amend	5-1-06	918-282-0100(T)	10-1-06	Repeal	11-1-06
918-098-1005	4-1-06	Amend	5-1-06	918-282-0110	7-1-06	Amend	8-1-06
918-098-1010	4-1-06	Amend	5-1-06	918-282-0110	10-1-06	Amend	11-1-06
918-098-1012	4-1-06	Amend	5-1-06	918-282-0110(T)	10-1-06	Repeal	11-1-06
918-098-1015	4-1-06	Amend	5-1-06	918-282-0185	10-1-06	Amend	11-1-06
918-098-1025	4-1-06	Amend	5-1-06	918-282-0205	10-1-06	Amend	11-1-06
918-098-1210	4-1-06	Amend	5-1-06	918-282-0335	7-1-06	Suspend	8-1-06
918-098-1215	4-1-06	Amend	5-1-06	918-282-0335	10-1-06	Repeal	11-1-06
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918-098-1410	4-1-06	Amend	5-1-06	918-282-0355	10-1-06	Amend	11-1-06
918-098-1450	4-1-06	Amend	5-1-06	918-282-0365	7-1-06	Amend	8-1-06
918-098-1470	4-1-06	Amend	5-1-06	918-282-0365	10-1-06	Amend	11-1-06
918-098-1600	4-1-06	Amend	5-1-06	918-282-0365(T)	10-1-06	Repeal	11-1-06
918-098-1620	4-1-06	Amend	5-1-06	918-283-0000	7-1-06	Suspend	8-1-06
918-098-1630	4-1-06	Amend	5-1-06	918-283-0000	10-1-06	Repeal	11-1-06
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918-225-0440	1-1-06	Repeal	2-1-06	918-283-0010	10-1-06	Repeal	11-1-06
918-225-0610	1-1-06	Amend	2-1-06	918-283-0020	7-1-06	Suspend	8-1-06
918-225-0640	7-1-06	Amend	8-1-06	918-283-0020	10-1-06	Repeal	11-1-06
918-225-0640	10-1-06	Amend	11-1-06	918-283-0030	7-1-06	Suspend	8-1-06
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918-225-0670	10-1-06	Amend	11-1-06	918-283-0040	7-1-06	Suspend	8-1-06
918-225-0680	7-1-06	Suspend	8-1-06	918-283-0040	10-1-06	Repeal	11-1-06
918-225-0680	10-1-06	Repeal	11-1-06	918-283-0050	7-1-06	Suspend	8-1-06
918-225-0685	7-1-06	Suspend	8-1-06	918-283-0050	10-1-06	Repeal	11-1-06
918-225-0685	10-1-06	Repeal	11-1-06	918-283-0060	7-1-06	Suspend	8-1-06
918-225-0691	7-1-06	Amend	8-1-06	918-283-0060	10-1-06	Repeal	11-1-06
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918-305-0180	1-1-06	Amend	2-1-06	918-695-0125	10-1-06	Amend	11-1-06
918-311-0030	10-1-06	Amend	7-1-06	918-695-0200	7-1-06	Suspend	8-1-06
918-311-0040	10-1-06	Amend	7-1-06	918-695-0200	10-1-06	Repeal	11-1-06
918-395-0010	7-1-06	Suspend	8-1-06	918-695-0300	7-1-06	Suspend	8-1-06
918-400-0230	1-1-06	Repeal	2-1-06	918-695-0300	10-1-06	Repeal	11-1-06
918-400-0250	7-1-06	Repeal	8-1-06	918-695-0310	7-1-06	Suspend	8-1-06
918-400-0380	7-1-06	Amend	8-1-06	918-695-0310	10-1-06	Repeal	11-1-06
918-400-0380	10-1-06	Amend	11-1-06	918-695-0320	7-1-06	Suspend	8-1-06
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918-400-0465	7-1-06	Amend	8-1-06	918-695-0330	7-1-06	Suspend	8-1-06
918-400-0650	7-1-06	Amend	8-1-06	918-695-0330	10-1-06	Repeal	11-1-06
918-400-0660	7-1-06	Amend	8-1-06	918-695-0340	7-1-06	Suspend	8-1-06
918-400-0665	7-1-06	Adopt	8-1-06	918-695-0340	10-1-06	Repeal	11-1-06
918-440-0040	7-1-06	Amend	8-1-06	918-695-0350	7-1-06	Suspend	8-1-06
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918-460-0015	7-1-06	Amend	8-1-06	918-695-0360	10-1-06	Repeal	11-1-06
918-480-0010	7-1-06	Amend	8-1-06	918-695-0370	7-1-06	Suspend	8-1-06
918-500-0021	7-1-06	Amend	8-1-06	918-695-0370	10-1-06	Repeal	11-1-06
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