

# OREGON BULLETIN

Supplements the 2006 *Oregon Administrative Rules Compilation*

**Volume 45, No. 12**  
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**BILL BRADBURY**  
Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the *Oregon Bulletin*. The Oregon Administrative Rules Compilation is an annual publication containing the complete text of the Oregon Administrative Rules at the time of publication. The *Oregon Bulletin* is a monthly publication which updates rule text found in the annual compilation and provides notice of intended rule action, Executive Orders of the Governor, 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. 06-15

### DETERMINATION OF A STATE OF EMERGENCY IN TILLAMOOK COUNTY DUE TO HEAVY RAIN AND FLOODING

I find that a threat to life, safety and property exists in Tillamook County due to heavy rain and flooding. Approximately 20 inches of rain has fallen in portions of Tillamook County in the last 48 hours. The Wilson River has crested at a record high level. Over one hundred residences and business have been evacuated in Tillamook County. Portions of U.S. Highway 101, Oregon Highway 6, Oregon Highway 53 and numerous local roads are closed due to high water and slides.

Pursuant to ORS 401.055, I declare that a **State of Emergency** exists in those areas of Tillamook County impacted by the heavy rain and flooding that began on November 6, 2006 and is continuing.

These findings were made and this declaration was issued at 9:57 a.m. on November 7, 2006 and confirmed in writing by this Executive Order on the same day.

### NOW THEREOFRE IT IS HEREBY ORDERED AND DIRECTED THAT:

1. The Office of Emergency Management (OEM) shall coordinate access to and use of personnel and equipment of all state agencies necessary to assess, alleviate, respond to, mitigate or recover from conditions caused by this emergency. OEM shall coordinate all essential protective measures in support of disaster areas of Tillamook County.
2. The Oregon National Guard, Oregon State Police, Oregon Department of Transportation and Oregon Department of Environmental Quality shall provide any assistance that is deemed necessary to assist in the response to this emergency and to provide all necessary support to Tillamook County. All other state agencies shall be prepared to assist as requested.
3. All state agencies shall coordinate requests and deployment of resources through the State Emergency Coordination Center.

Done at Salem, Oregon, this 7th day of November, 2006.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 06-16

### DETERMINATION OF STATE OF EMERGENCY IN CLATSOP, CLACKAMAS, COLUMBIA, HOOD RIVER, MULTNOMAH, LINCOLN, TILLAMOOK, LANE AND WASHINGTON COUNTIES DUE TO HEAVY RAIN AND FLOODING.

I find that heavy rains, floods, high winds and landslides have created a threat to life, safety and property in Clatsop, Clackamas, Columbia, Hood River, Multnomah, Lincoln, Tillamook, Lane and Washington counties. Beginning November 5, 2006, and continuing, heavy rains have caused flooding, landslides, and erosion throughout these counties, resulting in significant damage to the state highway system. Currently, damage to the state highway system in these counties is estimated to be \$8,096,000, including damage to federal aid highways.

Pursuant to ORS 410.055, I declare that a **State of Emergency** exists in those areas of Clatsop, Clackamas, Columbia, Hood River, Multnomah, Lincoln, Tillamook, Lane and Washington counties impacted by the heavy rain and flooding that began on November 5, 2006.

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

1. The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources for repairs and reconstruction of the federal aid highway system in Clatsop, Clackamas, Columbia, Hood River, Multnomah, Lincoln, Tillamook, Lane and Washington counties.
2. The Oregon Emergency Management Office shall implement the State's Emergency Operations Plan, and coordinate with state and local agencies impacted by this severe weather to facilitate any and all damage assessments that may be necessary as a result of this event.

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

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### CHANCE TO COMMENT ON... RECOMMENDED CLEANUP DECISION FOR THE KITTRIDGE DISTRIBUTION CENTER PORTLAND, OREGON

**COMMENTS DUE:** January 1, 2007

**PROJECT LOCATION:** 4959 NW Front Avenue, 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 a proposed cleanup decision for the Kittridge Distribution Site in Portland, Oregon.

**HIGHLIGHTS:** DEQ has completed an evaluation of site investigation reports, a risk assessment, and a Feasibility Study conducted for the Kittridge Distribution Center site in the northwest industrial district of Portland, Oregon. The work was completed by the Schnitzer Investment Corp. (SIC) and reviewed under a Voluntary Cleanup Program agreement with DEQ.

The property was the site of an acetylene gas production plant from approximately 1941 to 1991. The site was redeveloped in 1996 with warehouse buildings and has been used for a variety of industrial, light industrial and commercial businesses.

This site is located in the drainage basin of the Portland Harbor Superfund Site, located approximately 0.1 mile from the western shore of the Willamette River. In June of 2004 DEQ evaluated existing data and site conditions and issued a Portland Harbor Source Control decision concluding that the Kittridge Distribution site was not likely a current source of contamination to the Willamette River.

The site has undergone several site investigations and there have been several small removals of petroleum contaminated soils and polychlorinated biphenyl (PCB) contaminated concrete. A risk assessment calculated that there was no unacceptable risk to human health. However, because of the potential presence of polynuclear aromatic hydrocarbons (PAHs), PCBs, and metals, plus high pH in site soils and groundwater, SIC proposed a conservative approach whereby they would presume that these contaminants were present at levels that posed an unacceptable risk.

The proposed remedial actions objectives for soil and groundwater are:

- Maintain the existing cap of the site, which consists of warehouse buildings and asphalted parking area;
- Establish a restriction for all uses of groundwater below the site;
- Establish institutional controls via a site specific contaminated soil and groundwater management plan to guide site activities as they relate to capped contamination areas;
- Record an Easement and Equitable Servitude with the property deed to establish site hazards, inspection and maintenance of the soil cap, and reporting to DEQ.

DEQ is therefore proposing to issue a conditional no further action (CNFA) determination for the site under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

**HOW TO COMMENT:** DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Chuck Harman, Project Manager, at the address listed above or via email at [harman.charles@deq.state.or.us](mailto:harman.charles@deq.state.or.us) by 5 p.m., January 1, 2007. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

Summaries of site information can be found on the internet in DEQ's on-line Environmental Cleanup Site Information (ECSI) database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The Kittridge Distribution Center is listed as ECSI # 2442.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the January 1, 2007 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

### PROPOSED APPROVAL OF CLEANUP AT MATHEWS PROPERTY UMATILLA COUNTY, OREGON

**COMMENTS DUE:** January 2, 2007

**PROJECT LOCATION:** 28999 Hwy 730 in Umatilla, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on soil excavation actions performed at the Mathews Property located at 28999 Highway 730 in Umatilla, Oregon.

**HIGHLIGHTS:** Petroleum contaminated soil from used oil dumping was excavated and transported off-site for disposal. Confirmation soil samples collected following removal actions confirm remaining concentrations are less than DEQ's generic risk based concentrations.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by January 2, 2007 and sent to Katie Robertson, Project Manager, at the address listed above.

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

### A CHANCE TO COMMENT ON PROPOSED REMEDIAL ACTION FOR MILWAUKIE INTERNATIONAL WAY SITE MILWAUKIE, OREGON

**WRITTEN COMMENTS DUE:** January 2, 2007

**PROJECT LOCATION:** Milwaukie International Way Site, 4252 and 4288 S.E. International Way, Milwaukie, Oregon

**OPPORTUNITY TO COMMENT:** Pursuant to Oregon Revised Statute, ORS 465.320, the Department of Environmental Quality (DEQ) issues this notice of a proposed remedial action for groundwater contamination at the Milwaukie International Way Site ("Site"). The DEQ will consider public comment in finalizing its selection of a final remedy. Send written comments on the proposed remedial action to Deborah Bailey, Oregon DEQ, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, Oregon 97201, or e-mail to [bailey.deborah.a@deq.state.or.us](mailto:bailey.deborah.a@deq.state.or.us) by 5 p.m January 2, 2007.

**PROPOSED REMEDIAL ACTION:** The Site is located at 4252 and 4288 S.E. International Way, Milwaukie. Carter Properties currently owns the property at the first address. Manufacturing processes including machining steel, aluminum, and brass bar stock or castings by turning, boring, planing, drilling, and honing were performed at this property from 1960 to 2003. Watumull Properties Corporation owns the property at the second address. The second property was once a part of the original parcel of property that included the manufacturing processes business. The second property is currently used as commercial rental property.

Soils and groundwater at the Site are contaminated with trichloroethene and other volatile organic compounds, with contaminated plumes in groundwater on the two properties and in groundwater downgradient of these properties. DEQ has been over-

## OTHER NOTICES

seeing the investigation of the nature and extent of the contamination and the evaluation of cleanup options, as performed by potentially liable parties pursuant to an order issued by DEQ in 1999. DEQ also has been overseeing the performance of an interim remedial measure approved by DEQ in 2002, which included the removal of contaminated soils and installation of a system to pump and treat contaminated groundwater which also provides hydraulic control of contaminant plumes in shallow and deep aquifers.

The remedial action proposed by DEQ includes the following: continue to operate the components of the interim remedial measure, extract contaminated groundwater with one or more additional wells to limit further spread of groundwater contamination from the site, treat extracted groundwater through air stripping and carbon adsorption, treat the source area with an in-situ bioremediation technology, monitor groundwater to confirm contaminant reduction and mass removal, implement institutional controls, perform periodic remedy review, and, implement contingency measures as necessary.

**FOR MORE INFORMATION:** The staff report describing the proposed remedial action and other project files are available for public review by appointment at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. Appointments to review these files can be made by calling 503-229-6729, toll free at 1-800-452-4011, or TTY at 503-229-5471. The staff report is also available on the DEQ website at [www.deq.state.or.us](http://www.deq.state.or.us). Navigate to the document as follows: Land Quality, Environmental Cleanup, Cleanup Sites with Individual Web Pages, Milwaukie International Way (in the Northwest Region).

Additional information regarding the proposed remedial action for the site may be obtained by contacting Deborah Bailey, DEQ Project Manager, at the above address, by calling (503) 229-6811, or by e-mail at [bailey.deborah.a@deq.state.or.us](mailto:bailey.deborah.a@deq.state.or.us)

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 Public Affairs at (503) 229-5317.

### REQUEST FOR COMMENTS OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY SEEKING PUBLIC COMMENT ON PROPOSED CONSENT JUDGMENT REGARDING MILWAUKIE INTERNATIONAL WAY SITE

**WRITTEN COMMENTS DUE:** January 2, 2007

**Where Can I Review the Document?** The proposed consent judgment is available on DEQ's website at [www.deq.state.or.us](http://www.deq.state.or.us). Navigate to the document as follows: Land Quality, Environmental Cleanup, Cleanup Sites with Individual Web Pages, Milwaukie International Way (in the Northwest Region). You may also review the document at DEQ's Northwest Region office, located at 2020 SW 4th Ave., fourth floor, Portland, Oregon.

**Where Can I Send Comments and Get More Information?** Comments may be submitted to Deborah Bailey, Milwaukie International Way Project Manager, by email at [bailey.deborah.a@deq.state.or.us](mailto:bailey.deborah.a@deq.state.or.us); by mail at DEQ, 2020 SW 4th Ave., Suite 400, Portland, OR 97204; or by fax at 503-229-6945. Upon written request by 10 or more persons, or by a group having 10 or more members, DEQ will hold a public meeting to receive verbal comments. For more information, please contact Deborah Bailey at 503-229-6811.

**Where Is the Site Located?** The Milwaukie International Way Site ("Site") is located at 4252 and 4288 SE International Way, Milwaukie, Oregon.

**BACKGROUND:** Soils and groundwater at the Site are contaminated with trichloroethene and other volatile organic compounds, with contaminant plumes in groundwater on the two properties located at 4252 and 4288 SE International Way and in groundwater down-gradient of these properties. DEQ has been overseeing the investi-

gation of the nature and extent of the contamination and the evaluation of cleanup options, as performed by potentially liable parties pursuant to an order issued by DEQ in 1999. DEQ also has been overseeing the performance of an interim remedial measure approved by DEQ in 2002, which included the removal of contaminated soils and installation of a system to pump and treat contaminated groundwater which also provides hydraulic control of contaminant plumes in shallow and deep aquifers. DEQ intends to select a final remedial action for the soil and groundwater contamination at the Site by February 2007. (Opportunity to comment on the proposed final remedial action is being provided by separate public notice. If you would like information about how to review and comment on the proposed final remedial action, please contact Deborah Bailey at the number provided above.)

**What Is Proposed?** DEQ is proposing to enter a settlement with potentially liable parties to ensure implementation of the final remedial action for the Site and to reimburse DEQ for outstanding costs. The settlement would be in the form of a consent judgment pursuant to ORS 465.325. The consent judgment would require payment by or on behalf of certain potentially liable parties to DEQ in the amount of \$2,850,000 for final remedial action costs. DEQ would place this money into a dedicated account to be used by DEQ in performing the remedial action. Payment would also be made to DEQ by or on behalf of the potentially liable parties in the amount of \$800,000 in satisfaction of outstanding costs incurred by DEQ in connection with the Site and area-wide groundwater contamination in Milwaukie.

In return for these payments and other cooperation in remedy implementation, DEQ would covenant not to sue the settling parties, and those parties would receive contribution protection under ORS chapter 465 regarding the matters addressed by the consent judgment. These protections would also be extended to all successors and assigns of the current property owners.

DEQ proposes to enter this consent judgment with the following parties: Walter Freeman; Estate of Alice Freeman; John Freeman; Ed Freeman; Sierra Pacific Development, Inc.; XDP, Inc.; The HongKong and Shanghai Banking Corporation Limited; HSBC Bank Canada; HSBC Bank USA; Ralph Carter; Carter Properties, LLC; Revtek Acquisition Company, Inc., dba Revtek, Inc.; and Watumull Properties Corp.

**What Happens Next?** DEQ will review and consider all comments received during the comment period. If DEQ then determines to enter the consent judgment, the consent judgment will be executed by the parties and filed with the Clackamas County Circuit Court. The court must approve the consent judgment for it to take effect.

**What Are DEQ's Responsibilities?** DEQ is the state regulatory agency responsible for protecting and enhancing Oregon's water and air quality, for cleaning up hazardous substance contamination in the environment, and for managing the proper disposal of hazardous and solid wastes.

**ACCESSIBILITY INFORMATION:** Please contact Deborah Bailey at the number above if you need special physical, language, or other accommodations to review and comment on the proposed consent judgment.

### CHANCE TO COMMENT ON... RECOMMENDED NO FURTHER ACTION FOR THE WATERFRONT PEARL DEVELOPMENT PORTLAND, OREGON

**COMMENTS DUE:** January 1, 2007

**PROJECT LOCATION:** NW Naito Parkway (formerly 1300) at NW 9th Ave.

**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 a proposed "No Further Action" cleanup decision for the Waterfront Pearl Development Site in Portland, Oregon.

## OTHER NOTICES

**HIGHLIGHTS:** DEQ has completed an evaluation of site investigation reports, fill removal documentation, post-removal soil confirmation sampling and a risk assessment conducted for the Waterfront Pearl Development residential site in northwest downtown Portland, Oregon. The work was completed by the Waterfront Pearl Limited Partnership and reviewed under an agreement with DEQ. The site was used primarily as a parking area and its south lot served as a small memorial park since approximately 1966. The site has been undergoing redevelopment for about a year.

Approximately 74,000 metric-tons of soil, primarily composed of historic fill material were removed from the site for development, creating a 20-30 feet deep excavation between NW Naito Parkway and the western shore of the Willamette River. Confirmation soil samples were collected along the bottom and walls of the excavation to assess potential human health and ecological risks. The contaminants of potential concern (COPCs) previously found in fill material included petroleum hydrocarbon and associated polynuclear aromatic hydrocarbons (PAHs) and metals - lead, mercury and zinc. DEQ has concluded that the site does not pose an unacceptable risk to human health or the environment based on the results of the confirmation sampling and risk assessments. DEQ is therefore proposing to issue a no further action determination for the site under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

**HOW TO COMMENT:** DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments to Chuck Harman, Project Manager, at the address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., January 1, 2007. DEQ will hold a public meeting to receive verbal comments if requested by ten or more people or by a group with 10 or more members.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the January 1, 2007 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

### OPPORTUNITY TO COMMENT CONDITIONAL NO FURTHER ACTION WASHBURN SHELL, KLAMATH FALLS, OREGON

**COMMENT DUE:** January 2, 2007

**PROJECT LOCATION:** 3320 Washburn Way, Klamath Falls, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on a draft Conditional No Further Action (NFA) finding for the Washburn Shell. The draft NFA details the analysis of residual risk and effective risk management designed to address contaminated environmental media located at the Washburn Shell facility located in Klamath Falls, Oregon. More information concerning site-specific investigations and/or the proposed conditional NFA is available by contacting Mr. Cliff Walkey, DEQ's project manager for this site.

The Administrative File for this facility is archived at the DEQ's Bend, Oregon office, and can be reviewed in person by contacting Mr. Cliff Walkey at (541) 388-6146 extension 224 to arrange for an appointment.

**HOW TO COMMENT:** The public comment period will extend from December 1, 2006 through January 2, 2007. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

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

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

**THE NEXT STEP:** DEQ will consider all public comments received before finalizing the Conditional NFA for the Washburn Shell. DEQ will provide written responses to all received public comments.

### PUBLIC COMMENT PERIOD NOTICE OF NO FURTHER ACTION REQUIRED FORMER GLENBROOK NICKEL FACILITY, 63776 MULLEN STREET, COOS BAY, OREGON

**COMMENTS DUE:** December 31, 2006

**PROJECT LOCATION:** Former Glenbrook Nickel Facility, 63776 Mullen Street, Coos Bay Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed No Further Action Determination for the Operable Unit (OU) 1 Upland Area at former Glenbrook Nickel facility in Coos Bay, Oregon. The selected remedies identified in the Record of Decision (ROD) have been successfully implemented. This no further action determination excludes on-going investigations of the sediments nearshore (OU2 Sediments).

**HIGHLIGHTS:** Glenbrook Nickel Company, an affiliate of Teck Cominco American Incorporated, used the site for off-loading, storage, and distribution of nickel ore. The ore was dried, crushed, and shipped from the site to the Glenbrook's Nickel smelting facility in Riddle, Oregon. Tests were performed on surface material across the previous ore yard. Concentrations of nickel in the surface soil were found to be acceptable for human health but elevated for ecological receptors, particularly birds.

The following measures, identified in the ROD, were completed addressing the remaining nickel contamination with OU1 Uplands at the site:

- Covering the former ore stockpile areas with 6-inches of soil, gravel, or sand. This cover will prevent ecological receptors from exposure to the soils containing high levels of nickel.

- Placing an institutional control measure, known as an Easement and Equitable Servitude, on the property deed notifying future property owners/operators of the presence of the cover and associated protocols for proper handling and disposal should the cover material be excavated for any reason.

- Preparing an Inspection and Maintenance Plan that requires annual inspections of the cover to ensure that it is properly maintained.

**HOW TO COMMENT:** Written comments on the proposed remedial action may be submitted to Angie Obery at DEQ's Eugene office, 1102 Lincoln St., Suite 210, Eugene, OR 97401. Comments must be received by December 31, 2006. Questions may be directed to Angie Obery by calling her at 1800-844-8467 x7464.

A public meeting to answer questions and receive verbal comments on the proposed remedial action will be held if there is significant public interest.

**THE NEXT STEP:** DEQ will consider all public comments prior to making a final decision.

### DEQ NOTICE OF AGREEMENT

The Oregon Department of Environmental Quality (DEQ) and Tarr Acquisition LLC (Tarr) have signed a Prospective Purchaser Agreement (PPA) for an environmental investigation and cleanup as needed for property comprised of two adjacent parcels located at 2838

## OTHER NOTICES

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and 2946 NE Columbia Boulevard. These parcels have been termed the west parcel and east parcel, respectively. Tarr plans to redevelop the property and move its existing business to this location in order to expand its operation.

DEQ previously had identified each of the parcels as suspected contaminated sites. The west parcel was developed in the 1940s for agricultural and rural residential use. In the 1980s the site was used for industrial and commercial purposes, most recently as a portable toilet/recycling business. The primary environmental concerns at this property include the presence of dry wells that may have received industrial discharges, a heating oil underground storage tank (UST), and potential soil contamination related to a maintenance shop. A diesel release from the UST has been documented.

The east parcel was developed for residential use in the 1940s. The Gilsonite Company purchased a portion of the east parcel in the early 1950s and began an asphalt coating operation, and subsequently expanded onto the rest of the parcel in the 1970s. The property was sold to the Henry Company in 1992, but operations remained the same. Materials used in the process included mineral spirits, gaso-

line, and diesel fuel that were stored in above ground and underground tanks. In 1996 the USTs and contaminated soil were removed with DEQ's approval, and new USTs were installed in the same location. A release of mineral spirits to soil from the USTs was documented. The newer tanks were removed in 2006 and testing indicated they had not leaked.

The primary concerns on the east parcel include the presence of dry wells that may have received industrial discharges, a possible heating oil UST, and residual contamination related to the earlier tanks.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The PPA is a tool which facilitates the cleanup of contaminated property and encourages property transactions which would otherwise not likely occur because of the liabilities associated with existing contamination. DEQ has approved 83 PPAs throughout the State since 1995.

For additional information on the project contact DEQ Project Manager Mark Pugh at 503 229-5587. The contact for DEQ's Prospective Purchaser Program is Charlie Landman, Oregon at (503) 229-6461.

# 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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### Appraiser Certification and Licensure Board Chapter 161

**Rule Caption:** Change in Appraiser Assistant registration period and associated fees, along with general housekeeping changes.

Date:	Time:	Location:
1-22-07	9 a.m.	Parks and Rec. Dept. 725 Summer St. NE Rm. 124A Salem OR

**Hearing Officer:** Craig Zell

**Stat. Auth.:** ORS 183.355(1)(a), 674.305(7), 674.310(2)

**Other Auth.:** Title XI of the Federal Financial Reform. Recovery and Enforcement Act of 1989 (12 USC 3310 et seq.)

**Stats. Implemented:** ORS 674.305(7), 674.310(2)

**Proposed Amendments:** 161-003-0020, 161-010-0020, 161-010-0080, 161-010-0085, 161-015-0010, 161-015-0030, 161-020-0110, 161-025-0025, 161-025-0030, 161-025-0040, 161-050-0000, 161-050-0040

**Proposed Repeals:** 161-025-0050

**Last Date for Comment:** 1-22-07, close of hearing

**Summary:** The Board proposes to repeal Oregon Administrative Rule 161-025-0050 on the basis that the language is redundant to language contained in OAR 674.150. In addition, the Board proposes amendments to Oregon Administrative Rules chapter 161, division 3 regarding fees; division 10 regarding licensure and certification requirements, division 15 regarding application and examination process; division 20 regarding educational courses, requirements and providers, division 25 regarding application and examination process; division 20 regarding educational courses, requirements and providers, division 25 regarding scope of practice and procedures; and division 50 regarding temporary non-resident registrations, and changes in application/renewal information.

**Rules Coordinator:** Karen Turnbow

**Address:** Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, OR 97303

**Telephone:** (503) 485-2555

## Board of Geologist Examiners Chapter 809

**Rule Caption:** Response to Board request due back in 21 days; remove term lapse.

**Stat. Auth.:** ORS 183, 192, 672

**Stats. Implemented:** ORS 183.341, 183.355, 183, 192 & 672

**Proposed Amendments:** 809-015-0010, 809-020-0025

**Last Date for Comment:** 12-21-06, 5 p.m.

**Summary:** The rule change in 809-015-0010 removes the word lapse, as non-payment of fees results in an expired registration whether it is one day expired or an extended time. After five years, the registrant must apply as a new applicant and provide verification of passing national exams.

The rule change in 809-020-0025 requires that a geologist respond within 21 days to communications from the Board. The current window of time is 30 days.

**Rules Coordinator:** Susanna R. Knight

**Address:** Board of Geologist Examiners, 1193 Royvonne Ave. SE, #24, Salem, OR 97302

**Telephone:** (503) 566-2837

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## Board of Medical Examiners Chapter 847

**Rule Caption:** Reducing fees, renaming title of some data services, and adding fees.

**Stat. Auth.:** ORS 677.265(1)(a)

**Stats. Implemented:** ORS 677.265

**Proposed Amendments:** 847-005-0005

**Last Date for Comment:** 12-28-06

**Summary:** The proposed rule change reduces some data processing fees because data is now being provided on a disk which is faster and less expensive to provide in this format; the title of some fees are being changed to better reflect the content of the data lists; and some fees are being added to reflect data services the Board is already providing.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Adds Active - Administrative Medicine status for licensed physicians and clarifies other active license statuses.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.172, 677.175

**Proposed Adoptions:** 847-008-0037

**Proposed Amendments:** 847-008-0015, 847-008-0022, 847-008-0023

**Last Date for Comment:** 12-28-06

**Summary:** The proposed rule change defines Administrative Medicine and adds an Active - Administrative Medicine status for physician licensees; clarifies exceptions to unlimited Active registration status, specifies that a physician practicing teleradiology for Oregon is not required to be licensed in Oregon, and species that licensees granted Active - Military/Public Health, Active - Teleradiology and Active - Telemonitoring statuses must register and pay a biennial active registration fee.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove LLMF renewal limit and add sexual misconduct under definition of unprofessional conduct.

**Stat. Auth.:** ORS 677.265, 677.417

**Stats. Implemented:** ORS 677.015, 677.100, 677.132, 677.188, 677.190, 677.265, 677.415, 677.417

**Proposed Amendments:** 847-010-0063, 847-010-0073

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule amendments 1) remove the limit on the number of times the Limited License Medical Faculty (LLMF) may be renewed but maintain that a physician may not practice under an LLMF for more than four years total; and 2) add sexual misconduct under the definition of unprofessional conduct and define sexual misconduct as including sexual violation and sexual impropriety.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove 60-day application filing deadline and Limited License Medical Faculty renewal limit for physicians.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.100, 677.132, 677.265

**Proposed Amendments:** 847-020-0110, 847-020-0140

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule amendments remove reference to a 60-day application filing deadline for physicians and remove the limit on the number of times the Limited License Medical Faculty (LLMF) may be renewed but maintain that a physician may not practice under an LLMF for more than four years total.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove reference to 60-day application filing deadline for practice of medicine across state lines.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.100, 677.139, 677.265

**Proposed Amendments:** 847-025-0050

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule amendment removes reference to the 60-day application filing deadline for practice of medicine across state lines.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove reference to 60-day application filing deadline to volunteer medical services at camp.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.100, 677.265

**Proposed Amendments:** 847-028-0030

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule amendment removes reference to the 60-day application filing deadline to volunteer medical services at a camp operated by a nonprofit organization.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Add administration of immunizations to EMT-Intermediate scope of practice.

**Stat. Auth.:** ORS 682.245

**Stats. Implemented:** ORS 682.245

**Proposed Amendments:** 847-035-0030

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule adds the administration of immunizations under the supervising physician's standing order to the EMT-Intermediate scope of practice in the event of an outbreak or epidemic as declared by the Governor and as part of an EMS Agency's occupational health program.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove requirements for applicants for acupuncture licenses.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.265, 677.759

**Proposed Amendments:** 847-070-0016, 847-070-0038

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rules remove 1) the requirement that the applicant must have passed the practical portion (Point Location Module) of the NCCAOM Acupuncture Certification Examinations in order to be deemed certified by the NCCAOM; and 2) the criterion that an applicant for a Limited License, Visiting Professor must establish to the satisfaction of the Board that he/she specifically has the skills and training equivalent to certification in acupuncture by NCCAOM, while retaining the criterion that the applicant must establish to the satisfaction of the Board that he/she has the skills and training equivalent to graduation from an ACAOM accredited acupuncture program.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Rule Caption:** Remove references to abolished Advisory Council on Podiatry and 60-day application filing deadline.

**Stat. Auth.:** ORS 677.265, HB 2490 (2005)

**Stats. Implemented:** ORS 677.100, 677.805

**Proposed Amendments:** 847-080-0001, 847-080-0002

**Last Date for Comment:** 12-21-06

**Summary:** The proposed rule amendments remove references to the now abolished Advisory Council on Podiatry and the the 60-day application filing deadline.

**Rules Coordinator:** Diana M. Dolstra

**Address:** Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201

**Telephone:** (971) 673-2713

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

**Rule Caption:** Clarification of the residency requirements for offenders released onto Parole & Post-Prison Supervision.

**Stat. Auth.:** ORS 144.102, 144.050, 144.140, 144.270

**Stats. Implemented:**

**Proposed Amendments:** 255-070-0003

**Last Date for Comment:** 12-28-06

**Summary:** The amendment of this rule is necessary to bring it into conformity with Oregon Revised Statutes.

**Rules Coordinator:** Michael R. Washington

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

**Telephone:** (503) 945-8978

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## Board of Tax Practitioners Chapter 800

**Rule Caption:** 2006 Overhaul of OAR's based on recommendations made by the Rules Advisory Committee and voted on by the Board.

Date:	Time:	Location:
12-21-06	9 a.m.	3218 Pringle Rd. SE, #120 Salem, OR 97302

**Hearing Officer:** Monica J. Walker

**Stat. Auth.:** ORS 673.605, 673.740, 673.990

**Stats. Implemented:** ORS 673.605, 673.740, 673.990

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 800-010-0015, 800-010-0030, 800-010-0040, 800-010-0041, 800-010-0050, 800-015-0005, 800-015-0010, 800-020-0015, 800-020-0030, 800-020-0031, 800-020-0035, 800-020-0065, 800-025-0023, 800-025-0027, 800-025-0029, 800-025-0040, 800-025-0050, 800-025-0060, 800-025-0070

**Last Date for Comment:** 12-21-06, 5 p.m.

**Summary:** The amendments to the OARs were recommended by the Board's Rules Advisory Committee and are for general "house-keeping" and "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. Walker

**Address:** Board of Tax Practitioners, 3218 Pringle Rd. SE, # 120, Salem, OR 97302

**Telephone:** (503) 378-4034

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**Department of Administrative Services,  
Office for Oregon Health Policy and Research  
Chapter 409**

**Rule Caption:** Access to Health Data and Fees for Data Search.

Date:	Time:	Location:
12-15-06	1 p.m.	Public Service Bldg. Rm. 500A 255 Capitol Street NE Salem, OR

**Hearing Officer:** James Oliver

**Stat. Auth.:** ORS 192.440, 442.420(3)(d)

**Stats. Implemented:** ORS 192.410 - 192.440, 192.496, 192.501, 442.420(3)(d)

**Proposed Adoptions:** 409-021-0150

**Proposed Amendments:** 409-021-0010

**Proposed Ren. & Amends:** 409-021-0025 to 409-021-0115, 409-021-0020 to 409-021-0120, 409-021-0015 to 409-021-0130, 409-021-0030 to 409-021-0140

**Last Date for Comment:** 12-29-06, 5 p.m.

**Summary:** This rule specifies the process for gaining access to health data collected by the Office for Oregon Health Policy and Research (OHPR). Sections in this rule specify definitions for key terms, how to request an inspection of health data collected by OHPR, how to request access to public use data files, how to request access to limited data sets, and fees assessed to obtain copies of health data collected by OHPR. These data are primarily accessed for academic and research purposes.

**Rules Coordinator:** Kristin Keith

**Address:** Department of Administrative Services, Office for Health Plan Policy and Research, 155 Cottage St. NE U10, Salem, OR 97301

**Telephone:** (503) 378-5087

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**Department of Agriculture  
Chapter 603**

**Rule Caption:** Adopt current NIST handbooks, rule housekeeping, and a definition amendment.

Date:	Time:	Location:
12-27-06	10 a.m.	ODA Conference Rm. D 635 Capitol Street NE Salem, OR 97301-2532

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 618.016, 618.031, 618.036, 618.051

**Stats. Implemented:** ORS 618.031, 618.036, 618.051

**Proposed Amendments:** 603-027-0105; 603-027-0170; 603-027-0180; 603-027-0206; 603-027-0220; 603-027-0635; 603-027-0640; 603-027-0670; 603-027-0680; 603-027-0700

**Last Date for Comment:** 1-5-07

**Summary:** Adopt the 2007 Edition National Institute of Standards and Technology (NIST) Handbook 44; 2006 Edition NIST Handbook 130 sections on Packaging and Labeling Regulations, Method of Sale of Commodities, and Examination Procedure for Price

Verification; 2005 Edition of NIST Handbook 133; housekeeping to remove obsolete rules regarding uncompensated for temperature spring scales, ticket printers on propane delivery truck meters, ticket printers on refined petroleum delivery trucks; and amend the definition of "predominantly in favor".

**Rules Coordinator:** Sue Gooch

**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301-2532

**Telephone:** (503) 986-4583

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

**Rule Caption:** Advisory board meeting processes.

Date:	Time:	Location:
12-19-06	9:30 a.m.	1535 Edgewater St NW Salem, OR 97309

**Hearing Officer:** Chris Huntington

**Stat. Auth.:** ORS 183.335

**Stats. Implemented:** ORS 455.144

**Proposed Adoptions:** 918-040

**Proposed Repeals:** 918-225-0230, 918-251-0070, 918-400-0260, 918-690-0400

**Last Date for Comment:** 12-22-06

**Summary:** These rules establish consistent advisory board meeting processes for the administration of activities carried out by the Electrical and Elevator Board, the Building Codes Structures Board, the Mechanical Board, the Residential Structures Board, the Board of Boiler Rules, the Oregon State Plumbing Board and the Manufactured Structures and Parks Advisory Board.

**Rules Coordinator:** Dodie Wagner

**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

**Telephone:** (503) 373-7438

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

**Rule Caption:** Coordination of Group Health Insurance Policy Benefits.

Date:	Time:	Location:
1-4-07	1:30 p.m.	Conf. Rm. F (basement) 350 Winter St. NE Salem, OR

**Hearing Officer:** Lewis Littlehales

**Stat. Auth.:** ORS 731.244, 743.552

**Stats. Implemented:** ORS 743.549, 743.552

**Proposed Amendments:** 836-020-0770

**Last Date for Comment:** 1-11-07

**Summary:** This rulemaking delays to January 1, 2008, the effective date of rules adopted earlier this year that relate to coordination of benefits among group and blanket health insurance policies, and requires the Director of the Department of Consumer and Business Services to review the rules and their implementation experience after January 1, 2010.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301-3883

**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's updating of consensus standards in Maritime.

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

**Stats. Implemented:** ORS 654.001 - 654.295

**Proposed Amendments:** 437-005-0001

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 12-22-06

**Summary:** Oregon OSHA proposes to adopt the Federal OSHA changes as they appear in the October 17, 2006 Federal Register. These changes enhance the fire protection in shipyard employment standard (Division 5, Maritime, CFR 1915) by requiring employers to comply with the newer standards, which may be even more protective than the older standards. Federal OSHA states these changes will not result in additional compliance costs. Although Federal OSHA has jurisdiction over most marine activity, Oregon OSHA must remain at least as effective as the federal standard. Therefore, we propose to adopt the federal changes in Oregon.

This will have a delayed effective date of January 16, 2007.

Please visit our web site [www.orosha.org](http://www.orosha.org)

Click 'Rules & Laws' in the left vertical column and view our proposed, adopted and final rules.

**Rules Coordinator:** Sue C. Joye

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

**Telephone:** (503) 947-7449

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Access and Habitat Program Emergency Seeding.

Date:	Time:	Location:
1-12-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.232, 496.242

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.232, 496.242

**Proposed Adoptions:** 635-090-0200

**Last Date for Comment:** 1-12-07

**Summary:** This rule allows a special, fast-track review and approval process available to the Board for emergency seeding projects that address wildfire-caused impacts to lands providing wildlife habitat.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Amend Rules to expand types of marking acceptable for birds held by private hunting preserves.

Date:	Time:	Location:
1-12-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.570, 497.102, 497.156, 497.248

**Stats. Implemented:** ORS 496.012, 496.138, 496.570, 497.102, 497.156, 497.248

**Proposed Amendments:** Rules in 635-047

**Last Date for Comment:** 1-12-07

**Summary:** This rule amendment would expand the types of marking that are acceptable for birds held by private hunting preserves. Current rule identifies only two types of marking; the amendment would add and define a new type of marking.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Amend rule to delist the Peregrine Falcons from State List of Threatened and Endangered Species.

Date:	Time:	Location:
1-12-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

**Stats. Implemented:** ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

**Proposed Amendments:** Rules in 635-100

**Last Date for Comment:** 1-12-07

**Summary:** Amend Rules to remove both the American peregrine falcon and Arctic peregrine falcon from the State List of Threatened and Endangered Species.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Amend rules for the sport and commercial harvest of groundfish and Pacific halibut in 2007.

Date:	Time:	Location:
1-11-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.138, 496.146, 506.036, 506.109, 506.119, 506.129

**Stats. Implemented:** ORS 496.162, 506.129

**Proposed Adoptions:** Rules in 635-004, 011 & 039

**Proposed Amendments:** Rules in 635-004, 011 & 039

**Proposed Repeals:** Rules in 635-004, 011 & 039

**Last Date for Comment:** 1-11-07

**Summary:** These rules will amend groundfish and halibut harvest regulations for sport and commercial fishers to establish annual management measures for 2007. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Establish average market value of food fish for determining damages related to commercial fishing violations.

Date:	Time:	Location:
1-11-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 506.119

**Stats. Implemented:** ORS 506.109, 506.720

**Proposed Amendments:** 635-006-0232

**Last Date for Comment:** 1-11-07

**Summary:** Amend rules to establish the average market value of food fish species used to determine damages for commercial fishing violations. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Modify renewal requirements for commercial sardine limited entry permits.

Date:	Time:	Location:
1-11-07	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.146, 506.036, 506.109, 506.119

**Stats. Implemented:** ORS 506.036, 506.109, 506.119, 506.129

**Proposed Adoptions:** Rules in 635-006

**Proposed Amendments:** Rules in 635-006

**Proposed Repeals:** Rules in 635-006

**Last Date for Comment:** 1-11-07

# NOTICES OF PROPOSED RULEMAKING

**Summary:** Modify rules for renewal requirements for commercial sardine limited entry permits.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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

**Rule Caption:** Pharmaceutical Rule Revisions for January 1, 2007 — PMPDP PDL.

**Date:** 12-19-06      **Time:** 10:30 a.m.–12 p.m.      **Location:** DHS Bldg., Rm. 137C  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson

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

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0030

**Last Date for Comment:** 12-19-06

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to certain clients. OMAP will revise 410-121-0030, The Practitioner Managed Prescription Drug Plan (PMPDP) Plan Drug List (PDL) by adding and deleting certain drugs to the PDL.

**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:** Name change from “Office of Medical Assistance Programs (OMAP)” to “Division of Medical Assistance Programs (DMAP).”

**Date:** 12-19-06      **Time:** 10:30 a.m.–12 p.m.      **Location:** DHS Bldg., Rm. 137C  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson

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

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-001-0000–410-001-0200, 410-120-0000–410-120-1980, 410-121-0000–410-121-0625, 410-122-0000–410-122-0720, 410-123-0000–410-123-1670, 410-124-0000–410-124-0160, 410-125-0000–410-125-2080, 410-127-0000–410-127-0200, 410-129-0010–410-129-0280, 410-130-0000–410-130-0700, 410-131-0020–410-131-0280, 410-132-0000–410-132-0200, 410-136-0020–410-136-0860, 410-137-0080, 410-138-0000–410-138-0780, 410-140-0020–410-140-0400, 410-141-0000–410-141-0860, 410-142-0000–410-142-0380, 410-143-0000–410-143-0060, 410-145-0000–410-145-0080, 410-146-0000–410-146-0460, 410-147-0000–410-147-0620, 410-148-0000–410-148-0320, 410-149-0000–410-148-0080, 410-150-0000–410-150-0300

**Last Date for Comment:** 12-19-06

**Summary:** The administrative rules govern Division of Medical Assistance Programs’ (DMAP) payments for services provided to clients. DMAP will amend all administrative rules in all programs to change the name Office of Medical Assistance Programs (OMAP) to Division of Medical Assistance Programs (DMAP) as directed by the Department. DMAP will make other “housekeeping” corrections, specifically statutory authority and implementation references, as needed. These revisions will be in addition to any other rule revisions that are currently in review for public comment. See the DHS, DMAP website: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html> for other rule revisions currently in the public comment period.

**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:** Removal of unnecessary “Purpose and Foreword” rules.

**Date:** 12-19-06      **Time:** 10:30 a.m. – noon      **Location:** DHS Bldg Rm. 137C

**Hearing Officer:** Darlene Nelson

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

**Stats. Implemented:** ORS 414.065

**Proposed Repeals:** 410-122-0000, 410-127-0000, 410-129-0010, 410-131-0020, 410-132-0000, 410-136-0020, 410-142-0000, 410-143-0000

**Last Date for Comment:** 12-19-06

**Summary:** The administrative rules govern Division of Medical Assistance Programs’ (DMAP) payments for services provided to clients. DMAP will repeal unnecessary administrative rules listed above.

**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:** HIV disclosure for treatment, payment or health care operations; and laboratory reporting of HIV test results.

**Stat. Auth.:** ORS 431.110, 433.001, 433.004, 433.006, 433.008, 433.045, 433.065, 433.080

**Stats. Implemented:** ORS 431.110, 433.001, 433.004, 433.006, 433.008, 433.045, 433.065, 433.080

**Proposed Amendments:** 333-012-0270, 333-018-0005, 333-018-0030

**Last Date for Comment:** 12-29-06, 5 p.m.

**Summary:** The Oregon Department of Human Services, Public Health Division (Division) is proposing to amend:

- 333-012-0270 to allow for information in the medical record related to a positive HIV test result or HIV diagnosis to be disclosed to persons who must review the record for the purpose of treatment, payment or health care operations and to delete the language requiring specific written authorization for third party payors.

- 333-018-0005 to provide clarification that licensed laboratories shall report tests indicative of HIV infection directly to the Division.

- 333-018-0030 to remove current language and require laboratories to provide summary reports of the number of individuals tested and the number of HIV positive test results.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (971) 673-1291

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**Rule Caption:** Updates rules related to Radiation Protection Services

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

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

**Proposed Amendments:** Rules in 333-100, 333-102, 333-103, 333-105, 333-113, 333-116, 333-118, 333-120

**Last Date for Comment:** 12-29-06, 5 p.m.

**Summary:** The Oregon Department of Human Services, Public Health Division is proposing to update their Oregon Administrative Rules relating to Radiation Protection Services to comply with the Nuclear Regulatory Commission. There are no significant changes being proposed to the rule text or to licensee requirements.

# NOTICES OF PROPOSED RULEMAKING

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	10 a.m.	Rm. 255 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 181.537, 409.050, 411.060, 411.070, 411.816, 414.042, 414.047, 418.100

**Other Auth.:** Approved Federal Demonstration (USDA Food and Nutrition Service, 2006)

**Stats. Implemented:** ORS 181.537, 411.060, 411.070, 411.105, 411.117, 411.122, 411.630, 411.635, 411.700, 411.816, 411.825, 414.042, 414.047, 418.100, 2006 OL ch. 5

**Proposed Adoptions:** 461-001-0015, 461-001-0020

**Proposed Amendments:** 461-001-0000, 461-105-0010, 461-110-0370, 461-110-0410, 461-110-0530, 461-110-0750, 461-115-0530, 461-115-0540, 461-120-0125, 461-130-0315, 461-130-0325, 461-130-0327, 461-130-0335, 461-135-0070, 461-135-0210, 461-135-0400, 461-135-0475, 461-135-0506, 461-135-0510, 461-135-0520, 461-135-0725, 461-135-0750, 461-145-0001, 461-145-0025, 461-145-0055, 461-145-0108, 461-145-0250, 461-145-0340, 461-145-0440, 461-145-0505, 461-145-0540, 461-145-0570, 461-150-0070, 461-150-0080, 461-160-0015, 461-160-0055, 461-160-0090, 461-160-0400, 461-160-0415, 461-160-0430, 461-160-0500, 461-160-0780, 461-165-0180, 461-170-0020, 461-170-0101, 461-170-0102, 461-170-0103, 461-190-0197, 461-190-0310, 461-195-0511, 461-195-0541

**Proposed Repeals:** 461-110-0110, 461-110-0510, 461-110-0720, 461-120-0005, 461-120-0610, 461-150-0010, 461-160-0020, 461-175-0030, 461-190-0161

**Proposed Ren. & Amends:** 461-110-0115 to 461-001-0035, 461-160-0560 to 461-001-0030, 461-190-0110 to 461-001-0025

**Last Date for Comment:** 12-26-06

**Summary:** OAR 461-001-0000 is being amended to add definitions of terms currently used or defined in other rules throughout chapter 461 for food stamps, public assistance, and medical assistance. For some of the definitions currently in this Chapter that are being moved to this rule, the definition itself is also being amended. This rule is also being amended to add some definitions of terms not currently defined in the rules.

OAR 461-001-0015 is being adopted to provide a single rule focused on definitions that apply only in the Food Stamp program and to locate this rule in the same division (461-001) as other rules focusing on definitions. Most of the terms being defined are currently part of OAR 461-110-0110 which is being repealed. Some cross-references are being added and some of the definitions themselves are being changed.

OAR 461-001-0020 is being adopted to provide a single rule focused on definitions that apply only in the Food Stamp OFSET program and to locate this rule in the same division (461-001) as other rules focusing on definitions. Most of the terms being defined are currently part of OAR 461-190-0310. Some of the definitions are being changed or removed.

OAR 461-105-0010, 461-110-0370, 461-110-0410, 461-120-0125, 461-130-0327, 461-135-0210, 461-135-0400, 461-135-0475, 461-135-0506, 461-135-0510, 461-135-0520, 461-135-0725, 461-145-0025, 461-160-0015, 461-160-0055, 461-160-0415, 461-160-0430, 461-160-0500, 461-160-0780, 461-170-0101, 461-170-0102, 461-195-0511, and 461-195-0541 are being amended to update and

add cross-references to definitions (some of which are being added or moved to other rule numbers), and to update the terms used in these rules.

OAR 461-110-0110 is being repealed and its definitions are being relocated into OAR 461-001-0000 and 461-001-0015.

OAR 461-110-0115 is being amended and renumbered to 461-001-0035 to locate the definitions specific to the OSIP-EPD and OSIPM-EPD programs in the same division (461-001) as other rules focusing on definitions. This rule is being amended to clarify the applicability of the rule.

OAR 461-110-0510 is being repealed and OAR 461-110-0530 is being amended so that a single rule will be used to describe the concept of a financial group. OAR 461-110-0530 is also being amended to add cross-references, update and clarify the rule, and indicate how the rule applies to the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs.

OAR 461-110-0720 is being repealed and OAR 461-110-0750 is being amended so that a single rule will be used to describe the concept of a benefit group. OAR 461-110-0750 is also being amended to update language and add cross-references.

OAR 461-115-0530, 461-115-0540, 461-145-0001, 461-145-0055, 461-145-0340, 461-145-0440, 461-145-0540, 461-145-0570, 461-150-0070, 461-150-0080, and 461-190-0197 are being amended to relocate definitions to OAR 461-001-0000, update language, and cross-reference definitions in OAR 461-001-0000 and other rules.

OAR 461-120-0005, which is a table of contents for rules about nonfinancial eligibility requirements in Division 461-120, is being repealed.

OAR 461-120-0610, 461-150-0010, 461-160-0020, and 461-175-0030 are being repealed and their definitions are being relocated into OAR 461-001-0000.

OAR 461-130-0315 about requirements in the REF and TANF programs, 461-130-0325 about participation requirements, 461-130-0335 about removing disqualifications, and 461-160-0400 about the use of income to determine eligibility and benefits in the Food Stamp program are being amended to update and add cross-references, update terms, and clarify the rules.

OAR 461-135-0070 about specific eligibility requirements in the MAA (Medical Assistance Assumed) and MAF (Medical Assistance to Families) programs is being amended to remove exceeding the TANF time limit as a basis for eligibility. This rule is also being amended to clarify the rule, update and add cross-references to definitions that are being added or moved to other rule numbers, and update the terms used in this rule.

OAR 461-135-0750 is being amended to update section cross-references to match section renumbering in other rules and to update terms used in the rule.

OAR 461-145-0108 is being amended to update section cross-references to match section renumbering in other rules.

OAR 461-145-0250 is being amended to add an exclusion to the counting of income-producing property for eligibility in the MAA (Medical Assistance Assumed) and TANF programs. This rule is also being amended to relocate definitions to OAR 461-001-0000 and cross-reference definitions in that rule and other rules.

OAR 461-145-0505 about the treatment of spousal support in the eligibility process for food stamps, public assistance, and medical assistance is being amended to move definitions to OAR 461-001-0000, update and add cross-references to definitions in other rules, clarify the rule, and indicate how the rule applies to the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs.

OAR 461-160-0090 about the OSIP-EPD and OSIPM-EPD programs is being amended to remove a definition of an employment and independence expense, cite the definition of this term being

# NOTICES OF PROPOSED RULEMAKING

moved to OAR 461-001-0035 which differs slightly from the one being removed in this rule, and add cross-references to other rules.

OAR 461-160-0560 is being amended and renumbered to 461-001-0030 to locate the definitions specific to the OSIP and OSIPM long-term care and waived programs in the same division (461-001) as other rules focusing on definitions. This rule is being amended to clarify the applicability of the rule, including removing its applicability to the OHP program. Some of the definitions themselves are being changed.

OAR 461-165-0180 about the eligibility of child care providers is being amended to update cross-references to definitions that are being moved to other rule numbers and to fix an internal cross-reference.

OAR 461-170-0020 and 461-170-0103 are being amended to add a new reporting requirement in the Food Stamp program for those households containing only individuals who are elderly or have disabilities whose income is already at the countable income limit at certification or recertification. These rules are also being amended to add cross-references to other rules. OAR 461-170-0103 is also being amended to remove references to Unemployment Compensation holds and to state the Department in the Food Stamp program will act on a monthly computer match with the Department of Corrections that indicates a member is incarcerated.

OAR 461-190-0110 is being amended and renumbered to OAR 461-001-0025 to locate the definitions specific to the JOBS program in the same division (461-001) as other rules focusing on definitions. This rule is being amended to include definitions from OAR 461-190-0161 so that there are fewer rules containing the definitions for this program. Some cross-references are being added and some of the definitions themselves are being changed, including clarifying the term "case plan" in connection with a Domestic Violence Assistance Agreement. OAR 461-190-0161 is being repealed and its definitions are being relocated into OAR 461-001-0025.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

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

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

**Rule Caption:** Incorporate statute, housekeeping to clarify intent, update terminology and reorganize rules to assist user.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-19-06	1 p.m.	500 Summer St. NE, 137B Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070

**Other Auth.:** SB 430

**Stats. Implemented:** ORS 410.070

**Proposed Adoptions:** 411-050-0444, 411-050-0491

**Proposed Amendments:** 411-050-0400, 411-050-0401, 411-050-0405, 411-050-0408, 411-050-0410, 411-050-0412, 411-050-0415, 411-050-0420, 411-050-0430, 411-050-0435, 411-050-0440, 411-050-0443, 411-050-0445, 411-050-0447, 411-050-0450, 411-050-0455, 411-050-0460, 411-050-0465, 411-050-0480, 411-050-0481, 411-050-0483, 411-050-0485, 411-050-0487

**Proposed Repeals:** 411-050-0437, 411-050-0441, 411-050-0442

**Last Date for Comment:** 12-19-06, 12 p.m.

**Summary:** Increased the continuing education requirement from 10 to 12 hours annually, 4 of which may be related to the adult foster home business operation; Updated terminology including references to OAR Chapter 410, Division 007, Criminal History Check Rules, adapted 3/29/05; Reorganized to assist user in locating specific rules; Modified language for consistency with other long-term care facilities and for clarification to help reader understand the intent.

**Rules Coordinator:** Lisa Richards

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074

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

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**Rule Caption:** Amending Proctor Care Rules to include adults.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-19-06	8:30 a.m.	500 Summer St. NE, 137B Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070, 409.050, 427.007(3)(c)

**Stats. Implemented:** ORS 430.021(4), 430.610 - 430.670

**Proposed Amendments:** 411-335-0010, 411-335-0020, 411-335-0030, 411-335-0050, 411-335-0060, 411-335-0070, 411-335-0080, 411-335-0090, 411-335-0100, 411-335-0110, 411-335-0120, 411-335-0130, 411-335-0140, 411-335-0150, 411-335-0160, 411-335-0170, 411-335-0190, 411-335-0200, 411-335-0210, 411-335-0220, 411-335-0230, 411-335-0240, 411-335-0270, 411-335-0300, 411-335-0320, 411-335-0330, 411-335-0340, 411-335-0350, 411-335-0360, 411-335-0380, 411-335-0390

**Last Date for Comment:** 12-19-06, 12 p.m.

**Summary:** Seniors and People with Disabilities is amending OAR chapter 411, division 335 rules to include proctor services for adults.

**Rules Coordinator:** Lisa Richards

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301-1074

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

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

**Rule Caption:** Extend term of agricultural fireworks permits up to three years and some general housekeeping items.

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

**Stats. Implemented:** ORS 480.110 - 480.165

**Proposed Amendments:** 837-012-0305, 837-012-0310, 837-012-0315, 837-012-0320, 837-012-0325, 837-012-0330, 837-012-0340, 837-012-0350, 837-012-0360, 837-012-0370

**Last Date for Comment:** 12-21-06

**Summary:** Changes are being made to the Agricultural Fireworks Administrative Rules 837-012-0350 through 837-012-0370 to allow an Agricultural Fireworks permit to be valid for up to three years. Other changes have been made for purposes of housekeeping and clarification.

**Rules Coordinator:** Pat Carroll

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

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

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

**Rule Caption:** Establish Process to Accredite Training Programs Related to the Private Security Industry.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-8-07	1:30 p.m.	4190 Aumsville Hwy SE Salem, OR 97317

**Hearing Officer:** Bonnie Salle

**Stat. Auth.:** ORS 181.870, 181.873 - 181.878, 181.883 - 181.885

**Stats. Implemented:** ORS 181.870, 181.873-181.878, 181.883 - 181.885

**Proposed Adoptions:** 259-060-0092

**Proposed Amendments:** 259-060-0010, 259-060-0060, 259-060-0065, 259-060-0075, 259-060-0080, 259-060-0120, 259-060-0135

**Last Date for Comment:** 1-8-07, 5 p.m.

**Summary:** Define "Accreditation Program Manager";

Amend rules relating to eight-hour basic classroom instruction, written examination, four-hour assessment module, annual/biennial

# NOTICES OF PROPOSED RULEMAKING

refresher courses, professional certification and instructor certification; and

Establish procedures for accreditation of private security training programs.

**Rules Coordinator:** Bonnie Salle

**Address:** 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2431

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**Rule Caption:** Employment Definitions, Adopt ORPAT and Amend Rules relating to Police, Telecommunicators/EMDs and Course Certification.

**Stat. Auth.:** ORS 181.640, 181.644, 181.650, 181.652, 181.653, 181.667

**Stats. Implemented:** ORS 181.640, 181.644, 181.650, 181.652, 181.653, 181.667

**Proposed Amendments:** 259-008-0005, 259-008-0011, 259-008-0025, 259-008-0064, 259-008-0065, 259-008-0085

**Last Date for Comment:** 12-26-06, 5 p.m.

**Summary:** Define Full-time and Seasonal employment;

Adopt Physical Fitness Standards (ORPAT) for Basic Police;

Eliminate waiver of attendance at Basic Course for Emergency Medical Dispatchers who have not been employed in excess of 2-1/2 years;

Allow maintenance training extension for Telecommunicators and Emergency Medical Dispatchers on authorized leave of absence;

Amend rules relating to Medical standards for Telecommunicators and Emergency Medical Dispatchers.

Amend reporting rules for Basic Police Officers reporting mandatory maintenance training requirements due December 31, 2006;

Amend rules relating to the certification of courses and classes.

**Rules Coordinator:** Bonnie Salle

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97301

**Telephone:** (503) 378-2431

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**Rule Caption:** Amend Public Safety Memorial Fund rules relating to eligibility criteria for "Permanent Total Disability."

**Stat. Auth.:** ORS 245.950

**Stats. Implemented:** ORS 245.950

**Proposed Amendments:** 259-070-0010

**Last Date for Comment:** 12-27-06, 5 p.m.

**Summary:** Requires satisfactory evidence that an applicant meets the definition of a "permanent total disability" found in ORS 656.206 and OAR 436-030-0055.

Requires proof of determination in compliance with the Worker's Compensation Division of the Department of Consumer and Business Services or competent written vocational testimony by a person fully certified by the State of Oregon to render vocational services that the applicant meets the definition of "permanent total disability" found in ORS 656.206 and OAR 436-030-0055.

**Rules Coordinator:** Bonnie Salle

**Address:** 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2431

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**Rule Caption:** Amend rules relating to Fire Ground Leaders; NFPA Standard 1002, 2003 Edition; and lapsed certifications.

**Stat. Auth.:** ORS 181.640, 181.652, 181.653 & 181.667

**Stats. Implemented:** ORS 181.640, 181.652, 181.653 & 181.667

**Proposed Amendments:** 259-009-0005, 259-009-0062, 259-009-0067

**Last Date for Comment:** 12-26-06, 5 p.m.

**Summary:** Amends rule relating to a lapsed certification to require a fire service professional whose certification has lapsed to apply for re-certification;

Defines "Fire Ground Leader" to mean a Fire Service Professional who is qualified to lead emergency scene operations;

Adopts the provisions of NFPA Standard 1002, Edition 2003; and

Amends rules relating to Fire Service Personnel Certification for Fire Ground Leader.

**Rules Coordinator:** Bonnie Salle

**Address:** 4190 Aumsville Hwy SE, Salem OR 97317

**Telephone:** (503) 378-2431

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## Department of Transportation

### Chapter 731

**Rule Caption:** Public openings — what is opened; availability of bids and proposals for public inspection following opening.

**Stat. Auth.:** ORS 184.616, 184.619, 279A.050, 279A.065

**Stats. Implemented:** ORS 279C.365, 279C.410

**Proposed Amendments:** 731-005-0600

**Last Date for Comment:** 12-21-06

**Summary:** This rule relates to receipt, opening and recording of offers. ODOT identified a difference in the manner in which the public contacting code and ODOT's current administrative rules provide for public inspection of procurement documents. The current ODOT rule refers to Offers, which by definition includes both proposals and bids. However, there is a distinct difference when bids as opposed to proposals are to be made available for public inspection. This rule change will bring ODOT's rule in line with the public contracting code. Additionally, this rule change will distinguish that only price proposals or bid offers will be opened at the public Opening. This amendment replaces a temporary amendment to this rule that became effective August 1, 2006.

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

**Rules Coordinator:** Brenda Trump

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

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

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**Rule Caption:** Cite ODOT as owner of Prequalification Application forms relating to ODOT public improvement contracts.

**Stat. Auth.:** ORS 184.616, 184.619, 279A.050, 279A.065, 279C.430

**Stats. Implemented:** ORS 279C.335, 279C.430, 279C.435

**Proposed Amendments:** 731-005-0450

**Last Date for Comment:** 12-21-06

**Summary:** This rule relates to Prequalification of Offeror, which is a requirement prior to bidding on a public improvement project advertised by ODOT. The proposed amendment changes ownership of the Contractor Prequalification form from "prescribed by DAS" to "prescribed by ODOT" per ORS 279C.335.

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

**Rules Coordinator:** Brenda Trump

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

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

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

**Rule Caption:** Repeal of Driver Improvement Rules No Longer in Effect.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 809.480

**Stats. Implemented:** ORS 809.480

**Proposed Repeals:** 735-072-0030, 735-072-0031, 735-072-0040, 735-072-0060, 735-072-0120, 735-072-0130, 735-072-0150

**Last Date for Comment:** 12-21-06

**Summary:** DMV implemented new rules for both Provisional and Adult Driver Improvement Programs in January 1, 2002. The programs established by those rules replaced the existing programs. OAR 735-072-0031 was adopted as a rule explaining the transition between the programs. OAR 735-072-0031(2) specified that OAR 735-072-0030, 735-072-0040, 735-072-0060, 735-072-0120, 735-

# NOTICES OF PROPOSED RULEMAKING

072-0130 and 735-072-0150 only applied to certain individuals at the step of the previous programs where a person would be placed on probation, called in for an interview with a Driver Improvement Counselor and possibly subject to additional requirements as determined by the Driver Improvement Counselor. Any requirement imposed by a Driver Improvement Counselor needed to be completed or the person's driving privileges would be suspended for failure to comply. After a five year period the person was eligible to re-apply for driving privileges without complying with the requirements of the Driver Improvement Counselor. These rules are all obsolete as of January 1, 2007 and DMV proposes to repeal them.

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.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-18-06	2:30 p.m.	ODOT Bldg, Rm. 122 355 Capitol St. NE Salem, OR

**Hearing Officer:** Tracy White

**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:** 734-051-020, 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:** 12-18-06, 5 p.m.

**Summary:** 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 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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**Rule Caption:** Prequalification Application: due date for annual prequalification required to bid on ODOT public improvement projects.

**Stat. Auth.:** ORS 184.616, 184.619, 279A.050, 279A.065, 279C.430

**Stats. Implemented:** ORS 279C.335, 279C.430

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 734-010-0230, 734-010-0240

**Last Date for Comment:** 12-21-06

**Summary:** These rules relate to prequalification for Bidding, and conditions or Prequalification. ODOT has identified a need to change the renewal period of Contractor Prequalification in an effort to level ODOT staff workload throughout the year. Presently ODOT processes 500+ Contractor Prequalification applications over a period of February through May of each year. This same period of time also is the heaviest workload period for construction bidding and awarding. Present staff resources cannot easily accommodate both of these workloads. This issue can be alleviated by changing the prequalification application renewal period to occur later in the year when bid and award workloads typically show a downtrend. In addition, the amendments update the office responsible for processing prequalification applications and the prequalification web site.

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

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## **Occupational Therapy Licensing Board Chapter 339**

**Rule Caption:** Clarify time applicants can receive Limited Permit; Clarify limits for use of Occupational Therapist Aides.

**Stat. Auth.:** ORS 675.320 Powers of the Board

**Stats. Implemented:** ORS 675

**Proposed Amendments:** 339-010-0040, 339-010-0055

**Last Date for Comment:** 12-21-06

**Summary:** Amend Rule to clarify that Limited Permit is only for those who have already applied to take the National Certification Examination and received their Eligibility to Test Letter. This change is needed to clarify that applicants receiving a Limited Permit only receive it for a short time (60 days) after they receive their Eligibility to Test letter. The Board wants to limit the time the applicants work under the limited permit and for them to take the test and get the results within 60 days. (Limited Permit holders work under the supervision of a licensed Occupational Therapist and can only receive a Limited Permit one time).

The second Amends Rule to better clarity when Occupational Therapy can use "occupational therapy aides" for very limited tasks. The new language is only intended to make clearer the need for supervision and the very limited tasks such an aide can perform.

**Rules Coordinator:** Felicia Holgate

**Address:** Occupational Therapy Licensing Board, 800 NE Oregon St., Suite 407, Portland, OR 97232-2162

**Telephone:** (971) 673-0198

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

**Rule Caption:** Proposed rule adopts by reference the criteria for selecting instructional materials in Physical Education and Health.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	1 p.m.	Oregon Dept. of Education 2nd Fl., 251A Salem, OR

**Hearing Officer:** Randy Harnisch

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** ORS 337.035

**Proposed Adoptions:** 581-011-0131

**Last Date for Comment:** 12-20-06, 5 p.m.

**Summary:** The criteria committee for Physical Education and Health met earlier this year and has recommended the criteria for reviewing and adopting instructional materials in those subjects. The proposed rule would adopt by reference the approved criteria for selecting instructional materials in Physical Education and Health.

The review and selection process will take place over the next year with recommendation to the State Board of Education in fall 2007.

**Rules Coordinator:** Paula Merritt

**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310

**Telephone:** (503) 947-5746

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## **Oregon Housing and Community Services Chapter 813**

**Rule Caption:** Provides grants and loans to construct new, acquire or rehabilitate existing structures for low-income housing.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 456.515 - 456.720, 458.600 - 458.640

**Stats. Implemented:** ORS 456.555

**Proposed Adoptions:** 813-042-0000, 813-042-0010, 813-042-0020, 813-042-0030, 813-042-0040, 813-042-0050, 813-042-0060, 813-042-0070, 813-042-0080, 813-042-0090, 813-042-0100, 813-042-0110

**Proposed Repeals:** 813-042-0000(T), 813-042-0010(T), 813-042-0020(T), 813-042-0030(T), 813-042-0040(T), 813-042-0050(T), 813-042-0060(T), 813-042-0070(T), 813-042-0080(T), 813-042-0090(T), 813-042-0100(T), 813-042-0110(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** The rules within 813-042 are established to administer ORS 456.515 to 456.720 and ORS 458.600 to 458.630. These rules describe the Housing Development Grant Program and serves the objective to provide grants and/or low-interest loans to construct new housing or acquire and/or rehabilitate existing structures for housing persons of low and/or very-low income.

813-042-0000 sets out the purpose and the objectives for the Housing Development Grant Program.

813-042-0010 provides clarification of common terms and definitions within the program.

813-042-0020 defines eligibility criteria for organizations, non-profit and/or for profit businesses to participate in the program.

813-042-0030 sets out the distribution formula for grants and/or loans. Clarifies regions in the state.

813-042-0040 identifies the application procedures and requirements as it pertains to the availability of funds.

813-042-0050 identifies the criteria for funding applications.

813-042-0060 sets out the application review process for applications requesting funding under \$100,000, and for those applications requesting funding for amounts over \$100,000. Identifies the specific evaluation criteria.

813-042-0070 sets out the applicable charges that the department may require for applicants to the program.

813-042-0080 identifies the general administrative and monitoring requirements, such as reviews or field inspections to ensure program compliance. Requires an HDGA recipient to retain all financial records, supporting documents and other pertinent records for five years after the project is complete, or after any litigation claim is resolved. Requires accessibility by the department to all books, accounts, documents, records, and other property belonging to the recipient which relate to the use of HDGA funds.

813-042-0090 clarifies the remedies and provides examples of reasons indicating noncompliance. Allows the department to seek remedies for noncompliance.

813-042-0100 identifies the sanctions that the department may invoke against a recipient that fails to comply with the provisions of a Use Agreement.

813-042-0110 adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

## NOTICES OF PROPOSED RULEMAKING

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Defines charges relative to applicants to recipients of low income housing tax credits.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer Street NE Conference Rm. 124B Salem, OR

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 456.515 - 456.720

**Stats. Implemented:** ORS 456.559

**Proposed Amendments:** 813-090-0031, 813-090-0035, 813-090-0036, 813-090-0070

**Proposed Repeals:** 813-090-0031(T), 813-090-0035(T), 813-090-0036(T), 813-090-0070(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** 813-090-0031 Defines the charges that the department may include as part of the application process for the allocation of Low Income Housing Credits. Reasonable charges may also be charged for monitoring the project owner's compliance with restrictions established by the Department and IRC Section 42 or applicable law.

813-090-0035 Adds that any applicable charges must accompany the submission of an application form to qualify for an allocation of Low Income Housing Credits.

813-090-0036 Defines the procedure for when housing credits cannot be used in the year of allocation. Removes the requirement for the department to refund the reservation fee if the housing credit is used subsequently to meet requests within the credit authority.

813-090-0070(4) Removes that the department may charge the project owner a reasonable fee for the department's costs of monitoring the project owner's compliance.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Defines charges relative to applicants or recipients of Oregon Affordable Housing Tax Credits.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 317.097 & 456.515 - 456.720

**Stats. Implemented:** ORS 317.097

**Proposed Amendments:** 813-110-0010, 813-110-0015, 813-110-0030, 813-110-0033, 813-110-0035

**Proposed Repeals:** 813-110-0010(T), 813-110-0015(T), 813-110-0030(T), 813-110-0033(T), 813-110-0035(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** 813-110-0010 Provides clarification of common terms and definition within the program. Changes the word 'fee' to more accurately reflect 'charge'.

813-110-0015 Removes references to a \$100 nonrefundable fee to the Department for reviewing the Sponsor's Application.

813-110-0030 Changes the word 'fee' to more accurately reflect the word 'charge'.

813-110-0033 Defines the charges that the department may request as part of the application process for the Oregon Affordable Housing Tax Credit Program.

813-110-0035 Removes references in 813-110-0035(4) to a fee being required as part of the Application process.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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**Rule Caption:** Defines charges relative to applicants or recipients of funding through the HOME Investment Partnership Program.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer St. NE Conference Rm. 124B Salem, OR

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 456.559 - 456.620

**Stats. Implemented:** ORS 456.559

**Proposed Amendments:** 813-120-0080, 813-120-0100

**Proposed Repeals:** 813-120-0080(T), 813-120-0100(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** 813-120-0080 Defines the charges that the department may include as part of the application process for Home Investment Partnerships Program.

813-120-0100 Adds that the department may establish charges.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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**Rule Caption:** Clarifies terms, affordability, monitoring and application procedures/requirements; remedies. Adds waiver language.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer Street NE Conference Rm. 124B Salem, OR

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 456.555

**Stats. Implemented:** ORS 456.555

**Proposed Adoptions:** 813-130-0140

**Proposed Amendments:** 813-130-0000, 813-130-0010, 813-130-0020, 813-130-0030, 813-130-0040, 813-130-0050, 813-130-0060, 813-130-0070, 813-130-0080, 813-130-0090, 813-130-0100, 813-130-0110, 813-130-0120, 813-130-0130

**Proposed Repeals:** 813-130-0000(T), 813-130-0010(T), 813-130-0020(T), 813-130-0030(T), 813-130-0040(T), 813-130-0050(T), 813-130-0060(T), 813-130-0070(T), 813-130-0080(T), 813-130-0090(T), 813-130-0100(T), 813-130-0110(T), 813-130-0120(T), 813-130-0130(T), 813-130-0140(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** 813-130-0000 Clarifies terms and purpose of the program.

813-130-0010 Provides clarification of common terms and definitions within the program.

813-130-0020 Administrative changes. Changed 'Applicants' to 'Recipients'.

813-130-0030 Administrative changes. Restructured language for easier readability.

813-130-0040 Administrative changes. Restructured language for easier readability.

813-130-0050 Removed redundant language

813-130-0060 Administrative changes. Restructured language for easier readability.

813-130-0070 Administrative changes. Capitalization corrections.

813-130-0080 Administrative changes. Restructured language for easier readability. Added language to allow application charges for applicants requesting additional resources to projects previously funded. Added additional language to allow a transfer application charge if a change of ownership occurs.

813-130-0090 Administrative changes. Restructured language for easier readability.

813-130-0100 Added language that that each Recipient shall execute a Use Agreement containing fees, interest rates, repayment

# NOTICES OF PROPOSED RULEMAKING

terms, performance criteria and reporting requirements as the department or HUD considers appropriate or necessary for the type and use of assistance provided.

813-130-0110 Clarified language for easier readability.

813-130-0120 Clarified language for easier readability.

813-130-0130 Clarified language for easier readability.

813-130-0140 Added a waiver rule as already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Clarifies terms, fund uses, eligible applicants, projects and activities; and applicable program charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-20-06	9 a.m.	725 Summer St. NE Conference Rm. 124B Salem, Oregon

**Hearing Officer:** Heather Pate

**Stat. Auth.:** ORS 458.555, 458.505–458.545

**Stats. Implemented:** ORS 456.555, 458.505 thru 458.545

**Proposed Adoptions:** 813-205-0052, 813-205-0085, 813-205-0100, 813-205-0110, 813-205-0120, 813-205-0130

**Proposed Amendments:** 813-205-0000, 813-205-0010, 813-205-0020, 813-205-0030, 813-205-0040, 813-205-0050, 813-205-0051, 813-205-0060, 813-205-0070, 813-205-0080

**Proposed Repeals:** 813-205-0000(T), 813-205-0010(T), 813-205-0020(T), 813-205-0030(T), 813-205-0040(T), 813-205-0050(T), 813-205-0051(T), 813-205-0052(T), 813-205-0060(T), 813-205-0070(T), 813-205-0080(T), 813-205-0085(T), 813-205-0100(T), 813-205-0110(T), 813-205-0120(T), 813-205-0130(T)

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** 813-205-0000 Clarifies purpose and operation of the program.

813-205-0010 Add terms and definitions applicable to the program. Provides clarification of common terms and definitions within the program.

813-205-0020 Administrative changes. Clarified the program's objective. 813-205-0020(2) clarified the funding sources for the program.

813-205-0030 Clarified for easier readability.

813-205-0040(4) Allows the property owner to assign tax credits to the subgrantee providing weatherization services.

813-205-0050 Stipulates that Lead Safe Work Practices will be practiced on all dwellings constructed prior to 1978 unless it can be proven that a lead hazard does not exist.

813-205-0052 Stipulates that the department will allocate funds received as a result of legal settlement or other actions to improve and address the energy needs of low-income households.

813-205-0060 Administrative changes.

813-205-0070 (4) A Subgrantee Agency shall receive authorization from the Department for the purchase of a vehicle regardless of cost with grant funds.

813-205-0080 Administrative changes.

813-205-0085 Designates the statutory authority of the department to administer the Program through the activities of the Housing Division for low-income affordable rental housing development.

813-205-0100 Defines the applicants that are eligible to participate in the program. Establishes that the department may require application charges.

813-205-0110 Defines the eligible projects for participating in the program.

813-205-0120 Defines the eligible activities for the program.

813-205-0130 Defines how funds may be awarded to applicants.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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**Rule Caption:** Clarification Language. Includes ability to implement application and loan commitment charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	9 a.m.	725 Summer St. NE Conference Rm. 124A Salem, OR

**Hearing Officer:** Shelly Cullin

**Stat. Auth.:** 456.725 & 458.210–458.650

**Stats. Implemented:** 456.555 & 456.625

**Proposed Adoptions:** 813-010-0740

**Proposed Amendments:** 813-010-0006, 813-010-0011, 813-010-0016, 813-010-0021, 813-010-0029, 813-010-0032, 813-010-0033, 813-010-0036, 813-010-0042, 813-010-0051, 813-010-0700, 813-010-0705, 813-010-0710, 813-010-0715, 813-010-0720

**Proposed Repeals:** 813-010-0023, 813-010-0024, 813-010-0028

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** The Multi-Unit Housing Program provides financing for the construction, rehabilitation and acquisition of multi-unit housing in the State of Oregon for persons and families of lower income, while providing safeguards to protect the financial interest of the state.

813-010-0006 are intended clarify the program and the general purpose of the rules.

813-010-0011 clarifies terms used in the program and rules.

813-010-0016 clarifies that the Housing Council shall approve standard criteria for the eligible borrower in lieu of a sponsor.

813-010-0021 clarifies that loans shall be made to eligible borrowers in lieu of sponsors under the terms of written commitments. Establishes that the Department of may establish fees, charges premiums and interest rates, repayment terms, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided. Defines the terms.

813-010-0023 were repealed as these rules were no longer applicable to the program.

813-010-0024 were repealed as these rules were no longer applicable to the program.

813-010-0028 were repealed. Terms for the loans were included in 813-010-0021.

813-010-0029 clarifies the eligible applicants of the program as borrowers in lieu of sponsors. Includes transfer of ownership to include any lease of the property and the sale, or conveyance or transfer of more than 10 percent of a corporate or limited liability company owner's interest. Adds that the department may require a transfer application charge from owners of projects receiving loans when approval is requested for the change in project ownership or when a change is made without prior written approval by the Department.

813-010-0032 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0033 stipulates that the loan amounts shall not exceed the total allowable project costs or 85% of the appraised value of the project, whichever is less.

813-010-0036 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0042 Housekeeping language. Removes certain statutory authority references.

813-010-0051 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0700 Includes the references to electronic transmissions. Changes the term 'tenant' to 'resident' and 'sponsor' to 'borrower.'

813-010-0705 Clarifies that the servicing of loans shall be performed by servicers selected and approved by the Department. Removes that the servicing agreement is subject to termination under 813-010-0710. Payments will be collected under the Loan

## NOTICES OF PROPOSED RULEMAKING

Agreement, Regulatory Agreement and Declaration of Restrictive Covenants. Includes corrected statutory references under the statutory authority.

813-010-0710 Housekeeping. Updates the statutory authorities applicable to the rules.

813-010-0715 Includes the criteria for the Department allowing prepayments.

813-010-0720 Housekeeping. Updates the statutory authorities applicable to the rules.

813-010-0740 Adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Clarification Language. Includes ability to implement application and loan commitment charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	9 a.m.	725 Summer St. NE Conference Rm. 124A Salem, OR

**Hearing Officer:** Shelly Cullin

**Stat. Auth.:** ORS 90.800 - 90.840, 90.530, 183, 456.515 - 456.723, 458.210 - 458.650

**Stats. Implemented:** 456.555 & 456.625

**Proposed Adoptions:** 813-012-0180

**Proposed Amendments:** 813-012-0010, 813-012-0020, 813-012-0030, 813-012-0040, 813-012-0050, 813-012-0060, 813-012-0070, 813-012-0080, 813-012-0090, 813-012-0100, 813-012-0110, 813-012-0120, 813-012-0130, 813-012-0140, 813-012-0150, 813-012-0160, 813-012-0170

**Last Date for Comment:** 1-3-07 12 p.m.

**Summary:** The Rental Housing Program provides financing for the construction, rehabilitation and acquisition of multi-unit rental housing in the State of Oregon for persons of lower income, while providing safeguards to protect the financial interest of the state.

813-012-0010 are intended clarify the program and the general purpose of the rules.

813-012-0020 clarifies terms used in the program and rules.

813-012-0030 Housekeeping. Clarifies the criteria for eligible projects

813-012-0040 Housekeeping. Clarifies that an eligible project shall conform to the maximum income requirement of ORS 456.620(4).

813-012-0050 Housekeeping.

813-012-0060 Housekeeping.

813-012-0080 Adds that the greatest level of support services must be appropriate to the needs of the expected resident population.

813-012-0090 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-012-0100 Stipulates that the Department may require from the Borrower additional charges to cover the costs and reduce the financial risk to the Department of issuing bonds.

813-012-0110 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-012-0120 Removes the language that the Department may perform an inspection, along with the Borrower's architect within ten months after completion of the project. Changes the term 'sponsor' to 'prospective borrower.'

813-012-0130 Stipulates that the servicing of loans shall be performed by servicer(s) selected by the Department. Clarifies that the selected servicer shall promptly collect all payments and ensure that all improvements are kept ensured against fire and extended coverage, casualty, liability and business income loss in accordance with the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants. Establishes the qualifications of an Approved Servicer.

813-012-0140 Allows the department to terminate a servicing agreement or direct a change of Approved Servicers at any time consistent with the terms of the servicing agreement and the rules.

813-012-0150 Allows the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-012-0160 Stipulates that the it is the general policy of the Department to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Department's costs of review and processing.

813-012-0170 Housekeeping. Updates the statutory authorities applicable to the rules.

813-012-0180 Adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Clarification Language. Includes ability to implement application and loan commitment charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	9 a.m.	725 Summer St. NE Conference Rm. 124A Salem, OR

**Hearing Officer:** Shelly Cullin

**Stat. Auth.:** ORS 90.800 - 90.840, 90.530, 183, 456.515 - 456.723, 458.210 - 458.650

**Stats. Implemented:** ORS 456.210 - 458.650

**Proposed Adoptions:** 813-030-0070

**Proposed Amendments:** 813-030-0005, 813-030-0010, 813-030-0020, 813-030-0025, 813-030-0030, 813-030-0031, 813-030-0032, 813-030-0034, 813-030-0035, 813-030-0040, 813-030-0044, 813-030-0046, 813-030-0047, 813-030-0060, 813-030-0062, 813-030-0066, 813-030-0067, 813-030-0068

**Last Date for Comment:** 1-3-07 12 p.m.

**Summary:** The Elderly Housing Program provides funds to finance the construction, rehabilitation and acquisition of housing for elderly households in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

813-030-0005 is intended clarify the program and the general purpose of the rules.

813-030-0010 clarifies terms used in the program and rules. Adds definitions for 'Gross Household Income' and Multifamily Housing.'

813-030-0020 Housekeeping and clarification. Changes the term 'sponsor' to 'eligible borrower.'

813-030-0030 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-030-0031 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-030-0032 Housekeeping. Changes the term 'mobile home' to 'manufactured dwelling' and 'sponsor' to 'eligible borrower.'

813-030-0034 Housekeeping. Reduces the term of financing from five to two years.

813-030-0035 Housekeeping. Changes the term 'sponsor' to 'eligible borrower' and 'person' to 'entity.'

813-030-0040 Requires the prospective Borrower to submit an application to the Department on forms acceptable to the Department. Adds that an application conference will be scheduled with the prospective borrower if the Project meets the Program requirements. Changes 'fees' to 'charges' and adds additional potential subjects for discussion at the application conference. Requires the prospective Borrower to provide necessary loan application documentation and establishes the criteria for qualifying for a loan. Removes language

# NOTICES OF PROPOSED RULEMAKING

that states the Department may perform an inspection within ten months after completion of the project.

813-030-0044 Amends the conditions of commitment at loan closing.

813-030-0046 Amends the eligibility requirements for an Elderly Household.

813-030-0047 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-030-0048 Allows the department to stipulate the terms of a servicing agreement.

813-030-0062 Allows the department to terminate or amend servicing agreements and direct a change of Approved Servicer at any time consistent with the terms of the servicing agreement and these rules.

813-030-0066 Changes the term 'sponsor' to 'eligible borrower' and 'person' to 'entity.' Allows the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-030-0067 Stipulates that it is the general policy of the Department to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Department's costs of review and processing.

813-030-0068 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-030-0070 Adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Clarification Language. Includes ability to implement application and loan commitment charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	9 a.m.	725 Summer St. NE Conference Rm. 124A Salem, OR

**Hearing Officer:** Shelly Cullin

**Stat. Auth.:** ORS 456.555

**Stats. Implemented:** ORS 456.555, 456.625

**Proposed Adoptions:** 813-060-0036, 813-060-0070

**Proposed Amendments:** 813-060-0005, 813-060-0010, 813-060-0020, 813-060-0025, 813-060-0030, 813-060-0031, 813-060-0032, 813-060-0040, 813-060-0044, 813-060-0045, 813-060-0047, 813-060-0055, 813-060-0056, 813-060-0061, 813-060-0062, 813-060-0065

**Proposed Ren. & Amends:** 813-060-0035 to 813-060-0038

**Last Date for Comment:** 1-3-07 12 p.m.

**Summary:** The Disabled Housing Program provides funds to finance the construction, rehabilitation and acquisition of multi-family housing for disabled persons in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

813-060-0005 is intended clarify the program and the general purpose of the rules.

813-060-0010 clarifies terms used in the program and rules.

813-060-0020 Housekeeping and clarification. Changes the term 'sponsor' to 'eligible borrower.' Limits a Commitment up to the allowable total Project costs or 85 percent of the appraised value, whichever is less, of the Project.

813-060-0025 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0030 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0031 Housekeeping. Changes the term 'mobile home' to 'manufactured dwelling' and 'sponsor' to 'eligible borrower.'

813-060-0032 Housekeeping. Reduces the term of financing from five to two years.

813-060-0036 Adds language that allows the Department to make funds available for an interim term of 5 years. Establishes criteria.

813-060-0038 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0040 Housekeeping Changes the term 'sponsor' to 'eligible borrower.'

813-060-0044 Amends the conditions of commitment at loan closing. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0045 Amends the eligibility requirements for a Household.

813-060-0047 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0055 Allows the department to stipulate the terms of a servicing agreement.

813-060-0056 Allows the department to terminate or amend servicing agreements and direct a change of Approved Servicer at any time consistent with the terms of the servicing agreement and these rules.

813-050-0061 Changes the term 'sponsor' to 'eligible borrower' and 'person' to 'entity.' Amended language regarding the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-060-0062 Stipulates that there it is the general policy of the Department to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Department's costs of review and processing.

813-060-0065 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0070 Adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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**Rule Caption:** Clarification Language. Includes ability to implement application and loan commitment charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-21-06	9 a.m.	725 Summer St. NE Conference Rm. 124A Salem, OR

**Hearing Officer:** Shelly Cullin

**Stat. Auth.:** ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723, 458.210 - 458.650

**Stats. Implemented:** ORS 456.555, 456.625

**Proposed Adoptions:** 813-035-0070

**Proposed Amendments:** 813-035-0005, 813-035-0011, 813-035-0016, 813-035-0018, 813-035-0021, 813-035-0029, 813-035-0033, 813-035-0036, 813-035-0040, 813-035-0045, 813-035-0051

**Proposed Repeals:** 813-035-0700, 813-035-0705, 813-035-0710, 813-035-0715, 813-035-0720

**Last Date for Comment:** 1-3-07, 12 p.m.

**Summary:** The Pass-Through Revenue Bond Financing Program provides funds to finance the construction, rehabilitation and acquisition of multi-unit housing in the State of Oregon for persons and families of lower income, while providing sufficient safeguards to protect the financial interests of the state.

813-035-0005 is intended clarify the program and the general purpose of the rules.

# NOTICES OF PROPOSED RULEMAKING

813-035-0010 clarifies terms used in the program and rules. Adds definitions.

813-035-0016 Removes the requirement that the application must be in compliance with the applicable local comprehensive plan. Other Housekeeping amendments.

813-035-0018 Adds the language that private placement bonds need only address the purchaser's investment grade interests.

813-035-0021 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-035-0029 Defines the criteria for any transfer of ownership. Establishes that the department may require transfer application and transfer review charges from owners of projects that receive financing through the Department who wish to transfer ownership.

813-035-0033 Housekeeping. Changes term 'loan' to 'financing.' Repeals language requiring the interest rates on a Program loan to be consistent with the relevant commitment.

813-035-0036 Housekeeping.

813-035-0040 Amends the eligibility requirements for a person or household.

813-035-0045 Housekeeping.

813-035-0051 Establishes the requirements for the release of finds.

813-035-0700 Repealed. No longer applicable to the program operation.

813-035-0705 Repealed. No longer applicable to the program operation.

813-035-0715 Repealed. No longer applicable to the program operation.

813-035-0720 Repealed. No longer applicable to the program operation.

813-035-0070 Adds waiver language already provided for within statute.

**Rules Coordinator:** Sandy McDonnell

**Address:** 725 Summer Street NE, Suite B, Salem, Oregon 97301-1266

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

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

**Rule Caption:** Amend rule which allows license refusal that public interest or convenience does not demand.

**Stat. Auth.:** ORS Ch. 471, 471.030, 471.040, 471.730(1) & (5)

**Stats. Implemented:** ORS 471.313

**Proposed Amendments:** 845-005-0326

**Last Date for Comment:** 1-2-07

**Summary:** This rule describes the public interest or convenience reasons for which the Commission may deny a license. We intend to make housekeeping-type amendments to the rule, including: removing the word "lewd" from section (1) to bring the language into agreement with another recently amended rule; removing all of section (6) from the rule because it exceeds our statutory scope; and correcting a reference to the underlying refusal statute in section (5).

**Rules Coordinator:** Jennifer Huntsman

**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222

**Telephone:** (503) 872-5004

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

**Rule Caption:** Restricts trading within Deferred Compensation Program.

**Stat. Auth.:** ORS 243.470

**Stats. Implemented:** ORS 243.401 - 243.507

**Proposed Adoptions:** 459-050-0037

**Last Date for Comment:** 12-29-06

**Summary:** Establishes restrictions on dollar amount and frequency of transfers of funds within OSGP investment options. Adds a

redemption fee and restrictions for the International Stock investment option.

**Rules Coordinator:** Daniel Rivas

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

**Telephone:** (503) 603-7713

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## **Oregon University System Chapter 580**

**Rule Caption:** Repeals annual salary calculation method for academic staff.

**Stat. Auth.:** ORS 351.097

**Other Auth.:** OAR 580-020-0010

**Stats. Implemented:**

**Proposed Repeals:** 580-020-0020

**Last Date for Comment:** 12-21-06

**Summary:** 580-020-0020: This rule describes the monthly salary calculation method for academic staff with rank of instructor or above, employed on an academic year basis. The rule is no longer needed due to implementation of an automated payroll system capable of making precise monthly pro-rations in accordance with the terms of academic staff contracts and pay period variations occurring in the academic calendar year-to-year.

**Rules Coordinator:** Marcia M. Stuart

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

**Telephone:** (541) 346-5749

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## **Oregon University System, Portland State University Chapter 577**

**Rule Caption:** Periodic Updates to the Parking Rules and Regulations.

**Stat. Auth.:** ORS 351.070, 352.360

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 577-070-0005, 577-070-0010, 577-070-0015, 577-070-0020, 577-070-0025, 577-070-0030, 577-070-0035, 577-070-0045, 577-070-0050

**Last Date for Comment:** 12-22-06

**Summary:** The proposed amendment updates the Parking Rules and Regulations to make them consistent with recent changes to the Schedule of Fines and Fees for General Services (277-060-0020). This amendment corrects OAR references within the rule and more clearly defines ambiguous terminology that was present in the rule. The amendment includes minor changes to hours of operation and enforcement.

**Rules Coordinator:** Jeremy Randall Dalton

**Address:** Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

**Telephone:** (503) 725-3701

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**Rule Caption:** Minor change to Student Conduct Code allowing notice to be electronic or in writing.

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:**

**Proposed Amendments:** 577-031-0140

**Last Date for Comment:** 12-22-06

**Summary:** The proposed amendment allows for notice from the Senior Conduct Officer to the Respondent to be written notice. This change in language provides the agency with the flexibility to send written, hard copy notice or to send notice electronically.

**Rules Coordinator:** Jeremy Randall Dalton

**Address:** Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

**Telephone:** (503) 725-3701

# NOTICES OF PROPOSED RULEMAKING

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of a Rulemaking to Extend Sunset of OAR 860-022-0070 by Two Years.

**Stat. Auth.:** ORS 183 & 757

**Stats. Implemented:** ORS 757.210, 757.259

**Proposed Amendments:** 860-022-0070

**Last Date for Comment:** 12-22-06, 5 p.m.

**Summary:** This rule amendment would continue to require natural gas utilities to file Results of Operations by May 1 of each year that will be subject to an earnings review, and if the natural gas utilities earned over a certain level, they would be required to share earnings with their customers. Without this amendment, the requirement to file Results of Operations will sunset in 2006.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

**Telephone:** (503) 378-4372

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## Racing Commission Chapter 462

**Rule Caption:** Amend account wagering and multi-jurisdictional simulcasting and interactive wagering totalizator hub rules.

Date:	Time:	Location:
12-21-06	10:30 a.m.	Rm. 140 800 NE Oregon St. Portland, OR

**Hearing Officer:** Jeff Gilmour, Chair

**Stat. Auth.:** ORS 462.270(3)

**Other Auth.:** ORS 462.725

**Stats. Implemented:** ORS 462.725

**Proposed Adoptions:** 462-220-0090

**Proposed Amendments:** 462-210-0030, 462-220-0030, 462-220-0070

**Last Date for Comment:** 12-21-06

**Summary:** Rules regarding establishing an account; approval process for granting a hub operation license; powers of the commission to review and audit records, reporting requirements; enforcement of statutes and rules and related penalties.

**Rules Coordinator:** Carol N. Morgan

**Address:** Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232

**Telephone:** (971) 673-0208

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## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Adoption of 2007 Campaign Finance Manuals.

Date:	Time:	Location:
12-21-06	10-11 a.m.	900 Court St. NE, Rm. 257 Salem, OR 97301

**Hearing Officer:** Brenda Bayes

**Stat. Auth.:** ORS 246.120, 246.150, 260.156, 260.200

**Stats. Implemented:** ORS 246.120, 246.150, 260.156, 260.200

**Proposed Amendments:** 165-012-0005

**Last Date for Comment:** 12-21-06

**Summary:** This proposed rule amendment designates the 2007 Campaign Finance Manual for Candidates and Political Committees and associated forms as the procedures and guidelines used for compliance with campaign finance regulation. Additionally a new manual, the 2007 Campaign Finance Manual for Chief Petitioners and associated forms is adopted as the procedures and guidelines to be used by chief petitioners for compliance with campaign finance regulation.

To request a copy of the draft of either of these manuals please contact Summer Davis, Compliance Specialist, phone 503-986-1518; fax 503-373-7414; or e-mail summer.s.davis@state.or.us

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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

**Stat. Auth.:** ORS 246.150, 247.969

**Stats. Implemented:** ORS 192.842, 247.965

**Proposed Amendments:** 165-005-0130

**Last Date for Comment:** 12-21-06

**Summary:** This rule is being revised to incorporate procedures for county elections officials to process residence address disclosure exemptions from participants or parents or guardians of participants in the Address Confidentiality Program.

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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**Rule Caption:** Updates enforcement actions for campaign finance civil penalty election law violations.

**Stat. Auth.:** ORS 246.150, 260.200

**Stats. Implemented:** ORS 260.200, 260.215, 260.232, 260.995

**Proposed Amendments:** 165-013-0010

**Last Date for Comment:** 12-21-06

**Summary:** ORS 260.215(4) directs the Secretary of State to require a candidate or treasurer of a principal campaign committee to provide documentation of not more than 8 transactions previously supplied on campaign finance reports. This amendment permanently adopts the temporary amendments that exempted from disclosure any bank account number(s), credit card number(s) or social security number(s) supplied as documentation pursuant to ORS 260.200(3) as well as setting penalties for failing to provide documentation to a spot check review request. Appendix A of this rule is updated to include statutory changes that were passed in the 2005 Legislative Session.

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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**Rule Caption:** Contribution and allocation of polling expenses.

**Stat. Auth.:** ORS 246.150, 260.156

**Stats. Implemented:** ORS 260.083

**Proposed Amendments:** 165-012-0050

**Last Date for Comment:** 12-21-06

**Summary:** This rule establishes procedures for those committees to report the contribution of poll results, the allocation of polling expenses, the valuation of poll results, and the reporting of in-kind contributions of poll results and is proposed for amendment to define a "committee" as: candidates/candidate committees, measure committees, political party committees, miscellaneous committees and chief petitioner committees.

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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**Rule Caption:** Repeal of electronic filing rule.

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

**Stats. Implemented:** ORS 246.021, 260.159, 260.200 & OL 2005, ch 809, sec. 56, 57

**Proposed Repeals:** 165-012-0230

**Last Date for Comment:** 12-21-06

**Summary:** This rule is proposed for repeal because ORS 260.159, which sets out the electronic filing requirements implemented by the

## NOTICES OF PROPOSED RULEMAKING

rule, is repealed effective January 1, 2007. Electronic filing requirements mandated by ORS 260.057 will be incorporated into OAR 165-012-0005.

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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**Teacher Standards and Practices Commission**  
**Chapter 584**

**Rule Caption:** Adopt, amend, and repeal rules affecting requirements for teacher, counselor, and administrator licenses.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
12-22-06	1-3 p.m.	TSPC Office 465 Commercial St. NE Salem, OR 97301

**Hearing Officer:** Victoria Chamberlain

**Stat. Auth.:** ORS 342

**Stats. Implemented:** ORS 342.120 - 342.200, 342.400

**Proposed Adoptions:** 584-036-0080, 584-036-0082, 584-070-0012, 584-070-0014, 584-070-0022, 584-080-0153

**Proposed Amendments:** 584-005-0005, 584-017-0120, 584-017-0200, 584-042-0006, 584-042-0008, 584-060-0012, 584-060-0022, 584-060-0051, 584-060-0062, 584-070-0111, 584-070-0120, 584-080-0151, 584-080-0152, 584-080-0161, 584-100-0002

**Proposed Repeals:** 584-060-0141, 584-070-0400, 584-080-0050, 584-080-0051, 584-080-0052, 584-080-0131

**Last Date for Comment:** 12-22-06, 5 p.m.

**Summary:** Adopt: 584-036-0080 *Licensure Tests*: Would apply to ALL licensure tests, including tests for Oteaching, administration, school counseling, and school psychology. It is in Division 36 because that chapter applies to all licenses.

584-036-0082 *Courses In Lieu Of or For Preparation of Basic Skills Examinations*: Would put into administrative rule the "basic skills substitutes" that have been allowed by the Commission for a number of years.

584-070-0012 *Initial I School Counselor License Requirements*: This rule makes proposed changes that parallel the changes recommended for the Teaching and Administrator Licenses for the School Counselor areas.

584-070-0014 *Initial II School Counselor License*: This rule proposes changes that parallel the changes recommended for the Teaching and Administrator Licenses for the School Counselor areas.

584-070-0022 *Continuing School Counselor License*: This rule makes proposed changes that parallel the changes recommended for the Teaching and Administrator Licenses for the School Counselor areas.

584-080-0153 *Restricted Transitional Administrator License*: New rule created to separate "Unrestricted Transitional Administrator License" from "Restricted Transitional Administrator License for clarity."

Amend: 584-005-0005 *Definitions (50)*: Definition amends "Recent Experience" as it applies to licensure.

584-017-0120 *Elementary Authorization*: This rule makes proposed changes that parallel the changes recommended for the Teaching and Administrator Licenses for the School Counselor areas.

584-017-0200 *Verification of Program Approval*: Clarifies the administrative rule governing "program completion" and exactly "when" a program is completed.

584-042-0006 *Requirements for a Three-Year Professional-Technical Teaching License*: Clarifies eligibility for a CAP and the duration of the Emergency Teaching License.

584-042-0008 *Five-Year Professional Technical Teaching License*: Clarifies eligibility for a CAP and the duration of the Emergency Teaching License.

584-060-0012 *Initial Teaching License Requirements*: This proposal would give educators with an unrestricted Transitional Teaching License who have completed a teacher preparation course and/or have held a non-provisional license in another state an Initial I Teaching License. This gives them until their first renewal to complete the licensure tests including the test of knowledge required on Civil Rights laws.

584-060-0022 *Continuing Teacher License Requirements*: Adoption of the proposed new language would allow the Commission to accept foreign equivalents of a doctorate in education in lieu of completing a CTL program.

584-060-0051 *Teaching Authorization Levels*: Clarifies what the ELEM and ML authorizations are valid for.

584-060-0062 *Adding Endorsements to Initial or Continuing Teaching Licenses*: The proposed change clarifies adding endorsements to licenses if an educator has taught on a license for five years or more in a subject; the Commission may waive the subject-matter test when Commission-adopted coursework has been completed

584-070-0111 *Restricted Transitional School Counselor License*: This rule makes proposed changes that parallel the changes recommended for the Teaching and Administrator Licenses for the School Counselor areas. This proposal retains the Restricted Transitional License to identify educators who have not completed educator preparation in the area in which they are assigned as clear notice to the public and districts with regard to the educator's credentials.

584-070-0120 *Assignment of Teachers Holding Basic & Standard Teaching Licenses as School Counselors*: Clarifies when Initial or Continuing License holders are valid for counseling assignments.

584-080-0151 *Unrestricted Transitional Administrator*: Updates changes to the Transitional Administrator License.

584-080-0152 *Transitional Superintendent License*: Updates changes to the Transitional Superintendent License.

584-080-0161 *Exceptional Administrator License*: Updates changes to the Exceptional Administrator License.

584-100-0002 *Purpose of NCLB Rules*: This proposal acknowledges the Commission's limited scope as it relates to charter schools and highly qualified teachers.

Repeal: 584-060-014 *Test Scores Specified by Commission*

584-070-0400 *Test Scores Specified by Commission*

584-080-0050 *Preparatory Standards for Continuing Administrator*

584-080-0051 *Preparatory Standards for Continuing Administrator*

584-080-0052 *Preparatory Standards for Continuing Superintendent*

584-080-0131 *Test Scores Specified by Commission.*

**Rules Coordinator:** Victoria Chamberlain

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

**Telephone:** (503) 378-6813

# ADMINISTRATIVE RULES

## Board of Architect Examiners Chapter 806

**Rule Caption:** Truthful Statements/Advertising.

**Adm. Order No.:** BAE 6-2006

**Filed with Sec. of State:** 11-9-2006

**Certified to be Effective:** 11-9-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 806-020-0010, 806-020-0080

**Subject:** To clarify what constitutes truthful statements when taking credit for work performed on architectural projects. In addition, this rule makes very minor grammatical changes.

**Rules Coordinator:** Carol Halford—(503) 763-0662

### 806-020-0010

#### Truthful Statements to the Board

A registered architect shall be forthright and candid in statements or written responses to the board or its representatives on matters pertaining to professional conduct. The signature of an Architect in all matters relating to Professional Conduct certifies to the best of the architect's knowledge, information and/or belief that the information furnished is true and that no information has been withheld.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 090, 671.125

Hist.: AE 1-1983, f. & ef. 1-12-83; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; BAE 6-2006, f. & cert. ef. 11-9-06

### 806-020-0080

#### Misconduct

Under the provisions of ORS 671.090 and 671.220, an architect may be disciplined for misconduct in the practice of architecture if he or she:

(1) Signs or stamps drawings, specifications, reports or other professional work which were not prepared under the architect's direct control and supervision.

(2) Offers or accepts gifts, other than gifts of nominal value (e.g. reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client or governmental official in connection with a project in which the architect is interested.

(3) Engages in any conduct involving fraud or deceit which relates to the business or practice of architecture.

(4) Takes improper credit for work on an architectural project, such as by failing to:

- (a) Accurately describe his or her role in the project;
- (b) Name the architect or architectural firm of record on a project;
- (c) List reference information in a prominent location and in close proximity to the credit given or claimed.

(5) Assists the application for registration of a person by falsely verifying the individual's education, training or experience.

(6) Makes any false statement or gives any false information in connection with an application for registration or for renewal of registration.

(7) Is convicted of any crime under circumstances that relate to the practice of architecture.

(8) Violates any federal or state statute or rule that relates to the practice of architecture.

(9) Practices architecture while the architect's ability to practice is impaired by alcohol or drugs.

(10) Engages in false, misleading or deceptive advertising, which may include, but is not limited to:

(a) Misleading, or attempting to mislead, existing or prospective clients or the public, through advertising or other means, about the results that can be achieved through the use of the registrant's services;

(b) Misleading, or attempting to mislead, existing or prospective clients or the public by suggesting that the registrant can achieve results by means that violate this code or the law;

(c) Failing to truthfully inform the client, employer, or public about personal qualifications, capabilities, or experience; and without exaggerated, misleading, deceptive, or false statements or claims;

(d) Taking credit for work performed under the direction of a former employer beyond the scope of one's actual personal role and contribution.

(11) Makes a substantial misrepresentation in the course of practice.

(12) Obtains or attempts to obtain compensation by fraud or deceit.

(13) Engages in any conduct that, through professional experience, is not an acceptable standard for architectural practice in Oregon.

(14) Practices architecture in Oregon while not holding an active Oregon license to practice architecture.

(15) Is the subject of disciplinary action taken by another jurisdiction.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.090(4) & 671.125

Hist.: AE 1-1983, f. & ef. 1-12-83; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2004, f. & cert. ef. 1-28-04; BAE 6-2006, f. & cert. ef. 11-9-06

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## Board of Examiners for Speech-Language Pathology and Audiology Chapter 335

**Rule Caption:** Clarifies professional development requirements, defines use of delinquent fee, and standardizes recordkeeping rules throughout.

**Adm. Order No.:** SPA 4-2006

**Filed with Sec. of State:** 11-3-2006

**Certified to be Effective:** 11-3-06

**Notice Publication Date:** 9-1-06

**Rules Adopted:** 335-070-0055

**Rules Amended:** 335-010-0060, 335-010-0070, 335-060-0005, 335-070-0020, 335-070-0030, 335-070-0040, 335-070-0050, 335-095-0050, 335-095-0060

**Subject:** Professional development requirements in division 70 had not been reviewed extensively since implementation in 1998. Revisions attempt to better communicate the Board's desire for professional development that directly relates to the practice of speech-language pathology and audiology but at the same time recognizes the various work settings.

In the past the only means for the Board to assess a penalty for late response to audits and non-compliance with the professional development requirement was to go through the formal disciplinary process usually resulting in a permanent disciplinary action on the licensee's record. The revision to the delinquent fee definition allows the Board and the licensee to avoid this and pay a small fee.

Recordkeeping requirements will be more practical and consistent throughout with the revisions in these rules.

**Rules Coordinator:** Brenda Felber—(971) 673-0220

### 335-010-0060

#### Persons Responsible for Documentation

(1) A licensed speech-language pathology or audiology professional must sign each clinical document or clinical entry with their name and professional title. An electronic record must have an electronic signature. Stamped identification accompanied by an initial or signature is acceptable.

(2) The documentor must be:

(a) The licensed speech-language or audiology professional who directly renders the assessment, care, or treatment; or

(b) In supervision of non-licensed personnel, the speech-language or audiology professional who supervises the assessment, care, or treatment rendered by non-licensed personnel, shall co-sign for those services with their name and professional titles; or

(c) In supervision of SLP assistants, refer to OAR 335-095-0050.

(3) The documentation may not be delegated except in emergency situations.

Stat. Auth.: ORS 681.420(5) & 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06

### 335-010-0070

#### General Requirements for Record Keeping and Documentation

(1) Record keeping must conform and adhere to Federal, state, and local laws and regulations.

(2) Records must record history taken; procedures performed and tests administered; results obtained; conclusions and recommendations made. Documentation may be in the form of a "SOAP" (Subjective Objective Assessment Plan) note, or equivalent.

(3) Records and documentation must:

(a) Be accurate, complete, and legible;

(b) Be printed, typed or written in ink;

(c) Include the documentor's name and professional titles.

(d) Stamped identification must be accompanied by initial or signature written in ink.

(4) Corrections to entries must be recorded by:

(a) Crossing out the entry with a single line which does not obliterate the original entry, or amending the electronic record in a way that preserves the original entry; and

(b) Dating and initialing the correction.

# ADMINISTRATIVE RULES

(5) Documentation of clinical activities may be supplemented by the use of flowsheets or checklists, however, these do not substitute for or replace detailed documentation of assessments and interventions.

Stat. Auth.: ORS 681.420(5) & 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-060-0005

### Definitions

(1) An Inactive License or Certificate may be obtained by those otherwise qualified individuals who are not employed in the field of speech-language pathology or audiology, not residing in Oregon, or are retired from the profession.

(2) A Conditional License is a license certificate issued by the Board to applicants meeting the requirements as stated in ORS 681.260(2). The license provides for the licensee to work under supervision while completing the required nine months of supervised post-educational professional experience and/or until the licensee successfully passes the required examination.

(3) Effective January 1, 2006, a delinquent fee may be charged for each or all of the following, as applicable:

(a) Renewal applications postmarked after January 30th of even-numbered years;

(b) Failure to complete all required hours of professional development prior to January 30th of even-numbered years;

(c) Renewal applications postmarked by January 30th of even-numbered years which are incomplete or otherwise unable to be processed;

(d) Conditional license renewals or conditional license upgrade applications postmarked after the expiration date of the conditional license;

(e) Requests for special approval of professional development received 30 days or more after the activity is completed;

(f) Failure to respond to audit by the prescribed deadline;

(g) Audit responses postmarked by the deadline which are incomplete or otherwise unable to be processed.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460

Stats. Implemented: ORS 681.460

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-070-0020

### Professional Development Hours Defined

(1) Professional development is defined as participation in courses, classes, workshops and other activities for the purpose of developing and updating professional skills directly related to the performance and practice of speech-language pathology and audiology.

(a) Activities accepted for professional development include but are not limited to:

(A) Activities on the clinical practice of speech-language pathology and audiology;

(B) Teacher-oriented content that is not related to the profession but enhances ability to serve students;

(C) Business and management activities to enhance practice management;

(D) Courses involving professional ethics, diversity issues, reimbursement issues;

(E) Foreign language study when the language is needed for direct clinical practice.

(F) Supervising clinical fellows, practicum students, publishing articles, making presentations and teaching classes when they are not part of the licensee's regular job responsibilities.

(b) Activities not accepted include but are not limited to:

(A) Attending meetings, including association, business, committee, board meetings;

(B) Serving on committees and volunteer activities;

(C) Work experiences when they are part of the licensee's regular job description including supervising clinical fellows, publishing articles, making presentations and teaching classes.

(2) Credit for professional development shall be calculated on an hourly basis. One professional development hour (PDH) is defined as sixty (60) minutes or one (1) clock hour of attendance/participation in an approved professional development activity unless otherwise stated. For example, one hour may be considered equivalent to .1 CEU; therefore 1.0 ASHA CEU = 10 PDHs.

(3) Licensees shall complete the required professional development hours within the two year period prior to license renewal, that is, 24 months prior to January 30 of each even numbered year. Approved professional

development hours completed in excess of the requirement shall not be carried over to the subsequent renewal period.

(4) At least fifty percent (50%) of the required professional development hours must be directly related to the clinical practice of speech pathology and audiology.

(5) Not more than fifty percent (50%) of the required professional development hours may be accrued in a single course or activity.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-070-0030

### Activities Acceptable without Special Board Approval

Professional development hours may be accrued from, but are not limited to, the following sources:

(1) Attendance or participation in educational programs where continuing education credit is approved by the American Speech-Language Hearing Association (ASHA) or the American Academy of Audiology (AAA).

(2) Attendance or participation in educational programs where continuing education credit is given by the Oregon Speech-Language and Hearing Association (OSHA) and other state chapters of the American Speech-Language Hearing Association (ASHA); the Oregon Academy of Audiology (OAA) and other state chapters of the American Academy of Audiology.

(3) Continuing education units (CEUs) earned through ASHA.

(4) Attendance at educational programs where continuing education credit is given and approved by the Health Licensing Agency Hearing Aid Specialist Licensing Program.

(5) Academic course work taken for credit with a minimum grade of "C", from an educational institution accredited by an appropriate state or regional body or approved by the Board. The courses must relate to the clinical practice of speech-language pathology or audiology. One academic semester hour shall be equivalent to fifteen (15) clock hours for professional development credit. One academic quarter hour shall be equivalent to ten (10) clock hours for professional development credit. There is a limit on the number of hours reportable for a single course; see 335-070-0020(5).

(6) Self-assessment home study courses accompanied by examination and sponsored by a Board-recognized professional organization in audiology or speech-language pathology.

(7) Speech-language pathology or audiology programs (in-services, seminars, workshops) offered by public school districts, education service districts, and hospitals for employees. Programs must directly relate to the performance and practice of speech-language pathology or audiology for the purpose of developing and updating professional skills.

(8) CPR classes for a maximum of two (2) hours credit during the two-year licensing period.

(9) A universal health precautions class for a maximum of one (1) hour credit during the two-year licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-070-0040

### Procedures for Special Board Approval of Professional Development Offerings

Approval of professional development activities not specified above may be requested from the Board by an institution, organization, agency or individual licensee. Such requests may be submitted before or after the professional development activity takes place. A request made later than 30 days after a professional development offering takes place is considered to be late. If a requestor wishes to have a late request for special Board approval considered, the requestor needs to pay the delinquent fee. Late requests for special Board approval will be considered between November 1st of odd-numbered years and January 30 of even-numbered years. All requests must be submitted on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors and the number of professional development hours offered. An activity shall qualify for approval if the board determines that the activity:

(1) Is an organized program of learning; and

(2) Pertains to subject matter which integrally relates to the practice of speech-language pathology and/or audiology; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have education, training or experience acceptable to the Board.

# ADMINISTRATIVE RULES

(5) Credit for the hours of a single presentation will be acceptable if the presenter submits the request for approval within the required time-frame and meets criteria (1) through (4) above.

(6) Credit will not be given for attending or participating in a particular activity more than once in a licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-070-0050

### Responsibilities and Reporting Requirements of Licensees

The ultimate responsibility for professional development activities rests with the individual. This responsibility involves identification of each licensee's own development needs, taking the initiative in seeking continuing professional development activities to meet these needs, and seeking ways to integrate new knowledge, skills and attitudes. Each licensee has specific responsibility to:

(1) Select approved activities by which to earn professional development hours;

(2) Obtain from the Board approval for professional development activities not accredited by the Board;

(3) Maintain records of professional development hours. Each licensee shall maintain, for a period of four (4) years, all documentation verifying successful completion of professional development hours.

(4) Submit for license renewal a completed Board-prescribed application form, a completed professional development summary sheet, and the license renewal fee. During each license renewal period, up to fifteen (15%) of all licensees shall be required by the Board to furnish documentation of the completion of the appropriate number of professional development hours for a period not to exceed the current renewal period and the two years immediately preceding. Licensees reinstating or reactivating their licenses at any time shall be required by the Board to furnish documentation of the completion of the appropriate number of professional development hours for the 24 months immediately preceding the month in which they are reinstating/reactivating. Verification of professional development hours is not otherwise to be reported to the Board.

(5) Document attendance and participation in a professional development activity in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsors. The type of documentation required varies depending on the specific activity submitted to the Board for approval; and

(6) Fully comply with the provisions of this regulation. Failure to comply shall constitute unprofessional conduct and may result in the (1) refusal to renew, (2) suspension, or disciplinary action including suspension, (3) revocation of the license, and/or (4) a civil penalty.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-070-0055

### Active Licensees

Required professional development for renewal of an active license is:

(1) Speech-Language Pathology and Audiology: Forty (40) clock hours of documented and approved professional development;

(2) Dual licenses: Forty (40) clock hours of documented and approved professional development in audiology and forty (40) clock hours of documented and approved professional development in speech-language pathology. A maximum of twenty (20) hours may be applied to both licenses if the topic is applicable to both types of licenses. A CPR or universal health precaution class may be only counted once;

(3) Speech-Language Pathology Assistants: Twenty (20) clock hours of documented and approved professional development.

(4) Licensees shall complete the required professional development hours within the two year period prior to license renewal, that is, 24 months prior to Jan. 30 of each even numbered year.

Stat. Auth.: ORS 681

Stats. Implemented:

Hist.: SPA 4-2006, f. & cert. ef. 11-3-06

## 335-095-0050

### Supervision Guidelines for the Speech-Language Pathology Assistant

(1) All supervision of services provided by a speech-language pathology assistant must be performed by a speech-language pathologist licensed under ORS Chapter 681.

(2) The amount and type of supervision required will be based on the skills and experience of the speech-language pathology assistant, the needs of the patients/clients served, the service setting, the tasks assigned, and other factors.

(a) A minimum of 30% (20% direct) of all the time an assistant is providing services for the first 90 days of employment shall be supervised.

(b) Subsequent to the first 90 days of employment, a minimum of 20% (10% direct) of all the time an assistant is providing services shall be supervised.

(c) The supervising speech-language pathologist must be able to be reached at all times. A temporary supervisor may be designated as necessary.

(d) The caseload of the supervising clinician must allow for administration, including assistant supervision, evaluation of students and meeting times. (All students assigned to an assistant are considered part of the caseload of the supervising clinician.)

(3) The supervising SLP must co-initial each clinical entry and co-sign each page of records.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06

## 335-095-0060

### Scope of Duties for the Speech-Language Pathology Assistant

(1) A speech-language pathology assistant may conduct the following tasks under supervision of the licensed Speech-Language Pathologist:

(a) Conduct speech and language screenings without interpretation, utilizing screening protocols specified by the supervising speech-language pathologist.

(b) Provide direct treatment assistance, excluding dysphasia (as opposed to feeding for nutritional purposes), to patients/clients identified by the supervising SLP by following written treatment plans or protocols developed by the supervising SLP.

(c) Document patient/client progress, without interpretation of findings, toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist.

(d) Assist the speech-language pathologist in collecting and tallying of data for assessment purposes, without interpretation.

(e) Act as second-language interpreters during assessments.

(f) Assist the speech-language pathologist with informal documentation during an intervention session (collecting and tallying data as directed by the speech-language pathologist), prepare materials, and assist with other clerical duties as specified by the supervising speech-language pathologist.

(g) Schedule activities and prepare charts, records, graphs, or other displays of data.

(h) Perform checks and maintenance of equipment.

(i) Participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

(j) Initial each clinical entry and sign each page of records.

(2) The speech-language pathology assistant may not perform the following tasks:

(a) May not conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies.

(b) May not administer standardized or non-standardized diagnostic tests, formal or informal evaluations, or interpret test results.

(c) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence of the supervising speech-language pathologist.

(d) May not write, develop, or modify a patient/client's treatment plan in any way.

(e) May not provide intervention for patients/clients without following the treatment plan prepared by the supervising speech-language pathologist.

(f) May not sign any formal documents (e.g. treatment plans, reimbursement forms, or reports.)

(g) May not select patients/clients for services.

(h) May not discharge patients/clients from services.

(i) May not disclose clinical or confidential information either orally or in writing to anyone not designated by the speech-language pathologist.

(j) May not make referral for additional service.

(k) May not communicate with the patient/client, family, or others regarding any aspect of the patient/client status or service without the specific consent of the supervising speech-language pathologist.

(l) May not represent him/herself as a speech-language pathologist.

# ADMINISTRATIVE RULES

(m) May not write a formal screening, diagnostic, progress and/or discharge report.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06

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**Rule Caption:** Allows audiologists to design one statement to hearing aid purchasers that conforms to all rules.

**Adm. Order No.:** SPA 5-2006

**Filed with Sec. of State:** 11-3-2006

**Certified to be Effective:** 11-3-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 335-001-0000, 335-001-0005, 335-005-0030

**Subject:** The rule in division 5 is modified so that requirements for Audiology licensees under this chapter do not conflict with requirements for licensees also licensed under ORS 694 as a hearing aid specialist.

Revisions to division 1 corrects the title of the Oregon Hearing Society and adopts the Attorney General's Model Rules, OAR Chapter 137, division one and division four.

**Rules Coordinator:** Brenda Felber—(971) 673-0220

## 335-001-0000

### Notice of Proposed Rule

In addition to such other rulemaking requirements established by law, the Board will also furnish notice of its intended rulemaking to:

- (1) Oregon Speech Language Hearing Association;
- (2) Oregon State Department of Education;
- (3) Oregon Medical Association;
- (4) Oregon Hearing Society;
- (5) Oregon Academy of Otolaryngology;
- (6) Oregon Academy of Speech Pathology and Audiology;
- (7) Oregon Academy of Audiology;
- (8) Oregon Advisory Council on Hearing Aids;
- (9) Those persons on the Agency mailing list.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335

Hist.: SPA 2, f. & ef. 7-29-76; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 5-2006, f. & cert. ef. 11-3-06

## 335-001-0005

### Model Rules of Procedure

The Board adopts the Attorney General's Model Rules, OAR Chapter 137, division one and division four.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Examiners for Speech Pathology and Audiology.]

Stat. Auth.: ORS 681.420(5)

Stats. Implemented: ORS 183.341

Hist.: SPA 2, f. & ef. 7-29-76; SPA 1-1980, f. & ef. 9-2-80; SPA 1-1986, f. & ef. 9-9-86; SPA 1-1996, f. & cert. ef. 6-7-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 5-2006, f. & cert. ef. 11-3-06

## 335-005-0030

### Statement to Prospective Hearing Aid Consumer; Contents; Copy Retained

(1) Prior to consummation of the sale of a hearing aid, the audiologist shall provide to the consumer a written statement that shall include but not be limited to all of the following:

- (a) The name and address of the prospective hearing aid user.
- (b) The date of the sale.
- (c) The make, model, and serial number of the hearing aid or aids sold.

(d) A statement on the condition of the hearing aid: new, reconditioned, or used. A used hearing aid is a hearing aid that has been worn for any period of time, excepting hearing aids worn as part of hearing aid evaluations. A reconditioned hearing aid is a used hearing aid that has been rebuilt or is a hearing aid that consists of both old and new parts.

(e) The terms of any guarantee or expressed warranty with respect to the hearing aid or hearing aids.

(f) Statement of right to rescind the sale, length of trial period (minimum 30 days), procedure for extending trial period, procedure for rescinding sale, and the date by which the hearing aid(s) need to be returned to rescind the sale.

(g) The business address of the audiologist.

(h) The name, license number and signature of the audiologist selling the hearing aids.

(i) The procedure for filing a complaint which includes the address and telephone number of the Board and the internet address for the location of complaint forms on the Board's website.

(j) A statement acknowledging that the consumer has read and understands the information contained in the sales agreement, signed by the consumer and dated.

(2) A duplicate copy of the statement required under subsection (1) of this section is a clinical record and as such must be kept for seven years by the audiologist selling the hearing aid.

Stat. Auth.: ORS 681.420(5), 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 1-2006, f. & cert. ef. 5-8-06; SPA 5-2006, f. & cert. ef. 11-3-06

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## Board of Geologist Examiners

### Chapter 809

**Rule Caption:** Revisions to various definitions.

**Adm. Order No.:** BGE 3-2006

**Filed with Sec. of State:** 11-13-2006

**Certified to be Effective:** 11-13-06

**Notice Publication Date:** 7-1-06

**Rules Amended:** 809-003-0000

**Subject:** None of the revisions to definitions are substantive. The Board refers to those individuals registered to practice geology as "registrants, not licensees, so numerous changes are made to input the word "registrant". ASBOG is the national body charged with developing the national examination. The acronym is ASBOG and a revision is made to the definition of this acronym. Word usage is revised from "mitigatory" to "mitigation". Much of the definition of misconduct is being removed, but no new language is being added. The word tsunami is being included in the definition of "threat to the public health, safety, etc."

**Rules Coordinator:** Susanna R. Knight—(503) 566-2837

## 809-003-0000

### Definitions

The definitions of terms used in ORS 672.505 to 672.991, and the rules of this OAR chapter 809, are:

(1) "ASBOG": National Association of State Boards of Geology; an organization of state boards that regulate the public practice of geology; ASBOG prepares the national geology examinations.

(2) "Deceit": An attempt to portray as true or valid something that is untrue or invalid.

(3) "Equivalent of 45 quarter hours": 30 semester hours.

(4) "Expert Opinion": An opinion tendered to a court, commission, hearings officer, or other tribunal which is considered to be expert testimony by virtue of the professional experience, training, and registration and certification of the geologist tendering the opinion.

(5) "Falsely Impersonate": To assume without authority or with fraudulent intent the identity of another person.

(6) "False or Forged Evidence": Untrue documents purporting to be proof, or falsely and fraudulently altered proof.

(7) "Felony": A crime declared a felony by statute because of the punishment imposed.

(8) "Fraud": Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(9) "Gross Negligence": Reckless and wanton disregard for exercising care and caution.

(10) "Incompetence": Inadequacy or unsuitability for effective action.

The Board shall consider incompetence in the practice of geology to include, but not be limited to instances where a geologist has been adjudicated mentally incompetent by the court; been engaged in conduct which shows a lack of ability or fitness to discharge the duties and responsibilities a geologist owes a client, employer, or the general public; or been engaged in conduct which shows a lack of knowledge, or inability, to apply the principles or skills of the profession.

(11) "Misconduct": Violation of any state or federal rule or statute in the course of the practice of geology.

(12) "Mutual Recognition": When one state allows a geologist who is registered in another state to perform work in that state without obtaining local registration.

(13) "National examination": prepared by ASBOG and comprised of a four-hour fundamental section and a four-hour practice section.

(14) "Neglect of Duty": Lack of attention to the performance or services that arise from one's position.

# ADMINISTRATIVE RULES

(15) "Negligence": Failure by a registrant to exercise the care, skill, and diligence demonstrated by a registrant under similar circumstances in the community in which the registrant practices.

(16) "Official Transcript": Transcript certified by the school and received under seal.

(17) "Project": A contractually specified scope and amount of geologic work relating to a specific undertaking, such as, but not limited to, the geologic reconnaissance of an area, a geohydrologic study of an area, or an analysis of volcanic hazards from a volcano.

(18) "Proprietary": Belonging to a client, employer or geologist.

(19) "Public proceeding": as used in ORS 672.525(9) means a public forum where members of the public are invited to comment or testify or permitted to comment or testify.

(20) "Reciprocity": When one state will issue a registration to a geologist because the geologist holds a registration in another state.

(21) "Reinstatement of Registration": One-time process to bring a lapsed registration or certification to current, valid status.

(22) "Related Geological Science": A course of study that includes at least 36 quarter hours, or the equivalent, in geological subjects taken in the third or fourth year or in graduate courses.

(23) "Renewal of Registration": Annual process to maintain the current status of a valid registration or certification.

(24) "Third or Fourth Year": Upper division college classes.

(25) "Threat to the Public Health, Welfare, or Property": A threat of geologic nature such as, but not limited to, induced or imminent instability of a slope, exacerbation of or continuation of a high rate of erosion, flood hazard or land subsidence, ongoing or potential contamination of underground or surface waters. Also a potential threat which would be induced by an action taken in ignorance of, or without regard to geologic conditions such as construction of residences or other structures intended for habitation in areas prone to landslides, mudflows, volcanic eruption, tsunamis, or earthquakes without proper mitigation measures, or construction of dams or other waterworks, bridges, power plants or other critical facilities without exhaustive investigation of potential geologic hazards and incorporation of approved mitigation measures into their design.

(26) "Year of Study": 36 quarter hours or 24 semester hours.

Stat. Auth.: ORS 183, 192 & 672

Stats. Implemented: ORS 183.341, 183.355, 183, 192 & 672

Hist.: GE 1-1984, f. & ef. 2-1-84; GE 3-1984, f. & ef. 12-4-84; GE 4-1984, f. & ef. 12-18-84; GE 1-1985, f. & ef. 7-1-85; BGE 2-1999, f. & cert. ef. 11-8-99; BGE 2-2002, f. & cert. ef. 4-15-02; BGE 9-2004, f. & cert. ef. 10-19-04; BGE 3-2006, f. & cert. ef. 11-13-06

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## Board of Medical Examiners Chapter 847

**Rule Caption:** Specify requirement to pass open-book exam and documents to be submitted for acupuncture license.

**Adm. Order No.:** BME 21-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-23-06

**Notice Publication Date:** 6-1-06

**Rules Adopted:** 847-070-0022

**Rules Amended:** 847-070-0016, 847-070-0019

**Subject:** The adopted rules renumber the sections of OAR 847-070-0016 to be consistent with the administrative rule numbering system, make minor language changes to establish parallelism in the rule language, add the requirement that an applicant for acupuncture license pass an open-book examination, and specify the documents to be submitted for licensure as an acupuncturist.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

### 847-070-0016

#### Qualifications

Effective November 21, 2001, an applicant for licensure as an acupuncturist in the State of Oregon must have the following qualifications:

(1) Have graduated from an acupuncture program that satisfies the standards of the Accreditation Commission for Acupuncture and Oriental Medicine (A.C.A.O.M.), or its successor organization, or an equivalent accreditation body that are in effect at the time of the applicant's graduation. An acupuncture program may be established as having satisfied those standards by demonstration of one of the following:

(a) Accreditation, or candidacy for accreditation by ACAOM at the time of graduation from the acupuncture program; or

(b) Approval by a foreign government's Ministry of Education, or Ministry of Health, or equivalent foreign government agency at the time of

graduation from the acupuncture program. Each applicant must submit their documents to a foreign credential equivalency service, which is approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) for the purpose of establishing equivalency to the ACAOM accreditation standard. Acupuncture programs that wish to be considered equivalent to an ACAOM accredited program must also meet the curricular requirements of ACAOM in effect at the time of graduation.

(2) Certification in acupuncture by the National Certification Commission for Acupuncture and Oriental Medicine (N.C.C.A.O.M.). An applicant shall be deemed certified by the N.C.C.A.O.M. in Acupuncture if the applicant has passed the N.C.C.A.O.M. Acupuncture Certification Examinations, or has been certified through the N.C.C.A.O.M. Credentials Documentation Examination and passed the practical portion (Point Location Module) of the N.C.C.A.O.M. Acupuncture Certification Examinations. An applicant must have passed the N.C.C.A.O.M. practical examination, which is the point location portion of the Acupuncture Certification Examinations on or after April 22, 1991 in order to be eligible for Oregon licensure; or

(3) An applicant who does not meet the criteria in OAR 847-070-0016(1) and (2) must have the following qualifications:

(a) Five years of licensed clinical acupuncture practice in the United States prior to July 1, 1998. This practice must include a minimum of 500 acupuncture patient visits per year. Documentation shall include:

(A) Two affidavits from office partners, clinic supervisors, accountants, or others approved by the Board, who have personal knowledge of the years of practice and number of patient visits per year; and

(B) Notarized copies of samples of appointment books, patient charts and financial records, or other documentation as required by the Board; and

(b) An applicant must have practiced as a licensed acupuncturist in the U.S. during five of the last seven years prior to application for Oregon licensure. Licensed practice includes clinical practice, clinical supervision, teaching, research, and other work as approved by the Board within the field of acupuncture and oriental medicine. Documentation of this practice will be required and is subject to Board approval; and

(c) Successful completion of the A.C.A.O.M. western medicine requirements in effect on July 1, 1998; and

(d) Current certification in acupuncture by the N.C.C.A.O.M. An applicant shall be deemed certified in Acupuncture by the N.C.C.A.O.M. if the applicant has passed the N.C.C.A.O.M. Acupuncture Certification Examinations, or has been certified through the N.C.C.A.O.M. Credentials Documentation Examination; or

(4) An individual whose acupuncture training and diploma were obtained in a foreign country and who cannot document the requirements of subsections (1) through (3) of this rule because the required documentation is now unobtainable, may be considered eligible for licensure if it is established to the satisfaction of the Board that the applicant has equivalent skills and training and can document one year of training or supervised practice under a licensed acupuncturist in the United States; and

(5) In addition to meeting the requirements in (1) and (2), or (3), or (4) of this rule, all applicants for licensure must have the following qualifications:

(a) Licensure in good standing from the state or states of all prior and current health related licensure; and

(b) Have good moral character as those traits would relate to the applicant's ability of properly engaging in the practice of acupuncture; and

(c) Have the ability to communicate in the English language well enough to be understood by patients and physicians. This requirement is met if the applicant passes the N.C.C.A.O.M. written acupuncture examination in English, or if in a foreign language, must also have passed an English language proficiency examination, such as TOEFL (Test of English as a Foreign Language), or TSE (Test of Spoken English). An applicant must obtain a TOEFL score of 500 or more for the written TOEFL exam and 173 or more for the computer based TOEFL exam, or a TSE score of 200 or more prior to July 1995, and a score of 50 or more after July 1995. An applicant who is certified through the N.C.C.A.O.M. Credentials Documentation Examination must also have passed an English proficiency examination.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.757 & 677.780

Hist.: ME 5-1997, f. & cert. ef. 11-3-97; BME 5-1998, f. & cert. ef. 4-22-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 16-1999, f. & cert. ef. 10-28-99; BME 13-2001, f. & cert. ef. 10-30-01; BME 6-2002, f. & cert. ef. 4-23-02; BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06

# ADMINISTRATIVE RULES

## 847-070-0019

### Interview and Examination

(1) In addition to all other requirements for licensure, an applicant may be required to appear before the Acupuncture Committee for a personal interview regarding information received in the application process. The interview shall be conducted during a regular meeting of the committee.

(2) If there is reasonable cause to question the qualifications of an applicant, or if an applicant has not practiced as an acupuncturist for a period of twelve (12) or more consecutive months prior to application for Oregon licensure, the Board in its discretion may require the applicant to do one or more of the following:

(a) Pass the N.C.C.A.O.M. Acupuncture Certification Examinations.

(b) Pass an evaluation which may be written, oral, practical, or any combination thereof.

(c) Provide documentation of current N.C.C.A.O.M. Acupuncture certification.

(d) Document 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice prior to application for Oregon licensure. Continuing education that meets N.C.C.A.O.M.'s recertification requirements would qualify as Board approved continuing education.

(e) As a condition of licensure, practice under a Board approved mentor for a specified period of time.

(3) An applicant shall be required to pass an open-book examination on the Medical Practice Act (ORS chapter 677) and Oregon Administrative Rules (OAR chapter 847, division 070).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.759

Hist.: BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06

## 847-070-0022

### Documents to be Submitted for Licensure

The documents submitted must be no larger than 8 1/2" x 11". All documents will be retained by the Board as a permanent part of the application file. If original documents are larger than 8 1/2" x 11", the copies must be reduced to the correct size with all wording and signatures clearly shown. The following documents are required for an applicant:

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

(2) Birth Certificate: A copy of birth certificate for proof of name and birthdate, or a copy of Change of Name documentation, Marriage Certificate, or Divorce Decree if the applicant's name has been changed by court order, adoption, marriage, divorce, etc.

(3) Acupuncture School Diploma: A copy of a diploma showing graduation from an approved school of acupuncture, for those applicants who qualify under OAR 847-070-0016(1).

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

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

(6) A letter from the Dean of the applicant's program of acupuncture, for those applicants who qualify under OAR 847-070-0016(1).

(7) A letter from the National Certification Commission for Acupuncture and Oriental Medicine (N.C.C.A.O.M.) verifying current certification in acupuncture by the N.C.C.A.O.M., for those applicants who qualify under OAR 847-070-0016(2).

(8) A letter verifying licensure in good standing from the state or states of all prior and current health related licensure.

(9) A letter from the Director or other official for practice and employment to include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. For acupuncturists who have been or are in solo practice, three reference letters from acupuncturists in the local treatment community who are familiar with the applicant's practice and who have known the applicant for more than six months.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.275, 677.759

Hist.: BME 21-2006, f. & cert. ef. 10-23-06

**Rule Caption:** Expand EMT-Paramedic scope of practice to include surgical cricothyrotomy.

**Adm. Order No.:** BME 22-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-23-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 847-035-0030

**Subject:** The adopted rule removes "percutaneous" as a modifier of "cricothyrotomy" under the EMT-P scope of practice thereby expanding the scope to include surgical cricothyrotomy.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-035-0030

### Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001 (5).

(2) The scope of practice for First Responders and EMTs is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to a First Responder or EMT by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual EMT may be requested by the Board or Section and shall be furnished upon request.

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient's wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician or a nurse practitioner, if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) The scope of practice for emergency and nonemergency care established by the Board for First Responders is intended as authorization for performance of procedures by First Responders without direction from a Board-approved supervising physician, except as limited by subsection (2) of this rule. A First Responder may perform the following emergency care procedures without having signed standing orders from a supervising physician:

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for soft tissue injuries;

(g) Provide care for suspected fractures;

(h) Assist with prehospital childbirth; and

(i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

(a) Administration of medical oxygen;

(b) Open and maintain an airway through the use of a nasopharyngeal and a noncuffed oropharyngeal and pharyngeal suctioning devices;

(c) Operate a bag mask ventilation device with reservoir;

(d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and

(e) Administer epinephrine by automatic injection device for anaphylaxis;

(f) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

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(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

(a) Perform all procedures that an Oregon-certified First Responder can perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance. A cuffed pharyngeal airway device is:

(A) A single lumen airway device designed for blind insertion into the esophagus providing airway protection where the cuffed tube prevents gastric contents from entering the pharyngeal space; or

(B) A multi-lumen airway device designed to function either as the single lumen device when placed in the esophagus, or by insertion into the trachea where the distal cuff creates an endotracheal seal around the ventilatory tube preventing aspiration of gastric contents.

(d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(f) Provide care for suspected medical emergencies, including:

(A) Obtaining a capillary blood specimen for blood glucose monitoring;

(B) Administer epinephrine by subcutaneous injection or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Administer aspirin for suspected myocardial infarction.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

(m) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:

(A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or

(B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate and maintain an intraosseous infusion;

(d) Initiate saline or similar locks;

(e) Draw peripheral blood specimens;

(f) Administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:

(A) Physiologic isotonic crystalloid solution.

(B) Vasoconstrictors:

(i) Epinephrine;

(ii) Vasopressin;

(C) Antiarrhythmics:

(i) Atropine sulfate;

(ii) Lidocaine;

(iii) Amiodarone;

(D) Antidotes:

(i) Naloxone hydrochloride;

(E) Antihypoglycemics:

(i) Hypertonic glucose;

(ii) Glucagon;

(F) Vasodilators:

(i) Nitroglycerine;

(G) Nebulized bronchodilators:

(i) Albuterol;

(ii) Ipratropium bromide;

(H) Analgesics:

(i) Morphine;

(ii) Nalbuphine Hydrochloride;

(iii) Ketorolac tromethamine;

(I) Antihistamine:

(i) Diphenhydramine;

(J) Diuretic:

(i) Furosemide;

(g) Insert an orogastric tube;

(h) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

(i) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(j) Perform cardiac defibrillation with a manual defibrillator.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Cricothyrotomy; and

(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(e) Perform emergency cardioversion in the compromised patient;

(f) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(g) Initiate needle thoracostomy for tension pneumothorax in a pre-hospital setting;

(h) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(i) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(j) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

(a) Designing the supervising physician and agent application;

(b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93;

# ADMINISTRATIVE RULES

ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05; BME 9-2005, f. & cert. ef. 7-20-05; BME 18-2006, f. & cert. ef. 7-25-06; BME 22-2006, f. & cert. ef. 10-23-06

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**Rule Caption:** Office-based surgery or procedures.

**Adm. Order No.:** BME 23-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-23-06

**Notice Publication Date:** 9-1-06

**Rules Adopted:** 847-017-0000, 847-017-0005, 847-017-0010, 847-017-0015, 847-017-0020, 847-017-0025, 847-017-0030, 847-017-0035, 847-017-0040

**Subject:** The adopted rules establish definitions related to and requirements for office-based surgery or procedures in the areas of patient safety, selection of procedures and patients, patient medical records, discharge evaluation, emergency care and transfer protocols, quality assessment, and facility administration and equipment.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-017-0000

### Preamble

Licensees of the Board of Medical Examiners providing office-based invasive procedures are accountable for the welfare and safety of their patients.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.085, 677.097, 677.265

Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0005

### Definitions

For the purpose of these rules, the following terms are defined:

(1) "Advanced Cardiac Life Support (ACLS) trained" means that a practitioner has successfully completed and maintains certification with advanced resuscitative techniques appropriate to the practitioner's field of practice. For example, for those practitioners treating adult patients, training in advanced cardiac life support (ACLS) is appropriate; for those treating children, training in pediatric advanced life support (PALS) or advanced pediatric life support (APLS) is appropriate.

(2) "Anesthesia, continuum of sedation:" Level of Sedation — Responsiveness Airway — Spontaneous Ventilation — Cardiovascular Function:

(A) Conscious (Moderate) Sedation/ Analgesia — Purposeful response to verbal or tactile stimulation — No intervention required — Adequate — Usually maintained;

(B) Deep Sedation/Analgesia — Purposeful response following repeated or painful stimulation 1 — Intervention may be required — May be inadequate — Usually maintained;

(C) General Anesthesia — Unarousable, even with painful stimulus — Intervention often required — Frequently inadequate — May be impaired. Reflex withdrawal from a painful stimulus is not considered a purposeful response.

(3) "Anesthetic agent" means any drug or combination of drugs administered with the purpose of creating conscious (moderate) sedation, deep sedation, regional anesthesia, or general anesthesia.

(4) "Adverse incident" means an untoward event occurring at any time within seven (7) days of any surgery, special procedure, or the administration of anesthesia agent(s) in an office setting.

(5) "Basic Life Support (BLS)" trained means that a practitioner has successfully completed and maintains certification in cardiopulmonary resuscitation. BLS training includes teaching the use of an automated external defibrillator (AED).

(6) "Board" means the Oregon Board of Medical Examiners.

(7) "Local anesthesia" means the administration of an agent that produces a transient and reversible loss of sensation in a circumscribed portion of the body.

(8) "Major conduction block anesthesia" means the injection of a local anesthetic agent in close proximity to a specific nerve or nerves to stop or prevent a painful sensation in a region of the body. Major conduction anesthesia includes, but is not limited to, all blocks and approaches to

the brachial or lumbar plexus, sub-arachnoid blocks, epidural and caudal blocks and regional intravenous blocks.

(9) "Minor procedures" means surgery that can safely and comfortably be performed under topical or local anesthesia without more than minimal oral or intramuscular preoperative sedation. Minor procedures include, but are not limited to, surgery of the skin, subcutaneous tissue and other adjacent tissue, the incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, arthrocentesis and closed reduction of simple fractures or small joint dislocations.

(10) "Monitoring" means continuous or regular visual observation of the patient (as deemed appropriate by the level of sedation or recovery) and the use of instruments to measure, display, and record physiologic values, such as heart rate, blood pressure, respiration, and oxygen saturation.

(11) "Office" means a location at which medical or surgical services are rendered and which is not subject to a jurisdiction and licensing requirements of the Oregon Department of Human Services.

(12) "Office-based surgery" means the performance of any surgical or other invasive procedure requiring anesthesia, analgesia, or sedation, which results in patient stay of less than 24 consecutive hours, and is performed by a practitioner in a location other than a hospital, diagnostic treatment center, or free-standing ambulatory surgery center.

(13) "Governing body of the facility" means the licensee or group of licensees who establish the office-based surgery facility.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.085, 677.097, 677.265

Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0010

### Patient Safety

(1) Offices in which only minor procedures are performed do not require accreditation or the presence of ACLS certified providers.

(2) The facility in which the office-based surgeries or procedures are performed must be appropriately equipped and maintained to ensure patient safety through accreditation by an appropriate, Board recognized, national or state organization, e.g., the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association for Ambulatory Health Care (AAAHC), the American Association for Accreditation of Ambulatory Surgical Facilities (AAAASF), the American Osteopathic Association (AOA), the Institute for Medical Quality (IMQ) or the Oregon Medical Association (OMA).

(3) The licensee must be able to demonstrate qualifications and competency for the procedures performed by becoming or being board certified and maintaining board certification by a member of the American Board of Medical Specialties (ABMS). Alternatively, the governing body of the office facility is responsible for a peer review process for privileging physicians based on nationally recognized credentialing standards.

(4) The licensee must insure that a practitioner administering deep sedation or anesthesia and/or monitoring the patient shall not play an integral role in performing the procedure.

(5) At least one physician who is currently certified in advanced resuscitative techniques appropriate for the patient age group (e.g., ACLS, PALS or APLS) must be present or immediately available with age-size-appropriate resuscitative equipment until the patient has met the criteria for discharge from the facility. In addition other medical personnel with direct patient contact must at a minimum be trained in Basic Life Support (BLS).

(6) The governing body of the facility is responsible for providing healthcare providers who have appropriate education and training for administration of moderate sedation/analgesia, deep sedation/analgesia or general anesthesia.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.085, 677.097, 677.265

Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0015

### Selection of Procedures and Patients

(1) The licensee who performs the surgical procedure and/or anesthetic must evaluate and document the condition of the patient and the potential risks associated with the proposed treatment plan, and be satisfied that the procedure to be undertaken is within the scope of practice of the health care providers, the capabilities of the facility and the condition of the patient.

(2) Informed consent for the nature and objectives of the anesthesia planned and surgery to be performed must be in writing and obtained from patients before the procedure is performed. Informed consent is only to be obtained after a discussion of the risks, benefits, and alternatives and must be documented in the medical record.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.085, 677.097, 677.265

Hist.: BME 23-2006, f. & cert. ef. 10-23-06

# ADMINISTRATIVE RULES

## 847-017-0020

### Patient Medical Records

(1) A legible, complete, comprehensive and accurate medical record must be maintained for each patient evaluated or treated. The record must include:

- (a) Identity of the patient;
- (b) History and physical, diagnosis and plan;
- (c) Appropriate lab, x-ray or other diagnostic reports;
- (d) Appropriate preanesthesia evaluation;
- (e) Narrative description of procedure;
- (f) Pathology reports;
- (g) Procedure code; and
- (h) Documentation of the outcome and the follow-up plan.

(2) If the nature of the surgery is such that analgesia/sedation, major conduction blockage, conscious (moderate) sedation, or general anesthesia are provided, the patient record must include a separate anesthetic record that contains documentation of anesthetic provider, procedure, and technique employed. This must include the type of anesthesia used, drugs (type and dose) and fluids administered during the procedure, patient weight, level of consciousness, estimated blood loss, duration of procedure, and any complication or unusual events related to the procedure or anesthesia.

(3) The medical records must contain documentation of the intraoperative and postoperative monitoring required.

(4) The patient record must document if tissues and other specimens have been submitted for histopathologic diagnosis.

(5) Provision for continuity of post-operative care must be documented in each patient's medical chart.

(6) Procedures must be established to assure patient confidentiality and security of all patient data and information.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.085, 677.097, 677.265  
Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0025

### Discharge Evaluation

The licensee performing the procedure is responsible for the determination that the patient is safe to be discharged from the office after the procedure.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.085, 677.097, 677.265  
Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0030

### Emergency Care and Transfer Protocols

The licensee is responsible for insuring that, in the event of an anesthetic, medical or surgical complication or emergency all office personnel are familiar with a written documented plan for the timely and safe transfer of patients to a nearby hospital. This plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.085, 677.097, 677.265  
Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0035

### Quality Assessment

(1) Office-based surgical practices must develop a system of quality assessment that effectively and efficiently strives for continuous quality improvement.

(2) Documentation of adverse incident review must be available.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.085, 677.097, 677.265  
Hist.: BME 23-2006, f. & cert. ef. 10-23-06

## 847-017-0040

### Facility Administration and Equipment

The office facility must document that specific and current arrangements are in place for obtaining laboratory, radiological, pathological and other ancillary services as may be required to support the surgical and/or anesthetic procedures undertaken.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.085, 677.097, 677.265  
Hist.: BME 23-2006, f. & cert. ef. 10-23-06

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**Rule Caption:** Allow visiting physician to practice in an accredited facility in addition to a hospital.

**Adm. Order No.:** BME 24-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-23-06

**Notice Publication Date:** 3-1-05

**Rules Amended:** 847-010-0066

**Subject:** The adopted rule allows a visiting physician to practice in an accredited facility as well as a hospital. This rule is associated with the newly-adopted rules on Office-based Surgery in OAR 847, Division 017.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-010-0066

### Visiting Physician Requirements

(1) The Board of Medical Examiners may grant approval for a visiting physician to practice in a hospital, or facility accredited per OAR 847, division 017, in order to obtain or provide training for a period up to ten days no more than three times a year. The visiting physician who requests additional time beyond the ten days, or submits more than three requests in a year, must apply for and obtain a license to practice in the state of Oregon.

(2) Prior to being granted approval, the following information must be submitted to the Board of Medical Examiners:

(a) Two letters: one letter from the requesting hospital administrator or administrator of the accredited facility, and one letter from the hospital chief of staff, hospital department chairman or member of the governing body of the accredited facility with the following information:

- (A) Dates of Oregon practice of the visiting physician;
- (B) Description of the procedure(s);
- (C) Name of responsible staff physician who will be in attendance.

The attending staff physician must be an Oregon licensed physician with Active status;

(D) Documentation that the requesting hospital or accredited facility has approved privileges for the visiting physician.

- (b) A curriculum vitae for the visiting physician, and
- (c) Documentation that the visiting physician's license in the state in which they are practicing is active and in good standing.

(3) The request for approval to practice in the state of Oregon as a visiting physician must be received at least two weeks prior to the beginning date of such practice.

Stat. Auth.: ORS 677.265  
Stats. Implemented: ORS 677.265(1) & (2)  
Hist.: BME 7-2000, f. & cert. ef. 7-27-00; BME 13-2002, f. & cert. ef. 10-25-02; BME 24-2006, f. & cert. ef. 10-23-06

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**Rule Caption:** Waive reactivation registration process and fee for active — military or public health.

**Adm. Order No.:** BME 25-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-23-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 847-008-0055

**Subject:** The adopted rule specifies the registration process and fee for reactivation shall be waived for licensees practicing in Oregon whose status was changed to active — military or public health because they were called up to active duty, deployed/reassigned, or received change of duty orders to serve out-of-state or out-of-country in a branch of the armed forces.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-008-0055

### Reactivation from Active-Military or Public Health/Locum Tenens/Inactive/Emeritus to Active/Locum Tenens Status

(1) A licensee who wishes to reactivate from an active-military or public health, inactive or emeritus status to an active or locum tenens status, or from locum tenens status to active status must provide the Board with the following:

(a) Completed affidavit form provided by the Board, describing activities during the period of active-military or public health, locum tenens, inactive or emeritus registration:

- (b) Completed application(s) for registration; and
- (c) Appropriate fees for processing of affidavit and registration.

(d) A completed "Reports for Disciplinary Inquiries" (MD/DO/DPM) sent to the Board from the Federation of State Medical Boards or Federation of Podiatric Medical Boards, a physician profile sent to the Board from the American Medical Association Physician Profile System, or American Osteopathic Association, and the results of the Practitioner Request for Information Disclosure (Self-Query) from the National

# ADMINISTRATIVE RULES

Practitioners Data Bank and the Healthcare Integrity and Protection Data Bank, sent to the Board by the applicant;

(e) Verification of current licensure sent directly from each of the State Boards in the United States or Canada where the licensee has been practicing during the past 5 years, or from the date the license to practice in Oregon changed to active-military or public health, inactive, locum tenens or emeritus status, whichever is the shorter period of time, showing license number, date issued, and status;

(f) An official letter sent directly to the Board from the director, administrator, dean, or other official of each hospital, clinic, office, or training institute where the licensee was employed, practiced, had hospital privileges (MD/DO/DPM), or trained in the United States or foreign countries during the past 5 years, or from the date the license to practice in Oregon changed to active-military or public health, locum tenens, inactive or emeritus status, whichever is the shorter period of time. The letter shall include an evaluation of overall performance, and specific beginning and ending dates of practice/employment/training.

(2) A personal appearance before the Board may be required.

(3) If, in the judgment of the Board, the conduct of the licensee has been such, during the period of active-military or public health, locum tenens, inactive or emeritus registration, that the licensee would have been denied a license if applying for an initial license to practice medicine, the Board may deny active registration.

(4) If a licensee has ceased the practice of medicine for 12 or more consecutive months, the licensee may be required to take an examination to demonstrate medical competency.

(5) The above registration process and fee for processing the Affidavit of Reactivation shall be waived for licensees practicing in Oregon whose status was changed to active-military or public health because they were called to active duty service, were deployed/reassigned, or received change of duty orders to out-of-state or out-of-country in a branch of the armed forces. Upon returning to practice in Oregon the licensee shall provide the Board with the following:

(a) A completed Affidavit of Reactivation form;

(b) A copy of the Order to Active duty, Change of Duty Orders, or Reassignment Orders; and

(c) A copy of the Discharge from Active Duty, Change of Duty Orders or Reassignment Orders.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172, 677.265

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 2-1997, f. & cert. ef. 7-28-97; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2002, f. & cert. ef. 7-17-02; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 25-2006, f. & cert. ef. 10-23-06

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

**Rule Caption:** Adoption of Rules Regarding Procedure for Designation of Predatory Sex Offenders prior to release.

**Adm. Order No.:** PAR 10-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-30-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 255-060-0016

**Subject:** The adoption of this rule is necessary to cause the Board's procedure for designating sex offenders as predatory prior to being released from custody to be consistent with the Oregon Supreme Court ruling in *V.L.Y. v. Board of Parole and Post-Prison Supervision*, 338 Or 44 (2005)

**Rules Coordinator:** Michael R. Washington—(503) 945-0914

**255-060-0016**

**Procedures for Predatory Sex Offender Designation for Inmates.**

(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 evidence that the inmate is behaving in a manner that is consistent with exhibiting characteristics showing a tendency to victimize or injure others submitted in written reports prepared by an approved evaluator and a release counselor of any Department of Corrections institution.

(2) Predatory sex offender designations made by the board for inmates released from a Department of Corrections institution before August 7, 2006, are not included in this rule. Those designations are governed by the rules in effect when the designation was made or when the inmate was released from custody.

(3) Subject to the procedures set forth in this rule, the Board will make a finding that an inmate is eligible for predatory sex offender designation, if the inmate scores six or more points on the STATIC-99.

(4) 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 has participated in a sex offender evaluation or refused participation in such an evaluation, and 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 offender's original order of supervision or an amended order of supervision.

(5) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible for predatory designation are required to participate in a sex offender evaluation to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. Refusal to participate in such an evaluation will be used as evidence to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others.

(6) Subject to the procedures set forth below, inmates who score six or more points on the STATIC-99, and have been identified as eligible 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, or the Board within three days of the date the 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 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 before an evidentiary hearing is conducted or waived to determine a predatory sex offender finding. The Board may find an inmate is eligible for predatory sex offender designation if there is evidence to support a score on the STATIC-99 of six or more points.

(d) Inmates may elect to waive their right to submit written objections. Any such waiver must be in writing. When inmates waive their right to submit written objections, the Board may find an inmate or offender is eligible for predatory sex offender designation if the inmate's score on the STATIC-99 is six or more points.

(7) The sole purpose of the evidentiary hearing will be to determine whether the inmate is exhibiting characteristics showing a tendency to victimize or injure others. The Board shall receive the sex offender evaluation of the inmate, a copy of the STATIC-99, and any written objections from the inmate to consider at the hearing. The Board may receive a written report from a release counselor of any Department of Corrections institution indicating that the inmate is engaging in behavior that shows the inmate is exhibiting characteristics showing a tendency to victimize or injure others.

(a) Upon receipt of the abovementioned information, including the written report from a release counselor of any Department of Corrections institution, the Board will review it to determine whether it contains sufficient information to conduct an evidentiary hearing for purposes of determining whether the inmate should be designated as a predatory sex offender. If the Board determines there is sufficient information in the report, it will schedule an evidentiary hearing.

(b) The Board will provide the inmate 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 may proceed with the evidentiary hearing or waive his or her right to the hearing. At the evidentiary hearing, the inmate will be given the opportunity to rebut claims made in the sex offender evaluation, STATIC-99, and any written report submitted by a release counselor. At the conclusion of the evidentiary hearing, the Board will make a determination as to whether the inmate should be designated as a predatory sex offender.

(8) Pursuant to ORS 181.586, the community corrections agency supervising an inmate or offender found to be a predatory sex offender shall

# ADMINISTRATIVE RULES

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.: 1999 OL ch. 163, ORS 144.050, 144.140, 181.585, 181.586.  
Other Auth. V.L.Y v. Board of Parole & Post-Prison Supervision, 338 Or 44(2005)  
Hist.: PAR 7-2006(Temp), f. & cert. ef. 8-7-2006 thru 2-2-07; PAR 8-2006(Temp), f. & cert. ef. 8-30-06 thru 2-2-07; PAR 10-2006, f. & cert. ef. 10-30-06

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**Rule Caption:** Clarification of the Violation Hearing Process.

**Adm. Order No.:** PAR 11-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-30-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 255-075-0005

**Subject:** The amendment of these rules are necessary to clarify the requirements for the violation hearing process.

**Rules Coordinator:** Michael R. Washington—(503) 945-0914

**255-075-0005**

**Hearing Requirement: Procedure**

(1) Except as otherwise provided by these rules, before the Board can revoke parole or extend active parole supervision for offenders whose crimes occurred on or after December 4, 1986, and before November 1, 1989 (BM10), the Board or Hearings Officer shall conduct a hearing.

(2) When the offender waives the hearing and/or consents to the order, the Board need not conduct a hearing when the Board extends supervision for offenders whose crimes occurred on or after December 4, 1986 and before November 1, 1989 (BM10).

(3) Except in the cases set forth in OAR 255-075-0015 and section (6) of this rule, the Sanction Authority shall impose administrative sanctions or shall initiate a hearing within fifteen (15) days of arrest or detention for the violation of parole or post-prison supervision conditions.

(4) If an in-custody violation hearing and a final order cannot be accomplished within fifteen (15) days, a supervising officer or Hearings Officer shall request a non-bailable suspend and detain warrant from the Sanction Authority

(5) A Hearings Officer can impose up to sixty (60) days of local confinement after conducting a violation hearing or if an offender waives the hearing. In doing so, the Hearings Officer may issue a final order subject to the approval of the Sanction Authority, but immediately effective. If the Hearings Officer recommends a sanction that exceeds sixty (60) days, it must be approved by the Supervisory Authority before being considered by the Sanction Authority.

(6) If an offender consents to a sanction, intervention, or the recommendation of a revocation, a violation hearing is not required. A revocation involving a return to prison will require a future disposition hearing. If the offender contests any of the allegations, the offender may request a hearing.

Stat. Auth.: ORS 144.106(3), 144.108, 144.331(2), 144.343, 144.350 & 144.370  
Stats. Implemented: ORS 144.096, 144.098, 144.102, 144.106, 144.108, 144.346 & Ch. 525 OL 1997 (Enrolled SB 156)  
Hist.: 2PB 1-1979, f. & cert. ef. 2-1-79; 2PB 1-1984(Temp), f. & cert. ef. 11-19-84; 2PB 1-1985, f. & cert. ef. 2-28-85; PAR 1-1988(Temp), f. 3-11-88, ef. 3-14-88; PAR 6-1988, f. & cert. ef. 5-19-88; PAR 3-1989, f. 10-13-89, ef. 10-16-89; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 4-1992(Temp), f. & cert. ef. 4-30-92; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-11-98; PAR 11-2006, f. & cert. ef. 10-30-06

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amendment to July 1, 2006 PWR rates.

**Adm. Order No.:** BLI 37-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 10-19-06

**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 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).

(j) 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 13, 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](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; 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-

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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; BLI 37-2006, f. & cert. ef. 10-19-06

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**Rule Caption:** Correcting inaccurate reference in rule to conform with statutory language.

**Adm. Order No.:** BLI 38-2006

**Filed with Sec. of State:** 10-25-2006

**Certified to be Effective:** 10-27-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 839-003-0020

**Subject:** The previous rule at OAR 839-003-0020(6) stated that filing a complaint with the bureau's Civil Rights Division does not toll the one year period allowed by ORS 659A.875 for filing a civil suit alleging whistleblowing discrimination by a public employer. This is not accurate. ORS 659A.875(6) states that a civil action under 659A.885 against a public body based on an unlawful employment practice must be commenced within one year **unless a complaint has been timely filed with the Civil Rights Division** under ORS 659A.820. The error in the rule affected at least one pending lawsuit and was amended temporarily to prevent possible loss of rights for filling civil suits by plaintiffs who have timely filed complaints with the Civil Rights Division. The temporary rule was promulgated on July 5, 2006 and will expire on January 3, 2007. This Certificate will make the temporary rule permanent.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-003-0020

### Civil Suit

(1) A person alleging unlawful discrimination under state law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(b) A person filing a civil suit in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil suit.

(2) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(3) A civil suit alleging a violation of ORS 659A.145 or 659A.421, regarding discrimination in real property transactions, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(4) Notwithstanding OAR 839-003-0020(2), if a complainant files a complaint with the division alleging a violation of ORS 659A.145 or 659A.421 regarding discrimination in real property transactions:

(a) And the complainant also files a civil suit with respect to such allegations, the division will not dismiss the complaint until the civil trial commences;

(b) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under ORS Chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) The commissioner will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275.

(6) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(7) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 - 659A.224 & 659A.800 - 659A.890

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 24-2006(Temp), f. 7-5-06, cert. ef. 7-7-06 thru 1-3-07; BLI 38-2006, f. 10-25-06, cert. ef. 10-27-06

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**Rule Caption:** Clarifies application of PWR law to residential projects; allows reference to rates in contract specifications.

**Adm. Order No.:** BLI 39-2006

**Filed with Sec. of State:** 11-8-2006

**Certified to be Effective:** 11-10-06

**Notice Publication Date:** 10-1-06

**Rules Adopted:** 839-025-0037

**Rules Amended:** 839-025-0004, 839-025-0020

**Subject:** The amendment to OAR 839-025-0004 and adoption of OAR 839-025-0037 make permanent temporary rules defining residential construction in the Prevailing Wage Rate (PWR) law and provide that applicable federal residential rates may be paid on such projects subject to state law. OAR 839-025-0037 also sets out a process for requesting and approving rates if there are no applicable federal residential rates, and requires payment of regular PWR wage rates on residential projects subject to the PWR law **ONLY** if there are no applicable federal residential rates and the contracting agency does not obtain a special rate determination from BOLI. In addition, the amendment to OAR 839-025-0020 makes permanent a temporary rule deleting the requirement that the applicable prevailing wage rates be physically included in all bid specifications for projects subject to the PWR law, and allows a reference to the applicable wage rates to be made in the specifications.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-025-0004

### Definitions

As used in these rules, unless the context requires otherwise:

(1) "Apprentice" means:

(a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any state apprenticeship agency recognized by BAT; or

(b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the BAT or a state apprenticeship agency to be eligible for probationary employment as an apprentice.

(2) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to the worker.

(3) "Bureau" means the Bureau of Labor and Industries.

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(5) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.

(6) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(7) "Employ" includes to suffer or permit to work.

(8) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made on a regular basis and not less often than quarterly by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and

## ADMINISTRATIVE RULES

sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).

(9) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds \$50,000.

(10) "Nonprofit organization," as used in subsection OAR 839-025-0100(1)(c)(A)(i), means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(11) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.

(12) "Overtime" means all hours worked:

(a) On Saturdays;

(b) On the following legal holidays:

(A) Each Sunday;

(B) New Year's Day on January 1;

(C) Memorial Day on the last Monday in May;

(D) Independence Day on July 4;

(E) Labor Day on the first Monday in September;

(F) Thanksgiving Day on the fourth Thursday in November;

(G) Christmas Day on December 25.

(c) Over 40 hours in a week; and either

(d) Over eight (8) hours in a day; or

(e) Over 10 hours in a day provided:

(A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(B) The employer operates in accordance with this established work schedule.

(13) "Overtime rate" means the basic hourly rate of pay multiplied by "Overtime wages" means the overtime hours worked multiplied by the overtime rate.

(15) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality.

(16) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(17) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(18) "Public funds" means any revenue, money or that which can be valued in money collected for, or in the custody and control of a public agency.

(19) "Public work," "public works" or "public works project" includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(20) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(21) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(22) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure. "Reconstruction and renovation of privately owned property which is leased by a public agency" does not include:

(a) New construction that is initiated with the intent to lease to an identified public agency, either exclusively or as a primary tenant. A primary tenant is one who leases 51% or more of the space.

(b) Tenant improvements that meet the following criteria:

(A) Are paid for with public funds, either directly or indirectly as defined in OAR 839-025-0100(1)(c)(A), (B) and (C); and

(B) Are performed according to plans, specifications, or criteria furnished by one or more identified public agencies; and

(C) Comprise 51% or more of the value of the building or structure.

When the cost of the tenant improvements are borne by more than one public agency, prevailing wage coverage will not be found unless the public agencies act as a joint enterprise for the purposes of the construction project.

(i) For buildings or structures constructed within the past three years, the value will be determined by the total construction cost.

(ii) For buildings constructed more than three years before the tenant improvements, the value will be the real market value determined for property tax purposes.

(23) "Residential construction project" means:

(a) A public work project that is not exempt under the provisions of ORS 279C.810 for the construction, reconstruction, major renovation or painting of a single family house or apartment building of no more than four (4) stories in height and all incidental items such as site work, parking areas, utilities, streets and sidewalks pursuant to the U.S. Department of Labor's "All Agency Memorandum No. 130" — "Application Of The Standard of Comparison 'Projects Of a Character Similar' Under the Davis-Bacon and Related Acts" dated March 17, 1978. (See Appendix 6.)

(b) Notwithstanding the provisions of subsection (a) of this rule, where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or that the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the U.S. Department of Labor definition of residential construction, the commissioner may consider such information in determining a project to be a "residential construction project."

(24) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in paragraph (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(25) "Special wage determination" means a wage determination made at the request of a public contracting agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(26) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(27) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that bureau.

(28) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(29) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in sections (2) and (8) of this rule.

# ADMINISTRATIVE RULES

(30) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035.)

[ED. NOTE: Attachment referenced are available from the agency.]

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800, 279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0004, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06

## 839-025-0020

### Public Works Contracts and Contract Specifications; Required Conditions

(1) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public contracting agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520);

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530);

(e) A provision that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price; that the fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract.

(2) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(3)(a) The specifications for every public works contract must contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 276a). The existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations.

(b) If a public agency is required under paragraph (a) of this subsection to include the state and federal prevailing rates of wage in the speci-

cations, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b).

(4) The provision described in subsections (2) and (3) must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830). A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(5) All specifications for each contract awarded on the project must contain a provision stating that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price pursuant to ORS 279C.825. The fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract (Reference: ORS 279C.830).

(6) Public contracting agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800-279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06

## 839-025-0037

### Residential Construction Projects

(1)(a) For residential construction projects subject to ORS 279C.800 to 279C.870, public agencies shall use federal Davis-Bacon wage rates for residential construction projects unless there is no applicable federal rate for a particular trade or classification on the residential project.

(b) If the applicable federal Davis-Bacon wage rate determination does not include a rate for a particular trade or classification needed on a specific residential construction project, and the project is subject to ORS 279C.800 to 279C.870 but not the federal Davis-Bacon Act, the public agency is required to request a special wage rate, identifying the specific trade or classification, pursuant to OAR 839-025-0007.

(c) The commissioner may consider and approve a residential wage determination for a trade or classification issued by any federal agency within twelve months of the date of any request for a special wage rate pursuant to subsection (b).

(d) Requests for special wage rate determinations for projects subject to both ORS 279C.800 to 279C.870 and the federal Davis-Bacon Act shall be submitted pursuant to Title 29 CFR, Part 5.5(a)(1)(ii) as amended November 20, 2000.

(e) Copies of any special federal wage rate determinations requested and subsequent determination(s) issued pursuant to subsection (d) must be provided to the commissioner by the contracting agency.

(2) Notwithstanding subsection (1) of this rule, the commissioner, consistent with statutory authority, may survey and issue residential rates.

(3) Requests for special wage rates for residential construction projects pursuant to subsection (1)(b) of this rule must be submitted to the Bureau of Labor and Industries by the contracting agency no fewer than fifteen (15) business days prior to the date the specifications for the project are first advertised.

(4) If a contracting agency fails to request special wage rates for a residential construction project pursuant to subsection (1)(b) at least fifteen (15) business days before the date the specifications for the project are first advertised for the project, the Prevailing Wage Rates for Public Contracts published by the Commissioner of the Bureau of Labor and Industries in effect when the specifications are first advertised shall apply to those trades or classifications for which there is no applicable federal residential rate.

(5) The federal Davis-Bacon wage rates apply to residential construction projects subject to ORS 279C.800 to 279C.870 regardless of whether federal law requires Davis-Bacon rates on the project.

# ADMINISTRATIVE RULES

(6) Notwithstanding the provisions of this rule, unless otherwise exempt, under no circumstances may a rate less than the minimum wage rate required by ORS 653.025 be paid to any worker on a residential construction project subject to ORS 279C.800 to 279C.870.

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800-279C.870

Hist.: BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06

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## Construction Contractors Board Chapter 812

**Rule Caption:** Training and Testing Period Rule Amendment.

**Adm. Order No.:** CCB 11-2006(Temp)

**Filed with Sec. of State:** 11-6-2006

**Certified to be Effective:** 11-6-06 thru 5-4-07

**Notice Publication Date:**

**Rules Amended:** 812-006-0400

**Subject:** The rule had unintended consequences by keeping those individuals who demonstrated competency (by recently passing the test) from becoming licensed. Training providers that did their best to notify students has approximately two weeks to notify the students. It would have been difficult for students to successfully schedule the test, pass the test and complete the application process (Including getting the bond and insurance) within a 1-2 week time period. This affects applicants who recently passed the test and now find they cannot become licensed.

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

### 812-006-0400

#### Training and Testing Period

(1) For training and testing completed on or after October 1, 2006, the training and testing required under ORS 701.072(1) and (3) shall be valid for 24 months from the date the training was completed. Training and testing that is past the 24-month period from the date of the completed training will not be considered for the purposes of fulfilling the requirements set forth in ORS 701.078(1)(b)(A).

(2) In lieu of complying with section (1) of this rule, an RMI may satisfy the requirements of ORS 701.078(1)(b)(A) provided that the RMI:

(a) Has completed the training and passed the test;

(b) Has been the RMI of a licensee within two years of the date of application by the new applicant; and

(c) The license of the licensee that was previously owned by or that previously employed the RMI has not lapsed or, if lapsed, has lapsed for not more than 24 months.

(3) Sections (1) and (2) of this rule do not apply to an RMI that meets the experience requirements under 812-006-0450.

Stat. Auth.: ORS 670.310, 701.072 & 701.235

Stats. Implemented: ORS 701.072

Hist.: CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 11-2006(Temp), f. & cert. ef. 11-6-06 thru 5-4-07

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

**Rule Caption:** Updated to reflect expanded mechanism for notifying interested parties and to reflect current notification procedures.

**Adm. Order No.:** HRSD 2-2006

**Filed with Sec. of State:** 11-13-2006

**Certified to be Effective:** 11-13-06

**Notice Publication Date:** 5-1-06

**Rules Amended:** 105-001-0000

**Subject:** Change “Mailing or furnishing” to “sending” to reflect new statutory authority to send notification to interested parties electronically or by regular mail;

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

— Add notification requirement to legislators to reflect current process.

— Add clarifying language to rule text and title.

**Rules Coordinator:** Kristin Keith—(503) 378-2349, ext. 325

### 105-001-0000

#### Notice of Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the Department of Administrative Services, Personnel Division, shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State’s Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule.

(2) By sending a copy of the notice to persons on the Department of Administrative Services’ mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule.

(3) By sending a copy of the notice to:

(a) The Associated Press;

(b) Agency Heads;

(c) Agency Personnel Managers;

(d) Employee organizations certified by the Employment Relations Board if the rule affects employees represented by them; and

(e) The Capitol Press Room.

(4) By sending a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183.335, 183.341, 184.340, 240.250 & 240.145(3)

Stats. Implemented: ORS 183.335 & 183.341

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94; HRSD 5-2003, f. 5-15-03, cert. ef. 5-21-03; HRSD 2-2006, f. & cert. ef. 11-13-06

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**Rule Caption:** Updated to reflect new statutory language exempting public safety officers’ personal information from public disclosure.

**Adm. Order No.:** HRSD 3-2006

**Filed with Sec. of State:** 11-13-2006

**Certified to be Effective:** 11-13-06

**Notice Publication Date:** 7-1-06

**Rules Amended:** 105-010-0011

**Subject:** Added language from HB 2724 of the 2005 legislative session to exempt a public safety officer’s home address, home telephone number and electronic mail address from public disclosure when requested by the public safety officer.

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

— Add clarifying language to rule text to reflect actual statutory language.

**Rules Coordinator:** Kristin Keith—(503) 378-2349, ext. 325

### 105-010-0011

#### Human Resource Services Division Public Records

(1) It is the policy of the state to ensure every person has a right to inspect any public record except as otherwise expressly provided by ORS 192.501 to 192.505.

(2) Division Public Records Subject to or Exempt from Disclosure.

(a) The following division public records, falling within the disclosure exemptions under ORS 192.501 to 192.502, shall not be subject to inspection except by authorized division or agency personnel:

(A) Test questions, scoring keys, and other data used to administer the selection process, unless the public interest requires disclosure;

(B) A notice of disciplinary action and materials or documents supporting that action, unless the public interest requires disclosure;

(C) A communication within the division or between the division and another public body of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. The division has the burden of showing that the public interest in encouraging frank communications between officials and employees of the division clearly outweighs the public interest in disclosure;

(D) Information of a personal nature, such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in a particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(E) The home addresses, dates of birth, social security numbers and telephone numbers of state employees or volunteers in the agency’s or division’s personnel records. The exemption from disclosure of the addresses, dates of birth and telephone numbers of state employees and volunteers does not apply if the party seeking disclosure shows by clear and convinc-

# ADMINISTRATIVE RULES

ing evidence that the public interest requires disclosure in a particular instance; and

(F) Information submitted to the division in confidence and not otherwise required by law to be submitted where such information is reasonably considered confidential, the division has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(G) If requested by a public safety officer as defined in 181.610, the home address, home telephone number and electronic mail address of the public safety officer.

(b) A division public record pertaining to an individual applicant or employee may be inspected by that applicant or employee or other specifically designated party as follows:

(A) An applicant or employee may inspect a division public record contained in the applicant's or employee's file including a confidential report from a previous employer if the source-identifying information can be redacted.

(B) An applicant's or employee's official representatives, with the applicant's or employee's signed authorization, may inspect a division public record contained in that applicant's or employee's file including a confidential report from a previous employer, if the source-identifying information can be redacted.

(C) The following parties may inspect any division public record contained in an individual employee's file:

(i) An employee's immediate supervisor or higher level supervisor in direct line within the program area;

(ii) The personnel manager or authorized staff of the employing agency;

(iii) The head of the employing agency;

(iv) Human Resource Services Division staff;

(v) A representative of the Employment Relations Board with subpoena or signed authorization;

(vi) A legally authorized law enforcement agency; and

(vii) The Audits Division of the Office of Secretary of State when carrying out its statutory duties.

(D) An agency may inspect a division public record containing the name, home address, social security number, or employing agency of an employee when such data is to be used to enforce a claim due the state or to defend against a claim.

(E) An agency may inspect an application, examination, or certification record relating to a recruitment specifically for that agency or to a certificate received for a job vacancy.

(F) An investigating officer from the Bureau of Labor and Industries Civil Rights Division, Department of Justice or Equal Employment Opportunity Commission may inspect an application or examination record that is pertinent to an official investigation.

(c) A member of the public may inspect the following division public records pertaining to an applicant or employee:

(A) Information contained in an employment application;

(B) Sex identification;

(C) Grouping by age category;

(D) Ethnic identification;

(E) Performance evaluation;

(F) Date of initial hire to state service;

(G) Name, city and zip code;

(H) City and county of work station;

(I) Position number;

(J) Representation code;

(K) Benefit code;

(L) Position type;

(M) Employee's rate of pay;

(N) A confidential report from a previous employer, if the source-identifying information can be redacted.

(3) The State Personnel Records Officer is designated as the custodian of division public records. An alternate shall be designated to act in the absence of the Officer.

(4) A request for inspection of a division public record shall be made either in writing, or in person during normal working hours, to the State Personnel Records Officer, Salem, Oregon.

(5) Information which is exempt from disclosure, but contained within information open to disclosure, shall be blanked out. Upon request, the State Personnel Records Officer shall certify, on a cover sheet or the last page of the copy, that the copy has been compared with the original and that the copy is a true and exact copy of the original. The State Personnel Records Officer shall sign and date such certification.

(6) The State Personnel Records Officer, upon determining that requested records are open to inspection, shall make records, or copies thereof, available within a reasonable time. The division may establish fees reasonably calculated to reimburse it for actual cost to make such records available. Requesting parties shall be provided with estimates of costs to provide requested records.

Stat. Auth.: ORS 184.340 & 240.145(3)

Stats. Implemented: ORS 192.502

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 5-1988, f. & cert. ef. 6-28-88; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-010-0035; HRSD 1-1997, f. 9-30-97, cert. ef. 10-4-97; HRSD 1-1998, f. 6-29-98, cert. ef. 7-1-98; HRSD 2-2000, f. 7-12-00, cert. ef. 7-14-00; HRSD 6-2003, f. 5-15-03, cert. ef. 5-21-03; HRSD 3-2006, f. & cert. ef. 11-13-06

## Department of Agriculture Chapter 603

**Rule Caption:** Increase fees for Inspection and Certification of Agricultural Products.

**Adm. Order No.:** DOA 19-2006

**Filed with Sec. of State:** 11-2-2006

**Certified to be Effective:** 11-2-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 603-053-0200

**Subject:** The Amended Rule increases fees in the Shipping Point Inspection Program, allowing the Program to maintain a sufficient fund balance to provide continued service to the industry, as per statutory Authority ORS 561.190, 632.940 and 632.945.

**Rules Coordinator:** Sue Gooch—(503) 986-4552

### 603-053-0200

#### Inspection Fees For Agricultural Products

The following fees and charges are established for grading, inspection, and certification of horticultural and agricultural products and processes. Fees will be established in an amount reasonably necessary to cover the cost of providing grading, inspection, certification and auditing in the Shipping Point Inspection program and administration of the program pursuant to ORS 632.940:

(1) Separate fees and hourly rates for inspection of fresh products at specific facilities may be available upon request. At the option of the department, fees and hourly rates may be established for specific facilities at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility. Fees and rates established pursuant to this section supersede the fee schedule and rates established herein.

(2) Regular inspection and Expense Guarantee: Regular inspection fees are established in an amount reasonably necessary to cover the cost of providing the services and administration of the program in each of the Shipping Point Inspection Districts. An expense guarantee may be part of the regular inspection charges. Expense Guarantee: When service is requested that will require the assignment of an inspector at a point where the volume of work, at regular fee schedule, would not be adequate to cover the costs of the service, an expense guarantee may be required. This guarantee may include:

(a) A charge for a minimum of four hours of service at a rate of \$ 60 per hour unless otherwise specified by contract;

(b) Travel time at the rate of \$ 60 per hour;

(c) Mileage at the rate per mile established by the Department of Administrative Services;

(d) Eight hours per day at \$ 60 per hour for a minimum of five days per week Monday through Friday during the assignment;

(e) When regular fees equal or exceed the Expense Guarantee, the regular Fee Schedule shall apply;

(f) Credit may be given towards the Expense Guarantee for any work performed for other applicants;

(g) Overtime charges shall be in addition to the Expense Guarantee.

(3) Fresh Product Grade and Condition Certification:

(a) All Fresh Fruit and Vegetables (except Onions and Potatoes):

(A) 65 lbs. Or less net — 6-1/2¢ per container;

(B) Bulk or bulk bins — \$ 3.25 per ton

(b) Brine Cherries:

(A) 15,500 lbs. or less — \$ 43;

(B) 15,501 to 31,250 lbs. — \$ 50;

(C) 31,251 to 37,500 lbs. — \$ 57;

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(D) Quantities in excess of 37,500 lbs. — 18¢ per cwt. for the overage;

(c) Onions: — 12¢ per cwt.

(d) Potatoes: — 12¢ per cwt.;

(A) Certified Seed — 12¢ per cwt.;

(B) Diversion — 8¢ per cwt.

(e) Tree Nuts;

(A) Filberts Inshell — 20¢ per cwt.;

(B) Walnuts Inshell — 28¢ per cwt.;

(C) Filbert Kernels — 38¢ per cwt.;

(D) Shelled Walnuts — 48¢ per cwt.

(4) Inspection of Product for Processing: Fees and hourly rates for inspecting fruits and vegetables intended for processing shall be established on a separate, uniform basis for each facility. The fees and hourly rates shall be set at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility.

(5) USDA Good Agricultural Practices (GAP) and Good Handling Practices (GHP) Audit Fee: GAP and GHP Audits will be on a first come, first served basis as auditing staff is available. GAP and GHP Audit fees will be applied when an applicant requests a mock audit or an audit review of practices based on the voluntary FDA Standards for Minimizing Microbial Contamination to Fresh Fruits and Vegetables or other audit based standards as requested by the industry. The cost for such services may include;

(a) A charge for a minimum of four hours of service at a rate of \$ 75 per hour;

(b) Travel time at the rate of \$ 75 per hour;

(c) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services.

(6) Minimum Certificate Charge: When small lots are written up to meet a specific need in an operating packing house, of a commodity which is being inspected on a regular basis, the minimum certificate charge shall be calculated on the regular schedule for that commodity with a \$ 10 minimum fee.

(7) Mileage Charges: Mileage may be charged in addition to all inspection fees or time charges, at the rate per mile established by the Department of Administrative Services, when travel is required.

(8) Special Services or Determinations: When platform inspections, checkloading, checkweighing, count certification, sealing, or other special services are requested, then at the option of the Department the fee, hourly charge, and/or the minimum number of hours per day, per week or period, may be agreed upon by prior written contractual agreement between the applicant or applicants and the Department. In no case, however, shall such charges be less than is necessary to completely reimburse the Department for its total costs of furnishing such services. The provisions of this section supersede the other fee schedules and provisions relating thereto.

(9) Off Grade or Size Certification: When containers of rejected commodity are not emptied by the close of the business day, an off grade certificate shall be issued covering the total amount of rejected commodity and the regular fee schedule shall be applied.

(10) Overtime Charges: For all inspection services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$ 30 per hour for all time involved. Overtime charges shall be figured to the nearest one-half hour:

(a) After eight hours shed operation (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;

(b) At any time on Saturdays or Sundays; and

(c) At any time on any day which is declared by law to be a holiday for state employees.

(11) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours.

(12) No Service Days: No service will be given on Thanksgiving, Christmas, or New Years days.

(13) Standardization Inspection Charges: Produce requiring inspection under ORS 632, arriving on Oregon terminal markets without evidence of inspection or without request for inspection being made to the Department prior to arrival will be assessed double the applicable fee stated in the fee schedule and a state certificate will be issued.

(14) Extra Service Charge: When extra service is requested in conjunction with grade and condition certification, an additional charge at the applicable fee stated per hour may be made for additional time used to make these determinations. Time shall be figured to the nearest 1/2 hour.

(15) Additional Certificates: When it is necessary to issue extra certificates, certificate copies, or superceded certificates, a charge of \$ 10 for each certificate shall be made. When the cost to issue the certificates exceed \$10, the hourly rate shall apply. When it is necessary to issue extra certificates or supercede certificates due to errors of Inspection Service, no charge will be made.

(16) Phytosanitary or Federal FV-294 Certificates or Federal FV-184 Certificates (extra service charge for sampling and inspection):

(a) When in conjunction with and at the time of grade inspection — 2¢ per cwt.;

(b) When not grade inspected or at time of inspection, the hourly inspection fee will apply plus — 2¢ per cwt.;

(c) Minimum service charge for each certificate issued — \$10.

(17) Fumigation Certificates: When fumigation certification is requested, a charge at the applicable rate per hour will be made for all time required, including travel time, plus mileage at a rate established by the Department of Administrative Services.

Stat. Auth.: ORS 561.190, 632.940 & 632.945

Stats. Implemented: ORS 632.940 & 632.945

Hist.: AD 562, f. & ef. 10-7-57; AD 611, f. 7-10-59; AD 672, f. 6-29-61; AD 767, f. & ef. 7-17-63; AD 799(6-65), f. 6-30-65, ef. 7-15-65; AD 854(26-67), f. 9-26-67, ef. 10-1-67; AD 886(16-68), f. 8-21-68, ef. 10-1-68; AD 904(10-69), f. 8-29-69, ef. 9-8-69; AD 973(6-72), f. 7-11-72, ef. 8-1-72; AD 1037(27-74), f. 8-20-74, ef. 9-11-74; AD 1069(15-75), f. 9-5-75, ef. 9-25-75; AD 13-1979, f. 9-28-79, ef. 10-1-79; AD 10-1983, f. & ef. 8-22-83; AD 2-1991, f. & cert. ef. 2-15-91; AD 17-1992, f. & cert. ef. 11-30-92; AD 11-1994, f. 8-30-94, cert. ef. 9-1-94; AD 9-1996, f. & cert. ef. 7-26-96; DOA 7-1999, f. & cert. ef. 4-26-99; DOA 28-2000, f. & cert. ef. 10-13-00; DOA 27-2002, f. & cert. ef. 12-23-02; DOA 19-2006, f. & cert. ef. 11-2-06

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## Department of Community Colleges and Workforce Development Chapter 589

**Rule Caption:** Distribution of WIA Title IB State Incentive Grants for Local Performance Measures.

**Adm. Order No.:** DCCWD 7-2006

**Filed with Sec. of State:** 11-14-2006

**Certified to be Effective:** 11-15-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 589-020-0210

**Rules Repealed:** 589-020-0260

**Subject:** Amending OAR 589-020-0210 is necessary because new policy language refers to updated OAR regarding WIA regulations that transfers procedures to agency policy for the distribution of WIA Title IB Incentive Grant Awards.

Repealing OAR 589-020-0260 is necessary because it is outdated and will be addressed in the amended OAR 589-020-0210.

**Rules Coordinator:** Linda Hutchins—(503) 378-8649, ext. 474

### 589-020-0210

**Distribution of WIA Title IB State Incentive Grants for Local Performance Measures**

(1) Purpose: This rule establishes the requirements and methodology that the Department of Community Colleges and Workforce Development will utilize for distribution of state incentive grants and performance improvement plans pursuant to the federal Workforce Investment Act (WIA), PL 105-220, its amendments and regulations thereto.

(2) Definitions:

(a) Continuous Performance Improvement Plan: Funds made available to Local Workforce Investment Areas (LWIAs) that achieve a cumulative program area score less than 100% and at least 80% of the negotiated performance level on each performance indicator within a program area. See agency Policy 589-20.2 for application process.

(b) Cumulative Program Area Score: The aggregate amount by which a Local LWIA exceeds or falls below the negotiated performance levels in a particular program area.

(c) Exemplary Performance: Having achieved a cumulative program area score greater than 100% and at least 80% of the negotiated performance level on each performance indicator within a program area.

(d) Failure to Meet: Actual performance for any of the performance indicators that falls below the negotiated level of performance. Technical assistance is required to be provided under WIA Section 134(a)(2)(B)(iv) to Local Workforce Investment Areas (LWIAs) that fail to meet local performance measures.

(e) Grantee: Recipient of grant funds from the Department of Labor. Refers to the Department of Community Colleges and Workforce Development (CCWD).

# ADMINISTRATIVE RULES

(f) Incentive Awards: Funds awarded to LWIAs that meet Exemplary Performance.

(g) Incentive Grants: A portion of the Statewide Employment and Training Activities funds under WIA Title IB Section 134(a)(2)(B)(iii) and (vi) that is required to be used to award exemplary performance by local areas on the local performance measures and to provide technical assistance for LWIAs that fail to meet local performance measures.

(h) Local Performance Measure: A performance measure established under Section 136(c) of WIA. Local performance measures consist of the core performance indicators established under Section 136(b)(2)(A) of WIA and fall into four program areas – adult, dislocated worker, youth, and customer satisfaction.

(i) Local Workforce Investment Area(s): The area(s) in the state designated by the Governor under Section 116 of WIA to which WIA Title IB funds are allocated to carry out WIA Title IB programs.

(j) Mandatory Performance Improvement Plan: LWIAs that achieve a cumulative program area score of less than 100% and less than 80% of the negotiated performance level on a performance indicator within a program area must prepare and seek funding for a plan to address failure to meet performance. See agency Policy 589-20.2 for application process.

(k) Negotiated Performance Level: The numeric performance targets agreed to by the State and the LWIA for each of the core performance indicators.

(l) Performance Measures: The performance indicators required by the Workforce Investment Act of 1998.

(m) Program Area: Four program areas used in the evaluation of performance for incentive purposes; adults, dislocated workers, youth, and customer satisfaction.

(n) Program Year (PY): The period July 1 through June 30 of each year.

(3) Available WIA funds shall be reserved for incentive awards and awarded in accordance with the following criteria:

(a) To be eligible for an incentive award for a program area, the LWIA must achieve a cumulative average score greater than 100% for the performance measures in a given program area (adult, dislocated worker, youth, or customer satisfaction); and

(b) The LWIA must achieve at least 80% of the negotiated performance level on each performance measure within a given program area.

(c) Incentive funds shall be awarded annually after the end of each Program Year (PY), when data to compute actual performance becomes available.

(4) Funds available to each LWIA, which may be earned in accordance with (3)(a) and (b) shall be determined:

(a) By calculating the percent each of the adult, youth and dislocated worker program's PY allocation is of the total PY allocation;

(b) By multiplying the total funds available for incentive awards by the percentages identified in (5)(1) of this OAR to arrive at the available funds for each program (adult, dislocated worker, and youth); and finally

(c) By multiplying the amounts identified in (5)(b) of this OAR for each program by the PY allocation percentages of each LWIA for the respective program; these products are then added to arrive at the total funds that each LWIA might earn.

(5) Funds available to be earned for each program area (adult, dislocated worker, youth and customer satisfaction) shall be calculated in the following manner:

(a) Each program area bears equal weight (25% for each of the four program areas).

(b) The total funds that each LWIA might earn ((4)(c) of this OAR) are multiplied by 25% to arrive at the amount that might be earned for each program area (adult, dislocated worker, youth, and customer satisfaction).

(6) Incentive awards will be made from funds available for that purpose out of current year funding, e.g., PY'04 incentive funds are used to reward PY'03 performance.

(7) Awarded incentive funds may be used for any activities allowed under WIA Title IB.

(8) Definitions used for performance measures shall conform to those provided by the Department of Labor in Training and Employment Guidance Letter (TEGL) 17-05.

(9) Incentive awards shall only be applied to performance in Title IB programs.

(10) Funds for Continuous Performance Improvement Plans and Mandatory Performance Improvement Plans will be made available for LWIAs whose cumulative program area scores fall below 100% of the negotiated level.

(a) LWIAs whose cumulative program area score falls below 100% of the negotiated performance level may seek funding for Continuous Performance Improvement Plans.

(b) LWIAs whose cumulative program area score falls below 80% of the negotiated performance level must develop and seek funding for Mandatory Performance Improvement Plans.

(c) Funds may be used for any allowable WIA Title IB activities in support of a Continuous Performance Improvement Plan or Mandatory Performance Improvement Plan to correct identified deficiencies that led to failure to meet agreed upon levels of performance.

(d) Continuous Performance Improvement Plan and Mandatory Performance Improvement Plan awards will not exceed the amount the LWIA would have earned had performance been met.

(e) LWIAs seeking funds to support Continuous Performance Improvement Plan or Mandatory Performance Improvement Plan must submit the plan in writing to the Department of Community Colleges and Workforce Development. The plan shall be submitted timely, identify the problem/issue to be remedied, and provide a budget supporting the work to be accomplished.

(11) Funds remaining after distribution of all incentive awards, and Continuous Improvement Plan and Mandatory Performance Improvement Plan awards will revert to CCWD's 15% Statewide Activities Fund for allowable uses at the discretion of the Commissioner.

Stat. Auth.: ORS 326.370

Stats. Implemented:

Hist.: DCCWD 4-2002, f. & cert. ef. 9-23-02; DCCWD 6-2003, f. & cert. ef. 10-20-03; DCCWD 3-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 7-2006, f. 11-14-06, cert. ef. 11-15-06

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

**Rule Caption:** 2007 Workers' Compensation Premium Assessment Rates.

**Adm. Order No.:** DO 3-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 1-1-07

**Notice Publication Date:** 9-1-06

**Rules Amended:** 440-045-0020, 440-045-0025

**Subject:** OAR Chapter 440-045-0020, 440-045-0025: Pursuant to ORS 656.612, the Director shall adopt by rule the assessment to be imposed and collected from insurers, self-insured employers and self-insured employer groups, based on worker' compensation direct earned premium, in an amount sufficient to meet the expenses of the department in carrying out its duties under ORS Chapter 656, ORS Chapter 654 and the Insurance Code. The assessment rate is established annually. These rules establish the assessment rate for calendar year 2007.

**Rules Coordinator:** Myrna Curzon—(503) 947-7866

### 440-045-0020

#### Assessment Rate

The assessment to be levied against insurers, self-insured employers and self-insured employer groups for Calendar Year 2007 shall be 4.6 percent of direct earned premium and the direct earned premium self-insured employers and self-insured employer groups would have paid had they been insured employers.

Stat. Auth.: ORS 705.135 & 656.612

Stats. Implemented: ORS 656.612 & 656.614

Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06; DO 3-2006, f. 10-19-06, cert. ef. 1-1-07

### 440-045-0025

#### Adjustment Reserve Rate

In addition to the assessments established in OAR 440-045-0020, self-insured employer groups and self insured employers for the Calendar Year 2007 shall be assessed an additional 0.2 percent to fund the Self-Insured Employer Group Adjustment Reserve and the Self-Insured Employer Adjustment Reserve.

Stat. Auth.: ORS 705.135 & 656.612

Stats. Implemented: ORS 656.612 & 656.614

Hist.: DO 2-1999, f. 10-1-99, cert. ef. 1-1-00; DO 1-2000, f. 10-11-00, cert. ef. 1-1-01; DO 3-2001, f. 10-22-01, cert. ef. 1-1-02; DO 4-2002, f. 10-17-02 cert. ef. 1-1-03; DO 3-2003, f. 10-22-03, cert. ef. 1-1-04; DO 1-2004 f. 10-21-04 cert. ef. 1-1-05; DO 1-2005, f. 10-20-05, cert. ef. 1-1-06; DO 3-2006, f. 10-19-06, cert. ef. 1-1-07

# ADMINISTRATIVE RULES

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

**Rule Caption:** Revised requirements affecting managed care organizations' treatment guidelines, standards, and protocols.

**Adm. Order No.:** WCD 7-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 11-28-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 436-015-0005, 436-015-0030, 436-015-0040

**Subject:** These rules have been amended to:

- Define treatment guidelines, treatment standards, and treatment protocols;
- Clarify that protocols and guidelines may be made available to the director online under specified conditions;
- Require that the managed care organization plan include a summary of the process used by the managed care organization to develop and review treatment guidelines, standards, and protocols; and
- Require that the managed care organization include with its annual report to the director, copies of either all treatment protocols and guidelines, or any new and any revised treatment protocols and guidelines, adopted by the MCO during the previous calendar year, or a written statement that no new or revised treatment protocols or guidelines were developed or used during the calendar year.

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

Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

### 436-015-0005

#### Definitions

Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made a part of these rules.

- (1) "GSA" means a geographic service area.
- (2) "Health Care Provider" means an entity or group of entities, organized to provide health care services or organized to provide administrative support services to those entities providing health care services. An entity solely organized to become an MCO under these rules is not, in and of itself, a health care provider.
- (3) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with these rules.
- (4) "Primary Care Physician" means a physician qualified to be an attending physician according to ORS 656.005(12)(b)(A) and who is a general practitioner, family practitioner, or internal medicine practitioner.
- (5) "Treatment Guidelines" means general treatment recommendations or a range of treatment options, thought to be acceptable by most physicians and providers, that are available to assist medical providers in determining appropriate medical treatment for a medical condition.
- (6) "Treatment Protocols" means detailed treatment criteria, developed through consensus of physicians and providers, about what is acceptable medical treatment for a medical condition.
- (7) "Treatment Standards" means the MCO's certified plan, expectations and clinical requirements, generally agreed to be acceptable by physicians and providers, to which medical providers agree to comply. This includes, but is not limited to, the MCO's internal process, terms and conditions, treatment guidelines and treatment protocols.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 4-1991, f. & cert. ef. 6-14-91; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 4-2006(Temp), f. 5-11-06, cert. ef. 6-1-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06

### 436-015-0030

#### Applying for Certification

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director, within 120 days of the filing of the Notice of Intent to Form, the following:

(a) Four copies of an application which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

(b) The MCO certification of incorporation and a copy of the MCO by-laws;

(c) A non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund; and

(d) The approved MCO plan.

(2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.

(3) The MCO plan shall provide a description of the times, places, and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:

(a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(b) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner within 24 hours of the MCO's knowledge of the need or a request for treatment;

(c) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physician or answer other questions;

(f) Seek treatment from any category of medical service provider as defined in subsection (6)(a) of this rule and have a choice of at least 3 medical service providers within each category. The worker shall also have at least 3 choices, as needed, of ancillary service providers including, but not limited to, physical therapists and psychologists. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles (one way) in urban areas and 60 miles (one way) in rural areas will be considered a reasonable distance;

(h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;

(i) Receive services that meet quality, continuity, and other treatment standards which will provide all medical and health care services in a manner that is timely, effective, and convenient for the worker; and

(j) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places, and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician or authorized nurse practitioner who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(5) The MCO shall provide:

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO; and

(c) Copies of all treatment standards, protocols, and guidelines adopted by the MCO, including protocols and guidelines from any companies from whom the MCO may have purchased them, for the director review

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and approval under ORS 656.260(4)(a). The MCO must provide these copies at no cost to the director. The MCO may meet the requirements of this subsection if the protocols and guidelines adopted by the MCO are available online through the MCO or through a company from whom the MCO has purchased them. If the MCO chooses this option, the MCO must ensure the director has access to them at no cost to the director. The online protocols and guidelines must be complete and not in an abbreviated version. Standards, protocols, and guidelines approved by the director are for certification purposes only and may not necessarily apply to an individual case dispute regarding medical services brought before the director.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician, and podiatrist, as listed in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A process that allows workers to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which workers can choose within a GSA, the MCO must allow workers to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards. Treatment must also be consistent with ORS 656.245(2)(b)(C), which limits the authorization of treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits for a period not to exceed 60 days from the date of the first visit on the initial claim. Such authorized nurse practitioners are not themselves bound by the MCO's treatment and utilization standards; however, workers are subject to those standards.

(c) A program which specifies the criteria for selection and de-selection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical record keeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution, and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan must include a summary of the process used by the MCO to develop and review treatment standards, protocols, and guidelines. This summary must include, but is not limited to:

(a) A description of the medical expertise or specialties of the clinicians involved;

(b) A description regarding what the protocols and guidelines are based on;

(c) The criteria used by the MCO in selecting the conditions for which the MCO implements treatment protocols and guidelines;

(d) A description of the criteria used by the MCO to determine when it needs to review or revise its treatment standards, protocols, and guidelines;

(e) How the MCO makes the standards, protocols, and guidelines available to its panel providers and how it notifies them of any changes;

(f) Sufficient flexibility to allow treatment outside the standards, protocols, and guidelines if such treatment is supported by persuasive professional medical judgment and reasoning; and

(g) A description of how the MCO will ensure the worker continues to receive appropriate care in a timely, effective and convenient manner throughout the dispute resolution process.

(10) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer, and the MCO to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(11) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(12) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and 436-009.

(13) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(a) Coordinating and channeling all outgoing correspondence and medical bills;

(b) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(c) Serving as a member on the quality assurance committee.

(14) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(15) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(a) Submit all bills in accordance with the MCO contract with the insurer.

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(b) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(16) The MCO plan shall provide a procedure within the MCO plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(17) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(18) Within 45 days of receipt of all information required for certification, the director shall notify the applicant of the effective date of the certification and the initial geographical service area of the MCO. If the certification is denied, the applicant will be provided with the reason therefore.

(19) The application for certification for an MCO shall not be approved if the MCO fails to meet the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 4-2006(Temp), f. 5-11-06, cert. ef. 6-1-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06

## 436-015-0040

### Reporting Requirements for an MCO

(1) In order to ensure the MCO complies with the requirements of these rules, each MCO shall provide the director with a copy of the entire text of any MCO/insurer contract agreement, signed by the insurer and the MCO, within 30 days of execution of such contracts. Amendments, addendums, and cancellations, together with the entire text of the underlying contracts, shall be submitted to the director within 30 days of execution.

(2) Notwithstanding section (1), when an MCO/insurer contract agreement contains a specific expiration or termination date, the MCO must provide the director with a copy of a contract extension, signed by the insurer and MCO, no later than the contract's date of expiration or termination, or workers will no longer be subject to the contract after it expires or terminates without renewal pursuant to ORS 656.245(4)(a).

(3) Any amendment to the approved MCO plan, including changes to the MCO summary of the process used by the MCO to develop and review treatment standards, protocols, or guidelines under OAR 436-015-0030(9), must be submitted to the director for approval. The MCO shall not take any action based on the amendment until the amended plan is approved.

(4) Within 45 days of the end of each calendar quarter, each MCO shall provide the following information, current on the last day of the quarter, in a form and format as prescribed by the director: specify quarter being reported, MCO certification number, membership listings by category of medical service provider (in coded form), including provider names, specialty (in coded form), Tax ID number, Oregon license number, business address and phone number. (All fields are required unless specifically excepted by bulletin.) When a medical provider has multiple offices, only one office location in each geographical service area needs to be reported. In addition, the updated membership listing shall include the names and addresses of all health care providers participating in the MCO.

(5) By April 30 of each year, each MCO shall provide the director with the following information for the previous calendar year:

(a) A summary of any sanctions or punitive actions taken by the MCO against its members;

(b) A summary of actions taken by the MCO's peer review committee;

(c) An affidavit that the approved MCO plan is consistent with the MCO's business practices, and that any amendments to the plan have been approved by the director; and

(d) Copies of either all treatment protocols and guidelines, or any new and any revised treatment protocols and guidelines, adopted by the MCO during the previous calendar year. The MCO must provide these copies at no cost to the director. The MCO may meet the requirements of this subsection if the protocols and guidelines adopted by the MCO are available online through the MCO or through a company from whom the MCO has purchased them. If the MCO chooses this option, the MCO must notify the director and ensure the director has access to them at no cost to the director. The MCO must ensure the online protocols and guidelines are complete and not in an abbreviated version. If the MCO did not adopt any new or any revised treatment protocols and guidelines during the previous calendar year, the MCO must provide a written statement to this effect.

(6) An MCO must report any new board members or shareholders to the director within 14 days of such changes. These parties must submit affidavits certifying they have no interest in an insurer or other non-qualifying employer as described under OAR 436-015-0009.

(7) Nothing in this rule limits the director's ability to require information from the MCO as necessary to monitor the MCO's compliance with the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 13-1992, f. & cert. ef. 9-21-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 4-2006(Temp), f. 5-11-06, cert. ef. 6-1-06; WCD 7-2006, f. 10-19-06, cert. ef. 11-28-06

## Department of Corrections

### Chapter 291

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

**Adm. Order No.:** DOC 12-2006

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 5-1-06

**Rules Amended:** 291-117-0130, 291-117-0140

**Subject:** Amendment of OAR 291-117-0130 is necessary to streamline the process for handling inmate personal property claims to allow for a more timely resolution of property claims. Amendment of OAR 291-117-0140 is necessary to implement 2005 Or Laws, Chapter 184 that allows the department to direct the disposition of an inmate's unclaimed or abandoned tangible personal property.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

### 291-117-0130

#### Limitations on Value/Liability/Inmate Personal Property Claims

(1) No inmate may possess any single item of personal property that exceeds \$100 in value, excluding one television, one approved musical instrument, one approved graphing calculator; and approved medical prosthesis. No inmate may possess personal property the aggregate value of which exceeds \$1000, excluding approved medical prosthesis. When determining the aggregate value of inmate property, the inmate may be required to produce receipts or authorization slips for any item valued at \$75 or greater.

(2) Each inmate is responsible for his/her own authorized property. In permitting inmates to retain items of personal property while incarcerated, the Department of Corrections accepts no liability for the theft, loss, damage, or destruction of such property resulting from the intentional, willful, reckless or negligent act or activities of any inmate which exposes such property to loss, damage, theft or destruction.

(3) An inmate's authorized personal property that may have been lost, damaged, or destroyed because of operations of the department shall be reported by the inmate immediately upon discovery. Upon receiving an inmate's report or grievance, the department shall conduct an investigation. Following completion of the investigation, the department may in its sole discretion, and without admission of liability, replace an inmate's personal property that is lost, damaged or stolen while the inmate is incarcerated in a department facility, subject to the following limitations:

(a) The department may replace an item with an identical or similar item when the value of the item that is lost, damaged or stolen may reasonably be determined by the department.

(b) The department will not replace an inmate's personal television or musical instrument.

(4) Nothing in this rule is intended to preclude an inmate from seeking resolution to a personal property claim through the Oregon Tort Claims Act administered by the Oregon Department of Administrative Services Risk Management Division.

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

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

Hist.: DOC 6-2004, f. & cert. ef. 7-19-04; DOC 12-2006, f. 10-18-06, cert. ef. 11-1-06

### 291-117-0140

#### Disposition of Inmate Property

(1) Disposition of Unauthorized/ Excess Property at Intake:

(a) Items that are not authorized and considered not dangerous shall be packaged and mailed out at the inmate's expense. If the inmate lacks sufficient funds to mail out the property, arrangements may be made for the

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property to be picked up at the facility by a person designated by the inmate. Otherwise, the department shall mail out the property to a person designated by the inmate, and the inmate's trust account shall be debited.

(b) To permit the department to mail out an inmate's property, the inmate must provide staff with the name and street address of the person designated by the inmate to receive the property. If the property is returned because it is undeliverable, e.g., mail refused or no such address, the department shall make a second attempt to mail out the property if the inmate provides staff with an alternate address. If the property is returned to the facility a second time, the department shall confiscate the property and discard it.

(c) The department will not mail out any item(s) considered dangerous or hazardous including, but not limited to, ammunition, knives, lighters, and batteries. Oregon Trail cards will not be mailed out. Oregon Trail cards shall be processed as agreed upon by the department and the Department of Human Services.

(d) All items identified for mailing out/disposal shall be noted on the Personal Property and Clothing Inventory List (CD 353-C). The form shall be signed by the staff inventorying the property and the inmate.

(e) The form will be kept on file for a period of three years. A copy of the inventory form will accompany the item(s) mailed out.

## (2) Disposition of Excess Property:

(a) Inmate personal property that exceeds the capacity of the facility's designated storage space shall be considered excess property. Excess property shall be mailed out at the inmate's expense or discarded. Excess property that is not mailed out or discarded at the direction of inmate shall be considered contraband, and may result in confiscation of the item(s) and/or disciplinary action.

(b) Staff shall direct inmates in writing to bring their aggregate property within the capacity of designated storage space. The facility will hold an inmate's excess property for no more than 45 days following the date of staff's written order directing the inmate to mail out or dispose of the inmate's excess property. If after 45 days the inmate has not made arrangements to mail out or dispose of the item(s), the department shall confiscate the property as contraband and discard it.

(3) Disposition of Unclaimed Property: Inmate personal property items that the department cannot identify as the property of a specific inmate shall be confiscated and held by the department for no more than 45 days. If after 45 days the property items remain unclaimed, the department shall discard the items.

## (4) Disposition of Abandoned Property:

(a) Upon the Inmate's Release or Death: Inmate personal property that is left with the department upon an inmate's release from a department facility or death shall be processed and disposed of as follows:

(A) Staff will secure, inventory, and place the inmate's property in a secure area.

(B) Staff will attempt to contact the person(s) on the inmate's notification record to take possession of the property. If contact is made with the person(s), and if the person decides to claim and take possession of the inmate's property, the person must make arrangements with the designated staff to pick up the property at the facility or for the property to be mailed to the person. If the person picks up the property at the facility, the person must sign and provide staff with a property receipt before taking possession of the property. If the person makes arrangements to take delivery of the property by mail, the property will be mailed to the person certified mail, return receipt requested. Staff will document the property transfer, and place and maintain the property inventory and signed property receipt (or, in the case of mailing, the certified mail return receipt) in the inmate's institution file and such other files, if any, that the facility maintains for such records.

(C) The department will store the inmate's property for no more than 45 days following the inmate's release or death. If after 45 days the property remains unclaimed, the department shall confiscate the property and discard it.

## (b) Upon the Inmate's Escape:

(A) The department is not responsible for any loss or damage to inmate personal property that is left with the department upon an inmate's escape from an ODOC confinement or custody.

(B) In the event of escape, the inmate's property shall be confiscated, searched, inventoried and placed in evidence or property room in a secure area.

(C) If the inmate is not returned to the custody of the department within 45 days, and the property is not being held for evidence, the department shall discard the property.

(c) Voluntary Abandonment: Inmate personal property that is voluntarily abandoned by an inmate during confinement in an ODOC facility shall be disposed of as excess property.

(d) Funds held in the inmate's trust account shall be disposed of in accordance with the department's rule on Trust Account (Inmate) (OAR 291-158).

(e) Books and Shoes: Abandoned books will be stamped as department property and placed in the facility library. Abandoned shoes will be discarded.

(5) Disposition of Property Held as Evidence: Inmate personal property items that have been confiscated and held by the department as evidence in a disciplinary investigation shall be returned to the inmate upon conclusion of the investigation and any subsequent disciplinary hearing/case, if the inmate is found not to have violated the rules of prohibited inmate conduct, and the property item(s) is not classified as contraband.

(6) Disposition of Certain "Valuable" Property Items: Notwithstanding the dispositional rules set forth above, the department shall hold jewelry, approved religious items, and any other functional inmate property item that cost \$75 or more, excluding books and shoes, for a period of no more than two years. If after two years the property remains unclaimed, the department shall confiscate and dispose of the item(s).

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

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

Hist.: DOC 6-2004, f. & cert. ef. 7-19-04; DOC 12-2006, f. 10-18-06, cert. ef. 11-1-06

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**Rule Caption:** Internal Grievance and Review System for Inmates.

**Adm. Order No.:** DOC 13-2006

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 5-1-06

**Rules Amended:** 291-109-0100, 291-109-0110, 291-109-0120, 291-109-0140

**Rules Repealed:** 291-109-0130

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

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

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-109-0100

### Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures for the administration of the department's internal grievance review and appeal system for inmates confined in Department of Corrections facilities.

### (3) Policy:

(a) It is the policy of the Department of Corrections to encourage inmates to address their concerns informally with appropriate staff and managers through either dialog or written communication, the use of inmate communication forms where possible. Recognizing that due to the complex nature of the correctional setting some issues/disputes between staff and inmates may not be readily resolved at an informal level, it is the policy of the Department of Corrections to permit and encourage inmates to seek resolution of issues/disputes using the department's internal inmate grievance review and appeal system established in these rules.

(b) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections that all inmates be treated fairly and equitably, and that staff actions and decisions be consistent with the rules, policies and procedures of the department.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

# ADMINISTRATIVE RULES

## 291-109-0110

### Definitions

(1) Administrative Directive: A term used to describe in general a Department of Corrections rule or policy signed by the Director or Deputy Director.

(2) Communication: A process by which information is exchanged between individuals, usually through verbal or written message.

(3) Department of Corrections (DOC) Employee: Any person employed full-time, part-time, or under temporary appointment by the Department of Corrections; any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to department programs.

(4) Emergency: Any condition or situation where life, health, or safety may be threatened or where time frame considerations necessitate an immediate response or remedial action.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports either to the Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or the coordination of program operations. In a correctional institution, the superintendent is the functional unit manager.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(7) Inmate Communication Form: An official Department of Corrections form commonly referred to as a "kyte or kite." The form is designed for inmate use in communicating with employees and in which employees can respond to the inmate.

(8) 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.

(9) 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.

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

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

Hist.: CD 3-1979, f. 1-18-79, ef. 1-25-79; CD 34-1981(Temp), f. & ef. 8-7-81; CD 5-1982, f. & ef. 1-29-82; CD 39-1983(Temp), f. & ef. 10-14-83; CD 6-1984, f. & ef. 4-9-84; CD 53-1985, f. & ef. 8-16-85; CD 56-1986, f. & ef. 12-5-86; CD 13-1992, f. 6-15-92, cert. ef. 6-26-92; DOC 29-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 17-2000, f. & cert. ef. 6-19-00; Renumbered from 291-109-0010, DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0120

### Inmate-Staff Communications (General Principles)

(1) Proper and effective communication between inmates and staff is essential to the safe, secure, and orderly operation of Department of Corrections facilities and to the successful completion of the inmate's corrections plans. Inmates and staff communicate with each other not only with their choice of words (oral or written), but also non-verbally through their manner, tone, and approach (commonly referred to as "body language"). Inmates and staff are jointly responsible for ensuring their choice of words, manner, tone and approach are appropriate to properly and effectively convey their intended information and ideas to one another.

(2) Inmates shall communicate with staff in a civil and respectful tone and manner.

(3) Staff shall communicate with inmates in a professional manner that fosters respect and confidence. Staff orders directed to inmates should be clear and concise.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0140

### Grievance Review System

(1) General Requirements:

(a) If an inmate is unable to resolve an issue through informal communications, an inmate may seek resolution of the issue by submitting a written grievance using the department's approved inmate grievance form (CD 117) in accordance with these rules and in a civil and respectful tone and manner.

(b) An inmate grievance must include a complete description of the incident, action, or application of the rule being grieved, including date and approximate time. If the inmate has any referenced documents such as program failures, inmate communications, etc., it is recommended those documents also be attached to the grievance. Inmate grievances and supporting attachments meet the standard for photocopying detailed in the rule on Legal Affairs, OAR 291-139-0040.

(c) An inmate who attempts to grieve an issue by use of an inmate communication form or any written communication other than the department's approved inmate grievance form shall have his/her communication returned to him/her with instruction that the inmate resubmit the grievance on the department's approved inmate grievance form.

(d) An inmate grievance may request review of just one matter, action or incident per inmate grievance form.

(2) An inmate may file a single grievance concerning any of the following matters:

(a) The misapplication of any administrative directive or operational procedure;

(b) The lack of an administrative directive or operational procedure;

(c) Any unprofessional behavior or action which may be directed toward an inmate by an employee or volunteer of the Department of Corrections or the Oregon Corrections Enterprises;

(d) Any oversight or error affecting an inmate; or

(e) A program failure as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020, unless the program failure is a direct result of a misconduct report where the inmate was found in violation;

(f) The loss or destruction of property as designated in the DOC rule on Personal Property (Inmate), OAR 291-117-0130(3).

(3) An inmate cannot grieve the following:

(a) Grievances relating to actions or decisions not within the jurisdiction of the department (for example, actions by the Board of Parole and Post-Prison Supervision);

(b) Incident(s) or action(s) for which there exists a separate internal department appeal or review process; for example, rejection/confiscation of mail, visiting, discrimination complaints, classification issues, etc.;

(c) Misconduct reports, investigations leading to or arising from misconduct reports, or disciplinary hearings, findings and sanctions;

(d) Incident(s) or problem(s) to which an inmate was not a party;

(e) More than one DOC or OCE employee's actions/decisions on a single grievance form;

(f) Claims or issues that the inmate is pursuing in pending litigation in state or federal courts; or

(g) Group grievances representing other inmates or acts where an inmate is a spokesperson for other inmates. An inmate may submit only his/her signature on a single grievance form.

(4) An inmate may not file more than one grievance regarding a single incident.

(5) An inmate may file a grievance regarding the same issue as a previously filed grievance provided there is another incident and new information is available about the issue.

[ED. NOTE: Forms referenced are available from the agency.]

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0150

### How and When a Grievance is Filed

(1) Inmate grievances must be submitted to the functional unit grievance coordinator on the department's approved inmate grievance form (CD117). Instructions for filing a grievance are found on form CD117a (Inmate Grievance Instructions).

(2) To obtain a grievance review, the functional unit grievance coordinator must receive an inmate's grievance within 30 calendar days of the date of the incident giving rise to the grievance. The grievance coordinator shall date stamp and log the grievance form upon receipt.

(3) An inmate who seeks grievance review of an emergency situation as defined in OAR 291-109-0110(4) should submit his/her grievance to the grievance coordinator as soon as possible after the incident/occurrence so that it may be processed in a timely manner.

(4) In the event an inmate cannot complete the grievance form due to language barriers, physical barriers (in compliance with Section 504 of the Federal Rehabilitation Act), or competency and capacity barriers, another person may complete the form for the inmate. However, the inmate submitting the grievance must sign the grievance form. Translation services for

# ADMINISTRATIVE RULES

submission of inmate grievance forms for non-English speaking or illiterate inmates will be made available upon request.

(5) Functional unit managers or designees shall ensure the approved inmate grievance forms are readily available to inmates in DOC correctional facilities.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(3), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0160

### Processing of Inmate Grievances

(1) Upon receiving an inmate grievance, the grievance coordinator will assign the grievance a number and record its receipt in an inmate grievance log.

(a) After the inmate grievance has been logged, the grievance coordinator will send a grievance receipt to the inmate.

(b) The grievance coordinator will coordinate with the appropriate staff or, if deemed more suitable, the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the staff or manager respondent for reply.

(c) If answered by the staff member, the respondent will complete the form and submit it to his/her manager for review and signature. The response shall be returned to the grievance coordinator for processing within 21 calendar days.

(2) After recording, the grievance coordinator will send the inmate grievance and employee's response to the inmate and retain copies for the file. The grievance coordinator will complete processing of the grievance within 45 days from the date the grievance was received, unless further investigation is necessary. If the grievance is not processed within this time-frame, the grievance coordinator will make an effort to notify the inmate of the status of the grievance. If the inmate does not receive a response within the allotted time frame, he/she may contact the grievance coordinator.

(3) Grievance responses may be consolidated.

(4) If at anytime the grievance coordinator determines the inmate has pursued his/her issue through state or federal courts, the grievance process will cease and the grievance will be returned to the inmate. The grievance coordinator will retain a copy of the inmate's grievance and document the date and reason for return of the grievance.

(5) A grievance that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. The inmate may elect to resubmit the grievance to the grievance coordinator after correcting the procedural errors.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(4), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0170

### Grievance Appeals

(1) Appeals of the Initial Grievance (First Appeal Process):

(a) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and staff response(s). The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance was filed and the information is directly related to the alleged issue being grieved. After the appeal has been date stamped and logged, the inmate will be issued a return receipt, and the grievance appeal will be forwarded to the functional unit manager having authority to review and resolve the issue.

(b) Appeal Timelines: The grievance coordinator must receive an appeal within 14 calendar days from the date that the grievance response was sent to the inmate from the grievance coordinator. The functional unit manager shall respond to the inmate's grievance appeal within 30 calendar days.

(2) Appeal of the Functional Unit Manager Decision (Second Appeal Process):

(a) An inmate may appeal the functional unit manager's decision using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments, staff responses and documentation related to the first grievance appeal. The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance and/or first-level appeal was filed and the information is directly related to the alleged issue being grieved. After the appeal has been date stamped and logged, the inmate will

be issued a return receipt. The grievance appeal will be forwarded to the Assistant Director having authority to review and resolve the issue.

(b) The Assistant Director or designee shall review the grievance appeal. If the Assistant Director determines additional facts should have been gathered or additional witnesses interviewed, the grievance appeal will be referred back to the functional unit grievance coordinator. Upon completion of the investigation, the Assistant Director shall complete the review.

(c) Appeal Timelines: The grievance coordinator must receive the second appeal within 14 calendar days from the date that the first grievance appeal response was sent to the inmate from the grievance coordinator. The Assistant Director or designee shall respond to the inmate's grievance appeal within 30 calendar days.

(d) The Assistant Director's or designee's decision on an inmate's grievance appeal is FINAL, and is not subject to further review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(5), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0180

### Abuse of Grievance Review System

(1) An inmate shall submit no more than three inmate grievances in any one week or eight in any calendar month, unless a valid justification exists. Grievances submitted in excess of three grievances in any one-week or eight in any calendar month will be returned to the inmate without further processing, noting that he/she has abused the grievance review system.

(2) If a situation arises whereby there is a valid justification for submission of a grievance in excess of three in any one week or eight in one calendar month, it is the responsibility of the inmate submitting the grievance to clearly and concisely state in writing the reasons for submission of the grievance above and beyond the number allowed. If the grievance coordinator determines that these reasons are not clear, concise, or valid for the submission of an additional grievance, the grievance will be returned to the inmate without processing in accordance with subsection (a) above.

(3) Actions taken against an inmate who has abused the grievance review system under these rules are not grievable.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(6), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

## 291-109-0190

### Retention and Filing of Inmate Grievances

(1) The grievance coordinator will retain a file copy of grievances with pertinent documents, including appeals, in accordance with the State Archivist schedule.

(2) Inmate grievances will not be filed in the inmate's working file.  
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(7), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06

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**Department of Fish and Wildlife**  
**Chapter 635**

**Rule Caption:** Adopted rules to license and regulate businesses conducting nuisance, damage or public health risk animal control operations.

**Adm. Order No.:** DFW 117-2006

**Filed with Sec. of State:** 10-16-2006

**Certified to be Effective:** 10-16-06

**Notice Publication Date:** 9-1-06

**Rules Adopted:** 635-435-0000, 635-435-0005, 635-435-0010, 635-435-0015, 635-435-0020, 635-435-0025, 635-435-0030, 635-435-0035, 635-435-0040, 635-435-0045, 635-435-0050, 635-435-0055, 635-435-0060

**Subject:** Adopted Oregon Administrative Rule to license and regulate businesses conducting nuisance, damage or public health risk animal control operations. Specific rules include: permits required to capture and hold wildlife, humane euthanasia and discarding of wildlife carcasses, relocation of nuisance wildlife, transportation of wildlife, equipment inspection, record keeping and reporting requirements.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

# ADMINISTRATIVE RULES

## 635-435-0000

### Purpose

Landowners and those who legally occupy land often hire wildlife control operators to rid their homes, businesses or land of 'nuisance wildlife' such as raccoons, skunks and other species. The wildlife damage statute (ORS 498.012) authorizes landowners and occupiers to take wildlife that is causing damage, is a public nuisance, or poses a public health risk on their land. That statute does impose certain requirements. The purpose of these rules is to streamline compliance with these requirements while also promoting sound wildlife management by providing means for an agent to act on the behalf of a landowner or occupier and for an annual permit rather than requiring a permit for each wildlife conflict situation.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0005

### Definitions

For the purposes of these rules the following definitions apply:

(1) "Nongame wildlife nonprotected" means any species that does not meet any of the following definitions: "game mammals" as defined in OAR 635-045-0002, "game birds" as defined in 635-045-0002, "furbearers" as defined in 635-045-0002, "threatened and endangered species" as defined in 635-100-0125, or "nongame wildlife protected" as defined in 635-044-0130 or is not otherwise protected by statute or law.

(2) "Possession" means to have physical possession or to otherwise exercise dominion over any wildlife or wildlife parts, and possession begins once the trap has been checked by the permittee or subpermittee.

(3) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities. This definition is applicable where wildlife is taken under the authority of one who owns leases, occupies, possesses or has charge or dominion over the land. On public land this typically includes one who has a grazing lease.

(4) "Prohibited Species" means wildlife that the commission has placed on the Prohibited list in its Wildlife Integrity Rules (OAR chapter 635 division 56).

(5) "Protected wildlife" means any species that meets any of the following definitions: "game mammals" as defined in OAR 635-045-0002, "game birds" as defined in 635-045-0002, "furbearers" as defined in 635-045-0002, "threatened and endangered species" as defined in 635-100-0125, or "nongame wildlife protected" as defined in 635-044-0130 or is otherwise protected by statute or law.

(6) "Wildlife Control Operator" means an individual or business charging a fee and acting as an agent for a property owner, legal occupant, local jurisdiction or agency to take wildlife for the purpose of controlling damage, alleviating nuisance problems, or resolving public health risk concerns.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0010

### Permit Required to Capture, Hold, Transport, or Relocate Wildlife

(1) Any Wildlife Control Operator charging a fee to control damage, alleviate nuisance problems, or resolve public health risk concerns caused by certain wildlife must first obtain a Wildlife Control Operator Permit from the Department prior to capturing, holding, transporting or relocating such wildlife. A permit is not required to capture, euthanize or release on-site nongame wildlife nonprotected or species taken under authority of the predatory animal statute (ORS 610.105).

(2) A permit allows the permittee to capture, hold, transport, or relocate furbearers (except raccoons). A permit allows the permittee to hold, transport, or relocate predatory animals, western gray squirrels, and nongame wildlife nonprotected. These activities must be in compliance with conditions specified by these rules, the permit, and direction by the Department.

(3) A permit allows the permittee to capture, euthanize or release on-site raccoons. A permit does not allow the permittee to relocate raccoons to other sites unless directed by the Department.

(4) A permit does not authorize the permittee to intentionally capture, hold, transport or relocate game mammals, game birds or nongame wildlife protected. Game mammals excluding western gray squirrels, game birds or nongame wildlife protected caught incidentally must be released on-site.

(5) A permit does not authorize the permittee to intentionally capture, hold, transport or relocate species protected by other state or federal law.

Species protected by other state or federal law caught incidentally must be released on site.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0015

### Passing a Test Required to Obtain Wildlife Control Operator Permit

Note: from October 2006 until January 2008, those seeking to obtain a Wildlife Control Operator permit will be required to submit an application and satisfy all requirements of these rules. Beginning in 2008, all those seeking a permit (both new applicants and renewing permit holders) must in addition pass a test.

(1) To obtain a Wildlife Control Operator permit, an individual or business owner must complete and submit an application form provided by the Department. Beginning January 1, 2008, an applicant must also pass a test administered by the Department with a score of 80% or greater. The test shall be based on a wildlife control training manual provided by the Department. Once an individual or business owner passes the test, re-taking the test will not be required for renewing the permit.

(2) A business owner may designate subpermittees on his or her permit. Subpermittees must be employed by the permitted business owner and must sign a form provided by the Department that indicates that the subpermittee has read and understands the training manual. Subpermittees are not required to pass a test. The permittee is responsible for any violations by a subpermittee of these rules. Subpermittees are subject to all requirements of these rules applicable to permittees. Permittee may add or remove a subpermittee at any time and at his or her discretion but must inform the Department of such changes in writing within 21 days.

(3) Permits are free of charge and are issued for the calendar year.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0020

### Wildlife Control Operator Permit Required to be in Possession

(1) Individuals or employees of businesses holding a Wildlife Control Operator Permit must have the permit in possession while conducting wildlife control activities and make the permit available for inspection upon request by any Department employee or any person authorized to enforce wildlife laws.

(2) Individuals or businesses holding a permit must obtain and have in possession any other federal, state, or local permits that may be required.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0025

### Ownership and Holding of Wildlife Held Under Wildlife Control Operator Permits

(1) All wildlife captured, held, transported or relocated under a Wildlife Control Operator Permit remains the property of the State of Oregon and cannot be sold, traded, bartered, or exchanged except as allowed by OAR chapter 635 division 200. Wildlife captured, held, transported or relocated under a permit cannot be intentionally displayed for public exhibit.

(2) Traps must be checked within the time periods specified in OAR chapter 635 division 50.

(3) Within 24 hours after coming into possession of wildlife as part of wildlife control activity, the permittee must release, relocate, or euthanize the wildlife, or transport it to a person holding a Wildlife Rehabilitation Holding Permit who is willing to accept such wildlife. Lactating female wildlife or dependent infant(s) may be kept in possession up to 72 hours if necessary to keep the captured dependent infants or take other action to keep the family unit intact. Lactating female wildlife or dependent infant(s) may only be held longer than 72 hours if directed by the Department.

(4) If the permittee captures lactating female wildlife, the permittee must make reasonable efforts to verify the presence or absence of infants and to capture dependent infants.

(5) Once wildlife has been in possession 4 hours, the permittee must provide clean drinking water and replenish it at reasonable intervals.

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

Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162

Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0030

### Humane Euthanasia and Discarding of Wildlife Carcasses

(1) If any wildlife shows obvious symptoms of disease, the permittee must humanely euthanize or dispose of the wildlife as directed by the Department.

# ADMINISTRATIVE RULES

(2) A permittee may euthanize wildlife without the assistance of a veterinarian. A permittee's methods of euthanizing live-captured or free-ranging wildlife must be consistent with the "2000 Report of the AVMA Panel on Euthanasia" published in the Journal of the American Veterinary Medical Association, volume 218, number 5.

(3) No permit is needed to euthanize wildlife in accordance with ORS 498.016.

(4) When discarding wildlife carcasses, a permittee must follow Department directions. Disposal of wildlife parts must be done in a manner consistent with OAR chapter 635 division 200.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0035

### Relocation of Nuisance Wildlife

(1) A permittee must release prohibited species on site or humanely euthanize them. Prohibited species cannot be relocated off site except to humanely euthanize them. Prohibited species cannot be relocated to other sites.

(2) A permittee may either release raccoons on site or humanely euthanize them. Raccoons must not be relocated off site except to humanely euthanize them. Raccoons cannot be relocated to other sites except as authorized by the Department.

(3) Predatory animals, furbearers except raccoons and nongame wildlife nonprotected may be released on site, humanely euthanized or (as directed by the Department) relocated into suitable habitat.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0040

### Transportation of Wildlife

(1) Permittees are authorized to transport permitted live wildlife for:

(a) Relocation into suitable habitat as specified by these rules and the permit; or

(b) Transport to a person holding a Rehabilitation Holding permit; or  
(c) Euthanization of the animal.

(2) Permittees are authorized to transport permitted wildlife carcasses for disposal of the carcass as directed by the Department or for use of wildlife parts in compliance with OAR chapter 635 division 200.

(3) Permittees must provide all live wildlife with humane care during transport. When transporting live wildlife in a vehicle:

(a) The vehicles must be equipped to provide fresh air without injurious exhaust fumes, and with adequate protection from extreme weather that could cause morbidity or mortality.

(b) Wildlife must be protected from extremes in temperature that could cause morbidity or mortality.

(c) The cage or enclosure must be of sufficient strength to hold wildlife securely during transportation and to prevent escape.

(d) The interior of the cage must be free of defects including sharp points, objects or edges resulting from alterations, breakage or age of the trap and that could injure wildlife placed inside.

(e) With the exception of skunks, the cage must be of a size that assures the safety of the wildlife control operator and be large enough to ensure that each specimen has sufficient space to turn, stand, and lie naturally.

(f) More than one specimen must not be transported in the same cage or enclosure unless they are of the same species and were captured together in the same trap or capture device.

(g) A visual barrier must be placed between aggressive individuals.

(h) Wildlife must be of sufficient distance apart or shall have a divider placed between them to prevent any physical contact between specimens.

(i) Wildlife must not be placed in a cage or enclosure over other wildlife unless each cage is fitted with a floor or barrier which prevents excretions or body parts from entering lower cages or enclosures.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0045

### Equipment Subject to Inspection

In response to a complaint or reasonable suspicion that these rules have been violated, any State Police officer or Department of Fish and Wildlife representative may inspect a permittee's traps, cages, enclosures, or other equipment in use for capturing, holding, transporting or relocating wildlife; or any wildlife held in such equipment or otherwise in possession;

or wildlife control records. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of a permit holder's residence.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0050

### Trap Molestation Prohibited

(1) Any trap or capture device used by a permittee must be legibly marked or branded with either the owner's business name and phone number, or the owner's furtaker license (brand) number that has been assigned by the Department.

(2) It is *unlawful* to molest any trap or capture device set by a permittee for the purposes of controlling damage, alleviating nuisance problems, or resolving public health risk concerns caused by wildlife or to remove wildlife from such a trap or capture device without written authorization of the owner.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0055

### Record Keeping and Reporting Requirements

(1) A permittee and his or her subpermittees must have a landowner or occupier sign an affidavit of damage designating the permittee as his or her agent to address damage caused by any furbearer. An affidavit of damage is not required for species taken under authority of the predatory animal statute (ORS 610.105).

(2) A permittee and his or her subpermittees must keep records on a calendar-month report form provided by the Department for all furbearers captured on permit and for all live wildlife that is transported off-site. Reporting is required for non-target wildlife captured if such wildlife is relocated, euthanized or injured. Reporting is not required for predatory animals or nongame wildlife nonprotected that are captured then either released on-site or euthanized on-site.

(3) A permittee must submit the monthly report form to the Department by the 15th day of the following month. A permittee must submit a report even if no wildlife control activity occurred during the month.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

## 635-435-0060

### Cancellation or Non-Renewal of Permit

(1) Failure to comply with the record keeping, reporting, or other requirements of the Wildlife Control Operator Permit are grounds for cancellation or denial of renewal of the permit.

(2) A permittee may appeal cancellation or non-renewal of a permit through a contested case hearing. The request for a contested case hearing on a proposed cancellation must be received by the Department within 21 days after service of notice (90 days for emergency cancellations). The request for hearing on a proposed non-renewal must be received by the Department within 60 days of notice. Final Orders in contested case hearings shall be issued by the Director.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162  
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06

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**Rule Caption:** Adopted amendments to the Ken Denman, Elkhorn and Phillip W. Schneider Wildlife Area management plans.

**Adm. Order No.:** DFW 118-2006

**Filed with Sec. of State:** 10-16-2006

**Certified to be Effective:** 10-16-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 635-008-0080, 635-008-0085, 635-008-0153

**Subject:** Adopted amendments to Oregon Administrative Rules for the Ken Denman, Elkhorn, and Phillip W. Schneider Wildlife Area Long Range Management Plans, amendments will guide management activities for the next 10 years.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-008-0080

### Ken Denman Wildlife Area

The Ken Denman Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2006 Ken Denman Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

# ADMINISTRATIVE RULES

(1) Discharging firearms is prohibited except as authorized during game bird and game mammal seasons, or by permit.

(2) Running or training of dogs is prohibited April 1 through July 31 except on designated Dog Training Areas.

(3) Camping is prohibited.

(4) Boats with gas propelled motors are prohibited.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(4); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 118-2006, f. & cert. ef. 10-16-06

## 635-008-0085

### Elkhorn Wildlife Area

The Elkhorn Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the **2006 Elkhorn Wildlife Area Management Plan** unless otherwise excluded or restricted by the following rules:

(1) The area is closed to entry during the period December 1 through April 15, except by permit.

(2) Camping is prohibited except during the period April 15 through November 30, and may not exceed 14 days per stay.

(3) Campfires or open burning is prohibited except at campsites. Open fires are prohibited during designated fire closures.

(4) Dogs are prohibited from running at large.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(5); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 118-2006, f. & cert. ef. 10-16-06

## 635-008-0153

### Phillip W. Schneider Wildlife Area

The Phillip W. Schneider Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the **2006 Phillip W. Schneider Wildlife Area Management Plan** unless otherwise excluded or restricted by the following rules:

(1) Motor vehicles are prohibited except on parking areas, open roads, and up to 300 feet off open roads for the purpose of moving to and from campsites.

(2) Camping along the South Fork John Day road is open yearlong. On the remainder of the wildlife area camping is prohibited except during the period May 1 through November 30. Camping may not exceed 14 days per stay.

(3) Campfires or open burning is prohibited except at campsites. Open fires are prohibited during designated fire closures.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(12); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 30-2000, f. & cert., ef. 6-14-00, Renumbered from 635-008-0125; DFW 118-2006, f. & cert. ef. 10-16-06

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**Rule Caption:** In-season modification to the sturgeon retention limit in all Select Area commercial salmon fisheries.

**Adm. Order No.:** DFW 119-2006(Temp)

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 10-18-06 thru 12-31-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

**Subject:** Amend rules to prohibit sturgeon sales/retention for the remainder of the year during open fishing periods in the Columbia River mainstem and Select Area fisheries, effective 11:59 p.m. Wednesday October 18, 2006. This revision is consistent with action taken October 18, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are as follows:

(A) 6:00 a.m. Wednesday August 2, 2006 to 6:00 p.m. Thursday August 3, 2006 (36 hours);

(B) 6:00 a.m. Wednesday August 9, 2006 to 6:00 p.m. Thursday August 10, 2006 (36 hours);

(C) 6:00 a.m. Wednesday August 16, 2006 to 12:00 noon Thursday August 17, 2006 (30 hours);

(D) 6:00 a.m. Wednesday August 23, 2006 to 12:00 noon Thursday August 24, 2006 (30 hours);

(E) 6:00 a.m. Tuesday August 29, 2006 to 6:00 a.m. Friday September 1, 2006 (3 days); and

(F) 7:00 p.m. Tuesday September 5, 2006 to noon Tuesday October 31, 2006 (55 days, 17 hours);

(b) The fishing areas for the fall fishery are identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at Battle Creek Slough; except for those waters southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Use of additional weights or anchors attached directly to the headline is prohibited in Youngs Bay during fall seasons. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. Monofilament gillnets are allowed.

(a) It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the fall season from August 2 through August 24, 2006; and it is unlawful to use a gill net having a mesh size greater than 6-inches after August 24, 2006.

(3) During the open fishing periods identified in (1)(a) above, sturgeon sales and or retention is prohibited, effective 11:59 p.m. Wednesday October 18, 2006 in the mainstem Columbia River and Select Area fisheries. Retention of green sturgeon is prohibited.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. & cert. ef. 8-20-89; FWC 82-1990(Temp), f. & cert. ef. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. & cert. ef. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. & cert. ef. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. & cert. ef. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. & cert. ef. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. & cert. ef. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. & cert. ef. 8-22-94; FWC 64-1994(Temp), f. & cert. ef. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. & cert. ef. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. & cert. ef. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. & cert. ef. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. & cert. ef. 3-1-96; FWC 37-1996(Temp), f. & cert. ef. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. & cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. & cert. ef. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. & cert. ef. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. & cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. & cert. ef. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. & cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. & cert. ef. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. & cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. & cert. ef. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. & cert. ef. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & 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; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. & cert. ef. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. & cert. ef. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. & cert. ef. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06

# ADMINISTRATIVE RULES

## 635-042-0160

### Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon may be taken for commercial purposes during open fishing periods described as the fall fishery in paragraphs (2)(a), (3)(a) and (3)(b) of this rule in those waters of Blind Slough and Knappa Slough as described in (3) and (4) below.

(2) The open fishing periods established as the fall fishery in Blind Slough only are as follows:

(a) From 7:00 p.m. until 7:00 a.m. nightly (12 hours) commencing: 7:00 p.m. Tuesday Sept. 5, 2006 through 7:00 a.m. Friday Sept. 8, 2006 (3 nights) and 7:00 p.m. Tuesday Sept. 12, 2006 through 7:00 a.m. Friday Sept. 15, 2006 (3 nights)

(3) The open fishing periods established as the fall fishery in Blind Slough and Knappa Slough are as follows:

(a) From 7:00 p.m. until 7:00 a.m. nightly (12 hours) commencing: 7:00 p.m. Monday Sept. 18, 2006 through 7:00 a.m. Friday Sept. 22, 2006 (4 nights); and

(b) From 6:00 p.m. until 8:00 a.m. nightly (14 hours) commencing: 6:00 p.m. Monday Sept. 25, 2006 through 8:00 a.m. Friday Sept. 29, 2006 (4 nights); 6:00 p.m. Monday Oct. 2, 2006 through 8:00 a.m. Friday Oct. 6, 2006 (4 nights); 6:00 p.m. Monday Oct. 9, 2006 through 8:00 a.m. Friday Oct. 13, 2006 (4 nights); 6:00 p.m. Monday Oct. 16, 2006 through 8:00 a.m. Friday Oct. 20, 2006 (4 nights); and 6:00 p.m. Monday Oct. 23, 2006 through 8:00 a.m. Friday Oct. 27, 2006 (4 nights).

(4) Blind Slough fishing area is defined as those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(5) Knappa Slough fishing area is defined as all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to the boundary line defined by markers on the western end of Minaker Island to markers on Karlson Island and the Oregon shore.

(6) Gear restrictions are as follows: During the fall fishery, outlined in paragraphs (2)(a) and (2)(b) above, gill nets may not exceed 100 fathoms in length with no weight restriction on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is greater than 6 inches;

(7) During the fishing periods identified in (3)(b) above, sturgeon sales and or retention is prohibited, effective 11:59 p.m. Wednesday October 18, 2006 in the mainstem Columbia River fishery and all open Select Area fisheries. Retention of green sturgeon is prohibited.

(8) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & 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; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06

## 635-042-0170

### Tongue Point Basin and South Channel Select Area Salmon Season

(1) Tongue Point basin fishing area includes all waters bounded by a line from a yellow marker midway between the red US Coast Guard navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) to the flashing green US Coast Guard navigation light #3 at the rock jetty on the northwesterly tip of Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the north-west tip of Lois Island and a line from a marker on the southwest end of Lois Island due westerly to a marker on the Oregon shore.

(2) South Channel basin includes all waters bounded by a line from a marker on John Day Point through the green US Coast Guard navigation buoy #7 thence to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red US Coast Guard navigation marker #10 thence northwesterly to a marker on Burnside Island defining the terminus of South Channel.

(3) Salmon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(a) From 7:00 p.m. until 7:00 a.m. nightly (12 hours) commencing: 7:00 p.m. Tuesday Sept. 5, 2006 through 7:00 a.m. Friday Sept. 8, 2006 (3 nights); 7:00 p.m. Tuesday Sept. 12, 2006 through 7:00 a.m. Friday Sept. 15, 2006 (3 nights); 7:00 p.m. Monday Sept. 18, 2006 through 7:00 a.m. Friday Sept. 22, 2006 (4 nights); and

(b) From 4:00 p.m. until 8:00 a.m. nightly (16 hours) commencing: 4:00 p.m. Monday Sept. 25, 2006 through 8:00 a.m. Friday Sept. 29, 2006 (4 nights); 4:00 p.m. Monday Oct. 2, 2006 through 8:00 a.m. Friday Oct. 6, 2006 (4 nights); 4:00 p.m. Monday Oct. 9, 2006 through 8:00 a.m. Friday Oct. 13, 2006 (4 nights); 4:00 p.m. Monday Oct. 16, 2006 through 8:00 a.m. Friday Oct. 20, 2006 (4 nights); and 4:00 p.m. Monday Oct. 23, 2006 through 8:00 a.m. Friday Oct. 27, 2006 (4 nights).

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is more than 6-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored onboard boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 6-inches. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored onboard boats.

(5) During the fishing periods identified in (3)(b) above, sturgeon sales and or retention is prohibited, effective 11:59 p.m. Wednesday October 18, 2006 in the mainstem Columbia River fishery and all open Select Area fisheries. Retention of green sturgeon is prohibited.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & 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; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon may be taken for commercial purposes during open fishing periods described as the fall fishery in paragraphs (2)(a) and (2)(b) of this rule in those waters of Deep River described as: downstream of the town of Deep River to the mouth defined by a line from the US Coast Guard navigation marker #16 southwest to a marker on the Washington

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shore. Concurrent waters extend downstream of the Highway 4 bridge. Washington State waters extend upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) From 7:00 p.m. until 7:00 a.m. nightly (12 hours) commencing: 7:00 p.m. Monday Sept. 4, 2006 through 7:00 a.m. Friday Sept. 8, 2006 (4 nights); 7:00 p.m. Monday Sept. 11, 2006 through 7:00 a.m. Friday Sept. 15, 2006 (4 nights); 7:00 p.m. Monday Sept. 18, 2006 through 7:00 a.m. Friday Sept. 22, 2006 (4 nights); and

(b) From 4:00 p.m. until 8:00 a.m. nightly (16 hours) commencing: 4:00 p.m. Monday Sept. 25, 2006 through 8:00 a.m. Friday Sept. 29, 2006 (4 nights); 4:00 p.m. Monday Oct. 2, 2006 through 8:00 a.m. Friday Oct. 6, 2006 (4 nights); 4:00 p.m. Monday Oct. 9, 2006 through 8:00 a.m. Friday Oct. 13, 2006 (4 nights); 4:00 p.m. Monday Oct. 16, 2006 through 8:00 a.m. Friday Oct. 20, 2006 (4 nights); and 4:00 p.m. Monday Oct. 23, 2006 through 8:00 a.m. Friday Oct. 27, 2006 (4 nights).

(3) Gear restrictions are as follows: During the fall fishery, outlined in paragraphs (2)(a) and (2)(b) above, gill nets may not exceed 100 fathoms in length and there is no weight restriction on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. Nets may not be tied off to stationary structures and may not fully cross navigation channel. It is unlawful to use a gill net having a mesh size that is greater than 6-inches.

(4) During the fishing periods identified in (2)(b) above, sturgeon sales and or retention is prohibited, effective 11:59 p.m. Wednesday October 18, 2006 in the mainstem Columbia River fishery and all other open Select Area fisheries. Retention of green sturgeon is prohibited.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06

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**Rule Caption:** Expansion of the Columbia River Late Fall salmon season and to prohibit sturgeon retention.

**Adm. Order No.:** DFW 120-2006(Temp)

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 10-18-06 thru 12-31-06

**Notice Publication Date:**

**Rules Amended:** 635-042-0060

**Subject:** Amend rule to add two additional fishing periods to the Late Fall commercial gillnet salmon season in the Columbia River Mainstem, effective 7:00 p.m. Thursday October 19, 2006 through 7:00 a.m. Friday October 20, 2006 (12 hours) and 7:00 p.m. Tuesday October 24, 2006 through 7:00 a.m. Wednesday October 25, 2006 (12 Hours). Effective 11:59 p.m. Wednesday October 18, 2006, sturgeon sales and or retention will be prohibited. Adoption of these rules is consistent with action taken October 18, 2006 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-042-0060**

**Late Fall Salmon Season**

(1) Salmon 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);

(b) 7:00 p.m. Thursday October 19, 2006 through 7:00 a.m. Friday October 20, 2006 (12 hours);

(c) 7:00 p.m. Tuesday October 24, 2006 through 7:00 a.m. Wednesday October 25, 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)(b) and (2)(c) above gear is restricted to gill nets with an 8-inch minimum and 9 3/4-inch maximum 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) Retention of green sturgeon is prohibited. Sturgeon sales and or retention is prohibited, effective 11:59 p.m. Wednesday October 18, 2006 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

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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), 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; DFW 120-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06

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**Rule Caption:** Implementation of coho salmon fishery in select areas above Willamette River Falls.

**Adm. Order No.:** DFW 121-2006(Temp)

**Filed with Sec. of State:** 10-20-2006

**Certified to be Effective:** 10-20-06 thru 12-31-06

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** Amend rules to allow the harvest of unmarked coho salmon in select areas of the Willamette Zone above the Willamette River Falls, effective Friday, October 20, 2006.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-017-0090

### Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130 (1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during each lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Coho Salmon Harvest:

(a) Gales Creek (Tualatin River tributary, Washington Co.) from mouth upstream to NW Clapshaw Hill Road in Gales Creek:

(A) Open fishing period is October 20, 2006 through October 31, 2006;

(B) Gear restricted to artificial flies and lures.

(b) Molalla River upstream to Horse Creek Bridge (Clackamas Co.):

(A) Open fishing period is October 20, 2006 through December 31, 2006.

(c) Santiam River (Marion Co.) Mainstem:

(A) Open fishing period is November 1, 2006 through December 31, 2006.

(d) Santiam River (Marion Co.) North Fork up to Big Cliff Dam:

(A) Open fishing period is November 1, 2006 through December 31, 2006.

(e) Santiam River (Marion Co.) South Fork to Foster Dam:

(A) Open fishing period is November 1, 2006 through December 31, 2006.

(f) Tualatin River (Clackamas/Washington Co.) from mouth upstream to Hwy 210 Bridge at Scholls:

(A) Open fishing period is October 20, 2006 through October 31, 2006;

(B) Use of bait allowed during period described in (f)(A) above.

(g) Tualatin River (Clackamas/Washington Co.) from Hwy 210 Bridge at Scholls upstream to Hwy 47 Bridge at Gaston:

(A) Open fishing period is October 20, 2006 through October 31, 2006;

(B) Gear restricted to artificial flies and lures.

(h) Willamette River above Willamette Falls:

(A) Open fishing period is October 20, 2006 through December 31, 2006;

(B) Use of bait allowed during period described in (h)(A) above.

(i) Yamhill River (Yamhill Co.) from mouth upstream to confluence of North and South forks of Yamhill Rivers:

(A) Open fishing period is October 20, 2006 through October 31, 2006;

(B) Use of bait allowed during period described in (i)(A) above.

(j) South Yamhill River (Yamhill Co.) from confluence with North Yamhill upstream to Steel Bridge Road in Willamina:

(A) Open fishing period is October 20, 2006 through October 31, 2006;

(B) Gear restricted to artificial flies and lures.

[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 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW

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46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06

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## Department of Forestry Chapter 629

**Rule Caption:** Clarification of forest practice rule stream protection policy.

**Adm. Order No.:** DOF 8-2006

**Filed with Sec. of State:** 10-31-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 629-635-0100, 629-635-0110

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

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

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

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

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

**Rules Coordinator:** Gayle Birch—(503) 945-7210

### 629-635-0100

#### Purpose and Goals

(1) The leading use on private forestland is the growing and harvesting of trees, consistent with sound management of soil, air, water, fish and wildlife resources. There is a unique concentration of public resource values in and near waters of the state because these areas are critical for the overall maintenance of fish and wildlife and for maintaining water quality. Consequently, the policies of the Forest Practices Act, including encouraging economically efficient forest practices, are best achieved by focusing protection measures in riparian management areas, where the emphasis is on providing water quality and fish and wildlife habitat.

(2) OAR 629-635-0000 through 629-660-0060 are known as the "water protection rules."

(3) The purpose of the water protection rules is to protect, maintain and, where appropriate, improve the functions and values of streams, lakes, wetlands, and riparian management areas. Active management is encouraged where appropriate to meet this purpose. These functions and values include water quality, hydrologic functions, the growing and harvesting of trees, and fish and wildlife resources.

(4) Plans for alternate practices may be used to alter vegetation retention requirements in the water protection rules based on local site conditions. The plans may include but are not limited to site specific vegetation retention prescriptions as described in OAR 629-640-0400 (for streams) and 629-645-0020 (for wetlands). Operators are encouraged to:

(a) Evaluate site specific conditions in waters and riparian management areas; and

(b) Develop plans for alternate practices that will:

(A) Maintain, enhance, or restore riparian functions in streams, wetlands, lakes; or

(B) Meet the purposes and goals of the water protection rules while better meeting operational or other objectives.

(5) General vegetation retention prescriptions for streams, lakes and wetlands apply where current vegetation conditions within the riparian management area have achieved or are likely to achieve the desired future condition in a "timely manner." Landowners are encouraged to manage stands within riparian management areas in order to grow trees in excess of what must be retained so that the opportunity is available to harvest the excess.

(6) Alternative vegetation retention prescriptions for streams allow incentives for operators to actively manage vegetation where existing vegetation conditions are not likely to achieve the desired future condition in a "timely manner."

(7) The overall goal of the water protection rules is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met.

(a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large wood, and nutrients.

(c) The protection goal for wildlife is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and habitat components such as live trees of various species and size classes, shade, snags, downed wood, and food within riparian management areas. For wildlife species not necessarily reliant upon riparian areas, habitat in riparian management areas is also emphasized in order to capitalize on the multiple benefits of vegetation retained along waters for a variety of purposes.

Stat. Auth.: ORS 527.710, Other 527.630(3), 527.714, 526.016(4)

Stats. Implemented: 527.714, 527.715, 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2000; DOF 8-2006, f. & cert. ef. 10-31-06

### 629-635-0110

#### Monitoring

(1) Monitoring and evaluation of the water protection rules are necessary because of the innovative approach taken in the rules. Monitoring and evaluation are needed to increase the level of confidence of all concerned that the rules will maintain and improve the condition of the riparian vegetation and waters of the state over time.

(2) In cooperation with state and federal agencies, landowners and other interested parties, the department shall conduct monitoring on a continuing basis to evaluate the effectiveness of the water protection rules. The monitoring shall determine the effectiveness of the rules to meet the goals of the Forest Practices Act and the purposes stated in the rules, as well as their workability and operability.

(3) It is the Board of Forestry's intent that the department and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The department shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(4) The department shall report to the Board of Forestry annually about current monitoring efforts and, in a timely manner, present findings and recommendations for changes to practices. The Board of Forestry shall consider the findings and recommendations and take appropriate action.

Stat. Auth.: ORS 527.710, Other 527.630(3), 527.714, 526.016(4)

Stats. Implemented: 527.714, 527.715, 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2010; DOF 8-2006, f. & cert. ef. 10-31-06

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**Rule Caption:** Classify streams above artificial barriers as having fish use; revise stream survey procedures.

**Adm. Order No.:** DOF 9-2006

**Filed with Sec. of State:** 10-31-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 3-1-06

**Rules Amended:** 629-635-0200

**Subject:** The amendment to OAR 629-635-0200 has two major components. First, the amended rule states that the fish use designation

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

**Rules Coordinator:** Gayle Birch—(503) 945-7210

## 629-635-0200

### Water Classification

(1) The purpose of this water classification system is to match the physical characteristics and beneficial uses of a water body to a set of appropriate protection measures.

(2) For the purposes of applying appropriate protection measures, waters of the state shall be classified as either streams, wetlands, or lakes.

(3) Streams shall be classified further according to their beneficial uses and size.

(4) Streams shall be classified into one of the following three beneficial use categories:

(a) Streams that have fish use, including fish use streams that have domestic water use, shall be classified as Type F.

(b) Streams that have domestic water use, but not fish use, shall be classified as Type D.

(c) All other streams shall be classified as Type N.

(5) For purposes of classification, a stream is considered to have domestic water use only if a water use permit has been issued by the Oregon Water Resources Department.

(6) A channel is considered to have domestic water use upstream of an intake for the distances indicated below:

(a) For domestic water use that is a community water system (as defined under OAR 333-061-0020), Type D classification shall initially apply to the length of stream that was designated as Class I under the classification system that was in effect on April 22, 1994, which is that shown on district water classification maps at the time of adoption of this rule.

(b) For domestic water use that is not a community water system, Type D classification shall be initially applied for the shortest of the following distances:

(A) The distance upstream of the intake to the farthest upstream point of summer surface flow;

(B) Half the distance from the intake to the drainage boundary; or

(C) 3000 feet upstream of the intake.

(c) Type D classification shall apply to tributaries off the main channel as long as the conditions of subsections (6)(a) and (b) of this rule apply.

(7)(a) A representative of a community water system or other domestic water permit holder may request that the department designate additional lengths of channels upstream of a domestic water intake or reservoir as Type D. The representative or permit holder must present evidence that the additional stream protection is needed. The department will decide whether or not to extend Type D classification to these other channels based on evidence presented by the requesting party showing that protection measures associated with Type N classification would be insufficient to prevent adverse detrimental temperature increases, turbidity increases, or other adverse water quality changes at the domestic water use intake or reservoir.

(b) The process and criteria described in subsection (7)(a), and the criteria under section (6) of this rule will be used to evaluate the extent of Type D classification for new community water systems.

(c) The department will decide whether or not to extend the length of Type D classification within 30 days of the presentation of evidence.

(8) The domestic water use classification may be waived by the department at the request of a landowner who is the sole domestic water use permit holder for an intake and who owns all the land along upstream channels that would be affected by the classification related to that intake. This waiver shall not affect the classification related to downstream domestic water use intakes.

(9) A stream or lake will be considered to have fish use if inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(10) The fish use classification does not apply to waters where fish were introduced through a fish stocking permit that includes documentation that the stream had no fish prior to stocking.

(11) Through September 30, 2007, the department will use section (12) of this rule to determine if a water body has fish use. On and after October 1, 2007, the department will use section (13) of this rule to determine if a water body has fish use, and section (12) will be inoperative.

(12) The department, with assistance from the Oregon Department of Fish and Wildlife, will conduct a comprehensive field survey to identify fish use on non-federal forestland in Oregon. However, this survey will take a number of years to complete. In the interim, the following procedures apply to determining which unsurveyed waters are designated Type F:

(a) The department will assume that waters have fish use if they were Class I under the previous classification system. Waters that were Class I solely because of domestic water use are excluded.

(b) If waters within the boundaries of a proposed operation were not Class I (under the previous classification system) and fish use is unknown, then:

(A) The department will conduct a field survey for fish after a notification of operation is received; or

(B) The department will approximate the upstream extent of fish use in a watershed by considering the connection of the water with downstream waters where fish use is known. Fish use will be assumed to occur upstream of the known fish use until the first natural barrier to fish use is encountered.

(c) Where fish use is unknown, an operator may request that the department conduct a field survey for fish use for reaches of a stream that will be included within an operation that is scheduled to start at least 12 months following the request. The operator shall limit such requests to operations that are part of a landowner's planned harvest schedule and will be conducted during the following year. The department, with assistance from the Oregon Department of Fish and Wildlife when needed, shall attempt to complete such surveys within 12 months following the request. If the survey cannot be conducted in the time indicated, the stream will be considered to have no fish use. However, if the operation has not commenced within six months of the time the operation was scheduled to begin, the stream will again be considered to have unknown fish use.

(d) The department may use other reliable fish survey information when determining whether or not a stream has fish use. This information could include surveys done by landowners, federal or state agencies, universities, or other persons or entities. The department will determine whether such information is reliable.

(13) For the purposes of stream classification, the department will use the procedures in this section to determine if a stream has fish use.

(a) For stream segments where field surveys for fish use show that fish use ends at a natural barrier to fish use or other point that is not an artificial obstruction, the department will designate fish use based on the survey.

(b) For stream segments where field surveys for fish use show that fish use ends at an artificial obstruction to fish passage, the department will designate fish use as continuing upstream from the artificial obstruction to the first natural barrier to fish use.

(c) For stream segments where field surveys for fish use have not been conducted, the department will designate fish use as continuing upstream from a point of known fish use and ending at the first natural barrier to fish use, without respect to any artificial obstructions to fish passage. An operator may request that the department conduct a fish presence survey to verify this designation of fish use in stream segments associated with an operation scheduled to start between 12 and 24 months after the request.

(A) The department will make a good faith effort to conduct the requested surveys and will prioritize its survey work taking into account landowners without the financial or technical resources to conduct the surveys themselves.

(B) As an option, the landowner may conduct the fish presence survey.

(C) If neither the landowner nor the department is able to conduct the survey before the operation begins, the Type F classification applies up to the first natural barrier to fish use.

(d) To be used for stream classification under this section, field surveys for fish use must be conducted according to the protocol in "Surveying Forest Streams for Fish Use," published by the Oregon Department of Forestry and the Oregon Department of Fish and Wildlife.

(e) The department may use other information to determine the upstream extent of fish use including but not limited to field surveys for fish use by landowners or other entities, and local knowledge of stream conditions, natural barriers to fish use, or fish presence.

(f) An operator may request an exception to Type F stream classification above an artificial obstruction to fish passage that is documented by

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field survey as the end of fish use. The department will grant the request upon determining that the artificial obstruction is likely to continue to prevent fish passage for a period of time exceeding that needed to regrow trees to a size that would provide key pieces of large wood.

(g) When an exception to Type F stream classification is made above an artificial obstruction, the department will classify the stream as either Type D or Type N as appropriate and operators must apply the corresponding vegetation retention requirements.

(h) For the purposes of ORS 215.730(1)(b)(C), Type N streams are equivalent to "Class II streams."

(14) For each of the three beneficial use categories (Type F, Type D, and Type N), streams shall be categorized further according to three size categories: large, medium, and small. The size categories are based on average annual flow.

(a) Small streams have an average annual flow of two cubic feet per second or less.

(b) Medium streams have an average annual flow greater than 2 and less than 10 cubic feet per second.

(c) Large streams have an average annual flow of 10 cubic feet per second or greater.

(15) The assignment of size categories to streams on forestland will be done by the department as follows:

(a) The department will index average annual flow to the upstream drainage area and average annual precipitation. The methodology is described in Technical Note FP1 dated April 21, 1994.

(b) Actual measurements of average annual flow may substitute for the calculated flows described in the technical note.

(c) Any stream with a drainage area less than 200 acres shall be assigned to the small stream category regardless of the flow index calculated in subsection (15)(a).

(16) Wetlands shall be classified further as indicated below:

(a) The following types of wetlands are classified as "significant wetlands":

(A) Wetlands that are larger than 8 acres;

(B) Estuaries;

(C) Bogs; and

(D) Important springs in eastern Oregon.

(b) Stream-associated wetlands that are less than 8 acres are classified according to the stream with which they are connected.

(c) All other wetlands, including seeps and springs are classified according to their size as either "other wetlands greater than one-quarter acre" or "other wetlands less than one-quarter acre."

(17) Lakes shall be classified further as indicated below:

(a) Lakes greater than 8 acres are classified as "large lakes."

(b) All other lakes are classified as "other lakes."

Stat. Auth.: ORS 527.710, Other 527.630(3), 527.714, 526.016(4)

Stats. Implemented: 527.714, 527.715, 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2100; DOF 9-2006, f. & cert. ef. 10-31-06

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**Rule Caption:** Leaving green trees and snags along small non-fish streams subject to rapidly moving landslides.

**Adm. Order No.:** DOF 10-2006

**Filed with Sec. of State:** 10-31-2006

**Certified to be Effective:** 10-1-07

**Notice Publication Date:** 3-1-06

**Rules Adopted:** 629-640-0210

**Subject:** The adoption of OAR 629-640-0210 will require landowners and operators to retain green trees and snags along steep, small, nonfish streams that are likely to move wood downstream into fish-use streams through landslides. The rule requires a specific allocation of green trees and snags already required by ORS 527.676 to be retained in harvest type 2 or type 3 units larger than 25 acres, but does not require retention of a greater number of trees. The rule takes effect on October 1, 2007.

**Rules Coordinator:** Gayle Birch—(503) 945-7210

## 629-640-0210

**Leaving Green Trees and Snags along Small Type N Streams subject to Rapidly Moving Landslides**

(1) The purpose of this rule is to provide a source of large wood that can be moved by rapidly moving landslides into Type F streams.

(2) When directed by the State Forester, operators must retain green trees and snags required for harvest type 2 or type 3 units under ORS

527.676 adjacent to small Type N streams subject to rapidly moving landslides likely to deliver wood to Type F streams.

(a) The green trees and snags must be retained within an area that is 50 feet on each side of the small Type N stream and 500 feet upstream from a riparian management area of a Type F stream.

(b) Requirements under OAR 629-623-0300 supersede the requirements of this rule.

(3) Operators are required to retain all green trees and snags in the area described in subsection (2)(a) of this rule up to the number determined by the equation  $H - T$  where:

(a) H is the total number of green trees and snags required to be retained in the harvest type 2 or type 3 unit; and

(b) T is the number of trees retained in riparian management areas in the harvest unit that may be counted as harvest unit leave trees under OAR 629-640-0100(11) and 629-640-0200(12).

(4) An operator may propose a plan for an alternate practice to meet the purpose of this rule. Alternate practices may include but are not limited to placing wood directly in the Type F stream.

(5) This rule takes effect on October 1, 2007.

Stat. Auth.: ORS 527.710 Other Auth. 527.630(3), 527.714, 526.016(4)

Stats. Implemented: ORS 527.676(3)(d), 527.715, 527.765

Hist.: DOF 10-2006, f. 10-31-06, cert. ef. 10-1-07

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

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

**Adm. Order No.:** CWP 21-2006

**Filed with Sec. of State:** 11-1-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 7-1-06

**Rules Amended:** 413-200-0210, 413-200-0220

**Rules Repealed:** 413-200-0210(T), 413-200-0220(T)

**Subject:** OAR 413-200-0210 and 413-200-0220 about Family Group Home Standards are being amended to incorporate language that is currently part of DHS Child Welfare Policy I-E.4.2.1, "Family Foster Group Homes" which will be repealed. OAR 413-200-0210 is being amended to update its terminology and to indicate the importance of safety concerns as a purpose for the rule. OAR 413-200-0220 is being amended to define its terms and to state a complete list of requirements for family group home providers, including cross-references to other rules and policies.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-200-0210

**Family Group Home — Statement of Purpose**

(1) The family group home program was developed to meet the needs of children and young adults in Child Welfare custody who, because of emotional or behavioral characteristics, require a group living situation more structured than a foster home, but less structured than a group residential program. The purpose of family group home placement is to:

(a) Provide safety for the child or young adult in the least restrictive environment appropriate to meet the needs of the child or young adult;

(b) Improve the functioning of the child or young adult at home and in the community;

(c) Improve the relationship of the child or young adult with supportive adults; and

(d) Improve the ability of the child or young adult to successfully solve the problems of daily living.

(2) OAR 413-200-0210 and 413-200-0220 must be used in conjunction with Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06

## 413-200-0220

**Family Group Home Requirements**

(1) The following definitions apply to OAR 413-200-0210 and 413-200-0220:

(a) "Caseworker" means a Child Welfare employee assigned primary responsibility for a child or young adult served by Child Welfare.

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(b) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing foster or relative care to children in the legal or voluntary custody of Child Welfare, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification standards.

(c) "Child" means a person under 18 years of age.

(d) "Department" means the Department of Human Services.

(e) "Family group home provider" means the persons listed on the contract to provide Family Group Home services.

(f) "Individual service plan" means a goal-oriented, time limited written document which identifies the strengths and needs of the child or young adult, prioritizes desired behavior changes, and identifies appropriate services and supports to achieve the identified behavior changes.

(g) "Liaison" means a Child Welfare employee, assigned by the local branch office, with primary responsibility for supporting referral, intake, and placement of children and young adults in the family group home.

(h) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of Child Welfare and lives in substitute care or lives independently, through the Child Welfare Independent Living Subsidy Program.

(2) A family group home provider must:

(a) Meet all the safety standards defined in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396;

(b) Receive a "Certificate of Approval to Operate a Family Foster Home"; and

(c) Have the capacity to provide a safe and caring environment for a child or young adult whose emotional and behavioral characteristics are appropriate for family group home care.

(3) The family group home provider may contract for a minimum of four and a maximum of eight children and young adults. The total number of children and young adults living in the home, including the provider's children, may not exceed eight.

(4) The family group home provider may not provide emergency or shelter care for children or young adults.

(5) The family group home provider and the family group home liaison must jointly establish intake procedures for children and young adults being placed in the home. The intake procedure must include:

(a) Consultation between the caseworker, the family group home liaison, and the family group home provider to discuss the child or young adult being referred, and

(b) A pre-placement visit in the family group home by the child or young adult being referred.

(6) Individual service plans:

(a) Within 30 days of placement, an individual service plan must be developed for each child or young adult. The child, the foster family home liaison, the caseworker, and the family group home provider must be included in the development of the individual service plan. Other service providers may also be included.

(b) Individual service plans must be goal-oriented and time-limited. Each plan must consider the strengths and needs of the child or young adult, identify desired behavior changes, and estimate when the behavior changes will be achieved. The individual service plan must prioritize the behavior change goals, identify services and supports that will address each goal, and must include an after-care plan.

(c) For any child or young adult 16 years or older, the individual service plan must incorporate the Comprehensive Transition Plan (referred to as a youth's service plan in Child Welfare Policy I-B.2.3.5, "Independent Living Programs", OAR 413-030-0400 to 413-030-0455).

(7) The family group home provider must establish procedures for review of the individual service plan and after-care plan of the child or young adult. The after-care plan identifies the placement for the child or young adult after the child or young adult leaves the family group home.

(a) Each element of the individual service plan of the child or young adult is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker every three months after the development of the plan. The individual service plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(b) The after-care plan is reviewed by the child or young adult, the family group home provider, the family group home liaison, and the caseworker at the time of each individual service plan review, and the after-care plan is revised or modified as necessary based on the progress of the child or young adult in meeting the behavior change goals.

(8) Transitions.

(a) When a child or young adult has completed his or her individual service plan, the child or young adult is transitioned to the after-care resource in accordance with the individual service plan.

(b) If the child or young adult needs to be moved before the child or young adult has completed the individual service plan, the child or young adult, the family group home provider, the family group home liaison, and the caseworker of the child or young adult develop the transition plan for the move of the child or young adult. Whenever possible, the family group home provider provides 10 working days notice to the caseworker and the family group home liaison, requesting a child or young adult be moved from the home. Whenever possible, the caseworker provides 10 working days notice to the family group home provider and the family group home liaison when a child or young adult will be moved from the home.

(9) Staffing.

(a) A family group home must be staffed by the family group home provider.

(b) There must be a minimum of one adult to every five children and young adults who are present in the home.

(c) Any other adult providing care and supervision of a child or young adult in the home must meet the alternative caregiver requirements of Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

(10) The family group home provider must plan for a minimum of 48 hours per month away from child care responsibilities. The family group home provider must prepare a written plan for respite care with the family group home liaison.

(11) Each family group home provider must participate in 30 hours of professional training each year. The certifier and the family group home provider jointly agree upon a written training plan.

Stat. Auth.: ORS 418.005, 418.640

Stats. Implemented: ORS 418.005, 418.635

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 28-2000(Temp) f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 6-2001, f. & cert. ef. 3-23-01; CWP 9-2006(Temp), f. & cert. ef. 5-15-06 thru 11-9-06; CWP 21-2006, f. & cert. ef. 11-1-06

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

**Rule Caption:** OHP Mental Health Organizations modified enrollment procedure for children.

**Adm. Order No.:** OMAP 36-2006

**Filed with Sec. of State:** 10-26-2006

**Certified to be Effective:** 10-27-06

**Notice Publication Date:** 10-1-06

**Rules Adopted:** 410-141-0050

**Rules Repealed:** 410-141-0050(T)

**Subject:** The Oregon Health Plan (OHP-Division 141) Administrative rules govern the Office of Medical Assistance Programs' (OMAP) services provided to clients. On July 1, 2006, OMAP temporarily adopted 410-141-0050 to reflect necessary modifications to resume enrollment in OHP Mental Health Organizations for children who are eligible. Effective October 27, 2006, OMAP permanently adopted 410-141-0050, allowing the modified enrollment procedure to remain in effect until further notice. OMAP repealed the temporary rule 410-141-0050 (T), OMAP 30 – 2006.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0050

### MHO Enrollment for Children Receiving Child Welfare Services

Pursuant to and in the administration of the authority in OAR 410-141-0060, Children, Adults and Families (CAF) or Oregon Youth Authority (OYA) selects Prepaid Health Plans (PHPs) or a Primary Care Manager (PCM) for a child receiving CAF Child Welfare Services or OYA Services, with the exception of children in subsidized adoption and guardianship. This rule implements and further describes how the Department of Human Services (DHS or Department) will administer its authority under OAR 410-141-0060 for purposes of making Enrollment decisions and OAR 410-141-0080 for purposes of making Disenrollment decisions for children receiving CAF Child Welfare Services or OYA Services;

(1) The Department has determined that, to the maximum extent possible, all children receiving CAF services should be enrolled in Mental

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Health Organizations (MHOs) at the next available enrollment date following eligibility, redetermination, or upon review by the Department, unless Disenrollment from a MHO is authorized by the Department in accordance with this section and OAR 410-141-0080:

(a) Notwithstanding OAR 410-141-0060(4)(a) or 410-141-0080(2)(b)(E), children receiving CAF services are not exempt from mandatory Enrollment in an MHO on the basis of Third Party Resources (TPR) mental health services coverage;

(b) A decision to use Fee-For-Service (FFS) open card for a child receiving CAF services should be reviewed by the Department if the child's circumstances change and at the time of redetermination to consider whether the child should be enrolled in a MHO.

(2) When a child receiving CAF services is being transferred from one MHO to another, or for children transferring from FFS to a MHO, the MHO must facilitate coordination of care consistent with OAR 410-141-0160:

(a) MHOs are required to work closely with the Department to ensure continuous MHO Enrollment for children receiving CAF services;

(b) If the Department determines that Disenrollment should occur, the MHO will continue to be responsible for providing Covered Services until the Disenrollment date established by the Department, which shall provide for an adequate transition to the next responsible MHO.

(3) It is not unusual for a child receiving CAF services to experience a change of placement that may be permanent or temporary in nature. Consistent with OAR 410-141-0080(2)(b)(F), DHS will verify the address change information to determine whether a child receiving CAF services no longer resides in the MHO's Service Area:

(a) A temporary absence as a result of a temporary placement out of the MHO's Service Area does not represent a change of residence if DHS determines that the child is reasonably likely to return to a placement in the MHO's Service Area at the end of the temporary placement;

(b) Unless a corresponding change in MHO capitation rates is implemented, a child receiving CAF services placed in Behavioral Rehabilitation Services (BRS) settings will be enrolled in the MHO that serves the region in which the BRS setting is located, unless an out of area exception is requested by the MHO and agreed to by DHS for purposes related to continuity of care.

(4) If the child receiving CAF services is enrolled in a MHO on the same day the child is admitted to psychiatric residential treatment services (PRTS), the MHO shall be responsible for Covered Services during that placement even if the location of the facility is outside of the MHO's Service Area:

(a) The child receiving CAF services is presumed to continue to be enrolled in the MHO with which the child was most recently enrolled. An admission to a PRTS facility shall be deemed a temporary placement for purposes of MHO Enrollment. Any address change or DHS system identifier (e.g., C5 status) change associated with the placement in the PRTS facility does not constitute a change of residence for purposes of MHO Enrollment and shall not constitute a basis for Disenrollment from the MHO, notwithstanding OAR 410-141-0080(2)(b)(F). If DHS determines that a child was disenrolled for reasons not consistent with these rules, DHS shall re-enroll the child with the appropriate MHO and assign an Enrollment date that provides for continuous MHO coverage with the appropriate MHO. If the child had been enrolled in a different MHO in error, the Department will disenroll the child from that MHO and recoup the Capitation Payments;

(b) Immediately upon discharge from Long Term Psychiatric Care and prior to admission to a PRTS, a child receiving CAF services should be enrolled in an MHO. At least two weeks prior to discharge of a child receiving CAF services from Long Term Psychiatric Care (SAIP, SCIP or STS) facility to a PRTS facility, the long term care facility shall consult with the Department about which MHO will be assigned in order to provide for Enrollment in the MHO and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO that will be assigned in order to provide for continuity of care upon discharge from Long Term Psychiatric Care.

(5) Notwithstanding OAR 410-141-0060(6)(d) and (7) and 410-141-0080(2)(b)(H), if a child receiving CAF services is enrolled in a MHO after the first day of an admission to PRTS, the date of Enrollment shall be effective the next available Enrollment date following discharge from PRTS to the MHO assigned by the Department:

(a) For purposes of these rules and to assure continuity of care for the child upon discharge, the next available Enrollment date shall mean immediately upon discharge;

(b) At least two weeks prior to discharge, the PRTS facility shall consult with the Department about which MHO will be assigned and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO that will be assigned in order to provide for continuity of care upon discharge.

Stat. Auth.: ORS 409

Stats. Implemented: 414.065

Hist.: OMAP 30-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 10-27-06; OMAP 36-2006, f. 10-26-06, cert. ef. 10-27-06

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

**Rule Caption:** Amend the Psychiatric Security Review Board rules to allow the Division to directly approve providers.

**Adm. Order No.:** MHD 3-2006(Temp)

**Filed with Sec. of State:** 11-1-2006

**Certified to be Effective:** 11-1-06 thru 4-25-07

**Notice Publication Date:**

**Rules Amended:** 309-032-0450, 309-032-0455, 309-032-0460, 309-032-0465, 309-032-0470, 309-032-0475, 309-032-0480, 309-032-0485, 309-032-0490, 309-032-0495, 309-032-0500, 309-032-0505, 309-032-0510, 309-032-0515

**Subject:** The Department of Human Services, Addictions and Mental health Division, is temporarily amending OAR 309-032-0450 through 309-032-0515 "Psychiatric Security Review Board" (PSRB) rules to allow the Division to contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person, as allowed under ORS 161.390.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

### 309-032-0450

#### Purpose and Statutory Authority

(1) Purpose. These rules prescribe standards and procedures for community treatment and supervision of persons under the jurisdiction of the Psychiatric Security Review Board (PSRB).

(2) Statutory Authority. These rules are authorized by 409.050 to carry out the provisions of ORS 161.295 through 161.430, and 428.205 through 428.270 as these relate to community mental health services.

Stat. Auth.: ORS 161.295 - 430, 192.690, 428.210 & 430.041

Stats. Implemented:

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

### 309-032-0455

#### Definitions

As used in these rules:

(1) "Case Coordinator" means a person who is a qualified mental health professional, is identified by the PSRB in the Conditional Release Order and who is designated by the provider to deliver and/or arrange and monitor the provision of required reports and services in this rule.

(2) "Case Number" means the unique identification number assigned to each consumer by the provider. No more than one such number shall be assigned to the consumer, and that number shall be identical for both the consumer's rehabilitation record and CPMS enrollment. Once assigned, the case number must be retained for all subsequent admissions or periods of service for the consumer.

(3) "Community Mental Health Program" or "CMHP" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an omnibus contract with the Division.

(4) "Conditional Release" means placement by a court or the PSRB, of a person who has been found eligible under ORS 161.327(b) or 161.336, for supervision and treatment in a community setting.

(5) "Consumer" means a person who is under the jurisdiction of the PSRB and receiving services under these rules.

(6) "Consumer Identifying Information" means specific personal, biographical, and demographic information about the consumer.

(7) "CPMS" or "Client Process Monitoring System", means an automated consumer data system maintained by the Division. "CPMS" shall also mean any subsequent modification or change to this system.

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(8) "Data Base" means that collection of consumer information obtained through the mental health assessment process. It includes, but is not limited to: Identifying information, behavioral description, presenting problem(s), psychosocial and medical histories, developmental history, mental status, and current health information.

(9) "Diagnosis" means a DSM diagnosis determined through the mental health assessment and any examinations, tests, procedures, or consultations suggested by the assessment.

(10) "DSM" means the current edition of the "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(11) "Division" means the Addictions and Mental Health Division of the Department of Human Services.

(12) "Goal" means the broad aspirations or more final objectives toward which the consumer is striving, and toward which all services are intended to assist the consumer.

(13) "Health History" means a review of the consumer's current and past state of health as reported by the consumer, including:

(a) History of any significant illnesses, injuries, allergies, or drug sensitivities; and

(b) History of any significant medical treatments, including hospitalizations and major medical procedures.

(14) "Informed Consent" means the consumer or guardian understands a specific diagnosis and consents to service procedures and is informed of the risks or benefits, alternative services and procedures and the consequences of not receiving a specific service or procedure.

(15) "Licensed Medical Professional" means a medically trained person who is licensed to practice in the State of Oregon and has one of the following degrees: MD (Medical Doctor); DO (Doctor of Osteopathy); NP (Nurse Practitioner); PA (Physician's Assistant); or RN (Registered Nurse).

(16) "Local Mental Health Authority", as described in ORS 430.620, means the county court or board of county commissioners or one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation.

(17) "Medication Use Record" means information kept in the consumer's rehabilitation record which documents medications and/or agents prescribed or recommended by the provider's employed or contracted licensed medical professional who has prescriptive privileges, and includes medication progress notes as applicable.

(18) "Mental Health Assessment" means a process in which the consumer's need for mental health services is determined through evaluation of the consumer's strengths, goals, needs, and current level of functioning.

(19) "Mental Status Examination" means an overall assessment of a person's mental functioning that includes descriptions of appearance, behavior, speech, mood and affect, suicidal/homicidal ideation, thought processes and content, and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, abstraction abilities, judgment, and insight.

(20) "Objective" means an interim level of progress or a component step that is necessary or helpful in moving toward a goal.

(21) "Progress Note" means a written summary of how the consumer is progressing with respect to the consumer's rehabilitation plan.

(22) "Provider" means:

(a) An organizational entity which is operated by, or contractually affiliated with, a community mental health program, and is responsible for the direct delivery of mental health services to consumers; or

(b) A public agency or private corporation or an individual, as provided for in ORS 161.390. Notwithstanding the conditions of certification in OAR chapter 309, the Division may contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person.

(23) "Psychiatric Evaluation" means an assessment performed by a licensed medical professional with prescriptive privileges who is a qualified mental health professional.

(24) "Qualified Mental Health Associate" means a person who delivers services under the direct supervision of a qualified mental health professional, and who meets the following minimum qualifications:

(a) Has a bachelor's degree in a mental health related field; or

(b) Has a combination of at least one year's work experience and two years education, training or work experience in mental health.

(25) "Qualified Mental Health Professional" means a person who meets all of the following minimum qualifications:

(a) Fits one of these categories:

(A) Psychiatrist or physician, licensed to practice in the State of Oregon; graduate degree in psychology, social work, or other mental health related field; graduate degree in psychiatric nursing, licensed in the State of Oregon; registration as an occupational therapist; graduate degree in recreational therapy; or

(B) Any other person whose education and experience meet, in a determination process approved by the Division, a level of competence consistent with the standards established for qualified mental health professionals.

(b) Has demonstrated competence to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social, and work relationships; conduct a mental status assessment; document a DSM diagnosis; write and supervise a rehabilitation plan; and provide individual, family, and/or group therapy.

(26) "Qualified Person" means a qualified mental health professional or a qualified mental health associate.

(27) "Rehabilitation Plan" means an individualized, written plan defining specific rehabilitation objectives and proposed service interventions derived from the consumer's mental health assessment, and the Conditional Release Order.

(28) "Rehabilitation Record" means a separate file established and maintained under these rules for each consumer.

(29) "Service Supervisor" means a person who has two years of experience as a qualified mental health professional and who, in accordance with OAR 309-032-0505, reviews the services provided to consumers by qualified persons.

(30) "Setting" means the location at which a service is provided, and includes, but is not limited to: CMHP office, consumer's residence, or other identified location.

(31) "Significant Procedure" means a diagnostic or service modality which may have a substantial adverse effect on the consumer's psychological or physical health, such as administration of medications which have serious side effects.

(32) "Supervision" means monitoring of consumer's compliance with Conditional Release Orders, Agreement to Conditional Release, the rehabilitation plan requirements, and any additional monitoring and reporting requirements stipulated by the PSRB, the courts, or the Division, not otherwise specified in these rules.

(33) "Termination Summary" means a summary of consumer progress toward rehabilitation objectives from the time of admission to the termination of services.

(34) "Utilization Review" means a process in which consumer rehabilitation records are examined by a review committee to evaluate the need for, and appropriateness of services, as well as completeness of the record.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0460

### General Standards

Providers of mental health evaluations and services under Orders for Evaluation and/or Orders of Conditional Release shall provide all reports and notifications ordered by the PSRB, under ORS 161.295 through 161.430, or otherwise required in this rule and other law. These responsibilities do not conflict with adherence to consumer rights under this rule and other Oregon statutes.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0465

### Order for Evaluation

Following the receipt of an Order for Evaluation from the PSRB, the provider will:

(1) Within 15 days of receipt of the Order, schedule an interview with the consumer for the purpose of initiating or conducting the evaluation;

(2) Appoint a qualified mental health professional to conduct the evaluation and to provide an evaluation report to the PSRB;

(3) Within 30 days of the evaluation interview, submit the evaluation report to the PSRB responding to the questions asked in the Order for Evaluation; and

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(4) If supervision by the provider is recommended, notify the PSRB and the Oregon State Hospital of the name of the person designated to serve as the consumer's Case Coordinator, who will be primarily responsible for delivering or arranging for the delivery of services and the submission of reports under these rules.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270  
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0470

### Periodic and Special Circumstance Reports to the PSRB

The service provider, acting through the designated Case Coordinator, shall submit reports to the PSRB as follows:

(1) Monthly reports. Monthly reports consistent with PSRB reporting requirements as specified in the Conditional Release Order that summarize the consumer's adherence to Conditional Release requirements and general progress in rehabilitation;

(2) Interim reports. Prompt interim reports, including immediate reports by phone, if necessary, to ensure the public's or consumer's safety including:

(a) At the time of any significant change in the consumer's clinical, legal, employment or other status which may affect compliance with Conditional Release orders;

(b) Upon noting major symptoms of a psychiatric decompensation requiring psychiatric stabilization or hospitalization or any other major change in the consumer's rehabilitation plan;

(c) Upon learning of any violations of the Conditional Release Order;

(d) At any other time when, in the opinion of the Case Coordinator, such an interim report is needed to assist or protect the consumer or to protect public safety.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270  
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0475

### Minimum Rehabilitation Services

Rehabilitation services shall include all appropriate services determined necessary by the Community Mental Health Program or the provider to assist the consumer in maintaining release and which are consistent with Conditional Release Orders and the Agreement to Conditional Release. Rehabilitation shall include:

- (1) Medication management and monitoring;
- (2) Substance abuse treatment or referral;
- (3) Group, family, and individual counseling services;
- (4) Health care services. The providers shall directly provide, or refer for, available health care services to the extent they are necessary for continuation of conditional release;
- (5) Life skills training; and
- (6) Hospital services. The provider shall directly provide or arrange for psychiatric hospital services, if needed as follows:

(a) Voluntary psychiatric hospitalization. At the discretion of the Case Coordinator, and in consultation with the PSRB Executive Office, consumers may be returned to psychiatric hospitalization on a voluntary basis. These returns may be prompted by a deterioration in mental status, violations of Conditional Release Orders, or at the request of the Case Coordinator or the consumer;

(b) Conditional release revocation. If a consumer requires involuntary return to a State Psychiatric Hospital or center, revocation procedures shall be initiated through the PSRB. If the Community Mental Health Program or the provider is unable to consult immediately with the PSRB when it is necessary to hospitalize a consumer involuntarily, the PSRB Executive Office shall be notified of actions taken by the next working day.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270  
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0480

### Policies and Procedures

Each provider shall have written policies and procedures governing the following:

- (1) Establishment, maintenance, and contents of rehabilitation records;
- (2) Confidentiality of rehabilitation records;
- (3) Safety, storage, and retention of rehabilitation records;

(4) Consumer rights specific to services received, and consumer appeal process and grievance procedures;

(5) Consumer participation in rehabilitation and termination planning;

(6) Assessment, evaluation, and planning for consumer rehabilitation needs;

(7) Performance and documentation of medical services;

(8) Establishment and maintenance of medication use record;

(9) Performance and documentation of staff supervision;

(10) Performance and documentation of utilization review; and

(11) Revocation of the consumer's community placement when the consumer requires involuntary hospitalization and/or fails to comply with Conditional Release Orders.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270  
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0485

### Consumer Rights Specific to Services Received

In addition to consumer rights delineated in applicable Oregon Revised Statutes, Oregon Administrative Rules, and elsewhere in these rules, the following shall be required specific to services received:

(1) Notification of rights. At the time of enrollment, the provider shall make available to the consumer or guardian a document which describes the consumer's rights and responsibilities.

(2) Services refusal. The consumer shall have the right to refuse service, including any specific procedure, unless ordered by a court or the PSRB.

(3) Grievances. The consumer shall have the right to lodge a grievance.

(4) Access to records. The consumer shall have the right to access the consumer's own rehabilitation records in accordance with state and federal law, including ORS 179.505, 192.505, 45 CFR 205.50, 42 CFR Part 2, and the current edition of the Division's Handbook on Confidentiality.

(5) Informed participation in rehabilitation planning. The consumer shall be afforded the opportunity to participate in an informed way in planning his or her rehabilitation unless this participation would jeopardize the consumer's rehabilitation.

[Publication: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270  
Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0490

### Establishment and Maintenance of Rehabilitation Record

(1) Individuality of records and maintenance. A separate, individual rehabilitation record shall be opened and maintained for each eligible and enrolled PSRB consumer receiving services from the provider, including the instance in which more than one eligible and enrolled member of a family receives services from the same provider.

(2) Organization of records. Each rehabilitation record shall be maintained to assure accessibility, uniform organization, and completeness of all components required by these rules.

(3) Signature of authors. All documentation required in this rule must be signed by the staff providing the service and making the entry. Where required, the entry must be signed by the supervisor signifying approval of the material. Each staff and supervisor signature must include the person's academic degree or professional status and the date signed.

(4) Documentation of consumer consent. All procedures in these rules requiring consumer consent shall be documented in the record on forms describing what the consumer has been asked to consent to, and signed and dated by the consumer or legal guardian.

(5) Error corrections. Errors in the record shall be corrected by lining out the incorrect data with a single line in ink, and then adding the correct information, the date corrected, and the initials of the person making the correction.

(6) Confidentiality of other consumers. References to other consumers, when included in the individual consumer's record, shall preserve the confidentiality of the other consumers.

(7) Security. Rehabilitation records shall be secured, safeguarded, stored, and retained in accordance with applicable Oregon Revised Statutes and Oregon Administrative Rules. The PSRB shall provide copies of all reports to the consumer and to the consumer's counsel as required by ORS 161.336(4)(d).

(8) Confidentiality of rehabilitation records. All individuals' records are confidential except as otherwise indicated by applicable rule or laws:

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(a) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505 and 179.506(1) shall be applicable;

(b) For the purposes of disclosure from non-medical individual records, both the general prohibition against disclosure of "information of a personal nature" and limitations to the prohibition in ORS 192.502(2) shall be applicable;

(c) This does not restrict the provider from submitting reports required in this rule to the court or the PSRB without a consumer's signed release of information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0495

### Documentation of Protection of Consumer Rights

Rehabilitation records shall document adherence to the consumer's rights:

(1) Consumer consent to enrollment in rehabilitation services. At the time of enrollment, the consumer or guardian shall sign a document or documents which verifies the consumer has been informed of all consumer rights referred to in OAR 309-032-0485; and that the consumer consents to evaluation and services prior to development of the rehabilitation plan.

(2) Consent to specific rehabilitation services. At the time of rehabilitation plan development the qualified mental health professional responsible for development of the rehabilitation plan shall obtain consumer or guardian signed consent to the rehabilitation approaches recommended, and include this documentation in the service record.

(3) Consent to significant procedures. Whenever a significant procedure is proposed, the consumer's or guardian's signature verifying informed consent to the procedure shall be obtained and included in the rehabilitation record.

(4) Refusal to consent. If the consumer refuses recommended rehabilitation services, or refuses to consent to a procedure as required in these rules, the consumer's refusal shall be documented in the service record and the PSRB notified. The reasons for refusal and efforts to obtain the consumer's signature shall be documented in the consumer's rehabilitation record.

(5) Documentation of disclosure of fee policy. The service record shall include documentation signed by the consumer verifying that fees the consumer will be asked to pay have been described.

(6) Authorization to release information. The service record must include documentation signed by the consumer authorizing any release of information by the type of information and the recipient of information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0500

### Consumer Identification and Documentation of Service Needs and Delivery

Rehabilitation records shall document the gathering of information, conduct of assessments, planning, reviews, and the provision of services as follows:

(1) Consumer identifying information. Consumer identifying information must be obtained by a qualified mental health associate, or professional. The information must be readily identifiable and accessible in the consumer's record, and include the following:

(a) The unique case number assigned to the consumer;

(b) The consumer's name;

(c) The consumer's gender, age, and marital status;

(d) The consumer's phone number and address;

(e) Who to contact in case of an emergency and the phone or address at which contact may be made;

(f) A copy of the CPMS enrollment form(s).

(2) Conditional release orders. A copy of the Order of Conditional Release and the Agreement to Conditional Release shall be included in the consumer's record.

(3) Mental health assessment. A mental health assessment shall be completed for each consumer within 60 days of enrollment and prior to the initial review of the rehabilitation plan. The assessment must be completed by a qualified mental health professional who shall sign and date the final page of the assessment. The service supervisor, a psychiatrist, or a physician who is a qualified mental health professional shall review, sign and date the assessment within 60 days of the consumer's enrollment. The

assessment must include the following elements which must be readily accessible and identifiable in the record:

(a) A statement of the consumer's initial goal(s) in seeking or entering rehabilitation services and a description of events precipitating enrollment, and their related history;

(b) Historical information shall be obtained from the consumer, or other sources when appropriate, including but not necessarily limited to:

(A) Mental health history;

(B) Health history;

(C) Substance use and abuse history;

(D) Developmental history;

(E) Social history, including family and interpersonal history;

(F) Educational, vocational, and employment history; and

(G) Legal history.

(c) A determination of the consumer's functional strengths and deficits including, but not necessarily limited to daily living, social and vocational skills, and current support system;

(d) A mental status examination;

(e) A summary of significant and pertinent data from the mental health assessment including consumer strengths and deficits;

(f) A DSM diagnosis, supported by data obtained in the assessment;

(g) Preliminary recommendations for rehabilitation services, including psychosocial and medical interventions, additional examinations, tests, and evaluations that are needed; and

(h) A disposition statement about how the consumer will be served by the provider, and/or referred elsewhere, and if referred, the reasons for referral.

(4) Rehabilitation goal identification. The rehabilitation goals including those articulated by the consumer shall be recorded in the rehabilitation record so as to be readily identifiable and accessible. Each goal must derive from the mental health assessment, and be updated as follows:

(a) To reflect significant changes in the consumer's status which may affect goal pursuit; and

(b) When significant new goals are identified.

(5) Rehabilitation plan. An individualized rehabilitation plan, developed from the mental health assessment, and the consumer's goals so far as possible, must be completed, signed and dated by a qualified mental health professional within 60 days of the consumer's enrollment. The plan must be readily identifiable and accessible within the rehabilitation record and be written at a level of specificity that will permit its subsequent implementation to be efficiently monitored and reviewed. The recorded plan shall contain the following minimum components:

(a) Specific objectives that clearly state in language understandable to the consumer, the component steps, or outcomes for each rehabilitation goal, and the criteria for determining when each objective or outcome is attained;

(b) The specific services of interventions to be used to achieve each objective;

(c) The projected frequency and duration of services;

(d) Specific efforts to be undertaken by the consumers both:

(A) As a participant in services being offered by the provider; and

(B) Those to be undertaken by the consumer personally in their daily or ongoing living activities.

(e) Identification of the qualified person assigned to the consumer who is responsible for coordinating services.

(6) Consumer participation in rehabilitation planning. The qualified mental health professional responsible for providing services to the consumer must document in the consumer's rehabilitation record that:

(a) The rehabilitation goals including the consumer's goals for seeking services, as noted in the assessment, have been discussed with the consumer and consented to;

(b) The proposed rehabilitation activities and services approaches have been discussed with the consumer and consented to;

(c) The provider is exempt from complying with subsection (a) or (b) of this section if the qualified mental health professional documents in the rehabilitation record that the consumer is unable to participate as required in subsection (a) or (b) of this section; or, that such participation would jeopardize the consumer's rehabilitation;

(d) When and if the circumstances which prevented the completion of one or more actions required by subsection (a) or (b) of this section change, such that consumer participation and consent can occur, the consumer must be afforded the opportunity to participate in the activities, and that participation must be documented in the rehabilitation record.

(7) Medical services. Psychiatric evaluation services, and within resources specifically allocated for the purpose, other medical screening

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services, shall be provided. Delivery of any such services must be documented so as to be readily accessible and identifiable in the consumer's record, and must meet the following standards:

(a) Psychiatric evaluations shall be performed by a medical professional who is a psychiatrist, other physician, or licensed medical professional with prescriptive privileges, any of whom must be a qualified mental health professional:

(A) If the evaluation is performed by the provider's employed or contracted medical professional, it must be completed within 60 days of the consumer's enrollment, unless a similar evaluation was performed within 180 days prior to the enrollment. A psychiatric evaluation must be performed at least once annually. The evaluation must contain pertinent psychiatric history and information, a psychiatric diagnostic statement, and identification of medications recommended for the consumer's psychiatric condition;

(B) If the evaluation is performed by a medical professional not employed by, or under contract to, the provider, a summary of the evaluation must be obtained in a timely manner and include a diagnostic statement and medications recommended.

(b) If resources have been allocated for the purpose, medical screenings as follows will be provided to determine whether the consumer has organic diseases or conditions that cause or exacerbate the consumer's mental or emotional disturbance:

(A) A comprehensive health history;

(B) A physical examination;

(C) A blood chemistry screening; and

(D) Other laboratory, radiological, or diagnostic tests which may be indicated by history and physical examination.

(c) Medical screening shall be ordered within 60 days after enrollment of the consumer, unless a screening was performed within 180 days prior to enrollment. The data collected from the medical screening must be reviewed by a licensed medical professional, and the findings and interpretation(s), along with the licensed medical professional's recommendations for further medical tests, evaluations and treatment, filed in the rehabilitation record;

(d) All orders for medication, laboratory and other medical procedures issued by medical staff of the provider shall be recorded in the rehabilitation record in conformance with standard medical practice. Such orders, whether written or verbal, shall be initiated and authenticated by a licensed medical professional with prescriptive privileges. Relevant medical orders issued by medical personnel not employed by, or under contract to, the provider shall be documented through periodic consultation or exchange of information;

(e) A medication use record documenting all medications or agents prescribed or recommended for the consumer shall be signed by the provider's licensed medical professional having prescriptive privileges and shall be maintained so as to be readily identifiable and accessible in the rehabilitation record. Documentation for each medication or agent prescribed or recommended shall include the following:

(A) Name of medication or agent;

(B) Dosage and method of administration;

(C) Dates prescribed, reviewed, or renewed;

(D) If administered by provider staff, the dates administered, and the signature and identification of the staff person(s) administering the medication; and

(E) Observed affects and side effects, including laboratory findings and corrective actions taken for side effects.

(8) Progress notes. Progress notes, documenting consumer progress toward meeting rehabilitation plan objectives, must be recorded so as to be readily identifiable and accessible within the consumer's rehabilitation record, and must meet the following requirements:

(a) A progress note shall be recorded and signed by the qualified person providing the service each time a service is provided; or at any time a significant change occurs in the consumer's condition;

(b) Each progress note shall specify the service(s) provided, the date provided, and the amount of time it took to delivery each service. As appropriate, progress notes shall document:

(A) Periodic discussions with the consumer concerning progress or difficulty in meeting objectives identified in the rehabilitation plan;

(B) Significant changes in the consumer's condition including, at a minimum, documentation of changes in the consumer's mental status;

(C) Description of situational problems arising and their effect on the consumer;

(D) Description of modifications to the rehabilitation plan that are necessary due to paragraphs (A), (B), and (C) of this subsection; and

(E) Description of services provided that depart from the rehabilitation plan.

(9) Periodic review of assessment and plan. A review and update of each consumer's mental health assessment and rehabilitation plan shall occur at least annually, unless greater frequency is required by consumer needs, or OAR 309-0160080, or the PSRB. A copy of the review of update shall be submitted to the PSRB. Reviews and updates must be recorded so as to be readily identifiable and accessible within the rehabilitation record and must be signed by the qualified mental health professional providing services and by supervisory personnel as set forth in OAR 309-032-0575(7):

(a) The Mental Health Assessment review and update must include:

(A) An interim history, including significant changes in the consumer's environment, functioning, and mental status;

(B) A summary of rehabilitation interventions used and consumer response; and

(C) Any change in diagnosis.

(b) The Rehabilitation Plan review shall summarize consumer's progress toward meeting rehabilitation objectives and shall include updates of, or modifications to, the rehabilitation plan objectives.

(10) Services termination summary. A services termination summary shall be completed for each consumer for whom the provider no longer assumes rehabilitation responsibility. The summary must be prepared and signed by the qualified mental health professional responsible for the provision of services to the consumer, and be readily identifiable and accessible within the consumer's rehabilitation record. The summary must be formulated and written and the consumer's record closed no later than 90 days after the last rehabilitation service contact with the consumer, unless otherwise specified in the rehabilitation plan. This requirement for closure of the consumer's rehabilitation record is independent of, and unrelated to, requirements for CPMS termination:

(a) The services termination summary shall include the following minimum information:

(A) The date of termination, including the date of last contact with the consumer;

(B) Reasons for termination;

(C) Summary of consumer progress for each rehabilitation goal identified;

(D) Summary of consumer's status and level of functioning, including goals not accomplished; and

(E) Prognosis and recommendations for further services.

(b) In the case of a consumer's discharge from PSRB jurisdiction, the consumer, to the extent able, and family members or significant others, to the extent appropriate, shall participate in services termination planning. Such participation shall be documented;

(c) Consumer non-appearance. When rehabilitation responsibility is terminated for a consumer who no longer appears for services, the provider must document efforts made to locate or contact the consumer, and, for any consumer remaining under PSRB jurisdiction, immediately notify the Board.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0505

### Service Supervision

Except as provided for by section (2) of this rule, any staff providing services to a consumer shall be supervised:

(1) Approval of rehabilitation plan. The service supervisor, or a psychiatrist, or a physician who is a qualified mental health professional shall review and approve by signature, the rehabilitation plan and each periodic plan update for each consumer. The review(s) shall determine the appropriateness of the relationship between consumer needs, proposed services, services provided, and intended results. Reviews shall, at minimum, include reviewing the consumer's case with the qualified person(s) providing services to the consumer or by examining the consumer's rehabilitation record.

(2) Service supervision exceptions. Notwithstanding the supervision requirements above, the provider may modify the requirements specified in these rules for supervision of staff:

(a) Who are licensed under Oregon Revised Statutes to conduct private practice without supervision (such as a physician, psychologist, or social worker); and

(b) Who are qualified mental health professionals; and

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(c) Whose activities are not required to be supervised by OAR 309-016-0075 and 309-016-0080; or

(d) Who are supervisors not under supervision of another supervisor, and whose activities are not required to be supervised by OAR 309-016-0075, concerning Medical Supervision, and OAR 309-016-0080, concerning Clinical Record Requirements.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0510

### Utilization Review

Utilization reviews shall be conducted quarterly in accordance with applicable administrative rules and must include at least the following components:

(1) Completeness review. Consumer records shall undergo a completeness review to determine that all entries necessary to document services are present, that the records are accurate, and that the records contain all information, forms, and signatures required by these rules. The completeness review shall be conducted every quarter on a random sample of at least three percent of all active PSRB cases with no fewer than three of those cases not subject to reviews required by OAR 309-016-0090. If fewer than three PSRB service consumers are enrolled, the completeness review must include each consumer's record.

(2) Content review. The content of consumer records shall be examined by a committee consisting of at least the following members:

(a) A qualified mental health professional on the staff of the provider;

(b) A qualified mental health professional not on the staff of the provider; and

(c) A licensed medical professional who is a qualified mental health professional and, when necessary, meets additional requirements set by OAR 309-016-0090 concerning Utilization Review Requirements;

(d) The content review shall be conducted on a random sample of at least three percent of all active cases, with no fewer than three cases selected for the sample, or all PSRB service consumers if fewer than three persons are enrolled. The review shall meet any additional sampling requirements set by OAR 309-016-0090 concerning Utilization Review Requirements.

(3) Utilization review summary. Upon completion of each quarterly utilization review a summary shall be written of both the content review and the completeness review findings, presented to the provider director or designee, and retained in the provider's administrative files. The summary shall include recommended corrective action(s), if any. Documentation of corrective actions taken shall be filed in the appropriate administrative file.

(4) Utilization review records access. Utilization reviews of consumer records shall be available for examination by appropriate local, state, and federal agency representatives.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

## 309-032-0515

### Variations

(1) Criteria for a variance. Variations may be granted to a CMHP or a provider if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules.

(2) Variance application. The CMHP or provider requesting a variance shall submit, in writing, an application to the Division which contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A description of the individual's opinion and participation in requesting the variance;

(e) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(f) Signed documentation from the CMHP or the provider indicating its position on the proposed variance.

(3) Division review. The Assistant Director or designee of the Division shall approve or deny the request for a variance.

(4) Notification. The Division shall notify the CMHP or the provider of the decision. This notice shall be given to the CMHP or the provider

within 30 days of the receipt of the request by the Division with a copy to other relevant sections of the Division.

(5) Appeal application. Appeal of the denial of a variance request shall be made in writing to the Assistant Director of the Division, whose decision shall be final.

(6) Written approval. The CMHP or the provider may implement a variance only after written approval from the Division. The intergovernmental Agreement shall be amended to the extent that the variance changes a term in that agreement.

(7) Duration of variance. A variance shall be reviewed by the Division at least every two years.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07

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## Department of Human Services, Public Health Chapter 333

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

**Adm. Order No.:** PH 23-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 10-19-06

**Notice Publication Date:** 5-1-06

**Rules Adopted:** 333-123-0001, 333-123-0005, 333-123-0010, 333-123-0015, 333-123-0020, 333-123-0025, 333-123-0030, 333-123-0035, 333-123-0040, 333-123-0045, 333-123-0050

**Subject:** The Oregon Department of Human Services (DHS), Public Health Division (Division) is permanently adopting Oregon Administrative Rules related to therapeutic radiation machines.

**Rules Coordinator:** Christina Hartman—(971) 673-1291

## 333-123-0001

### Purpose and Scope

This Division establishes requirements for registrants of therapeutic radiation machines. Nothing in this Division relieves the registrant from complying with other applicable federal, state and local regulations.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0005

### Definitions

(1) "Absorbed dose (D)" means the mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of DE by DM, where DE is the mean energy imparted by ionizing radiation to matter of mass DM. The SI unit of absorbed dose is joule/kg and the special name of the unit of absorbed dose is the gray (Gy). The previously used special unit of absorbed dose (rad) is being replaced by the gray.

(2) "Absorbed dose rate" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

(3) "Accessible surface" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool.

(4) "Added filtration" means any filtration which is in addition to the inherent filtration that is in the primary beam.

(5) "Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of DE/DM, where DE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass DM. The SI unit of air kerma is joule/kg.

(6) "Barrier" See protective barrier.

(7) "Beam axis" means the axis of rotation of the beam-limiting device.

(8) "Beam-limiting device" means a field defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

(9) "Beam monitoring system" means the system designed and installed in the radiation head to detect and appropriately measure the radiation present in the useful radiation beam.

(10) "Beam scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

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(11) "Bent beam linear accelerator" means a linear accelerator geometry in which the accelerated electron beam must change direction by passing through a bending magnet.

(12) "Changeable filters" means any filter, exclusive of inherent filtration, that can be removed from the useful beam through any electronic, mechanical, or physical process.

(13) "Contact therapy system" means a therapeutic radiation machine with a short target to skin distance (TSD), usually less than 5 cm.

(14) "Conventional Simulator" means any x-ray system designed to reproduce the geometric conditions of the radiation therapy equipment.

(15) "CT Simulator" means a computed tomography (CT) unit used in conjunction with relevant software which recreates the treatment machine, and that allows import, manipulation, display and storage of images from CT and/or other imaging modalities.

(16) "Detector" See radiation detector.

(17) "Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

(18) "External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a specified distance from the body.

(19) "Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

(20) "Filter" means material placed in the useful beam to change beam quality in therapeutic radiation machines subject to 333-123-0025(2) and (3).

(21) "Gantry" means that part of a radiation therapy system supporting and allowing movements of the radiation head about a center of rotation.

(22) "Gray (Gy)" means the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule/kg. The previous unit of absorbed dose (rad) is being replaced by the gray. (1 Gy = 100 rad; 1 cGy = 1 rad).

(23) "Half-value layer (HVL)" means the thickness of a specified material which attenuates incident ionizing radiation to an extent such that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

(24) "Intensity Modulated Radiation Therapy (IMRT)" means radiation therapy that uses non-uniform radiation beam intensities, which have been determined by various computer-based optimization techniques.

(25) "Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(26) "Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

(27) "Irradiation" means the exposure of a living tissue or matter to ionizing radiation.

(28) "Isocenter" means the center of the sphere through which the useful beam axis passes while the gantry, collimator and couch move through the full range of motions.

(29) "Kilovolt (kV) (kilo electron volt (keV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum.

**Note:** current convention is to use kV for photons and keV for electrons.

(30) "Lead equivalent" means the thickness of the material in question affording the same attenuation, under specified conditions, as lead.

(31) "Leakage radiation" means radiation emanating from the radiation therapy system except for the useful beam.

(32) "Light field" means the area illuminated by light, simulating the radiation field.

(33) "mA" means milliamperes.

(34) "Medical Treatment Event" means an event that meets the criteria in 333-123-0020(1).

(35) "Megavolt (MV) (mega electron volt (MeV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum.

**Note:** current convention is to use MV for photons and MeV for electrons.

(36) "Monitor unit (MU)" See dose monitor unit.

(37) "Moving beam radiation therapy" means radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes, but is not limited to arc, conformal, intensity modulation and rotational therapy.

(38) "Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit port of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the distance from the virtual source or target to isocenter distance along the central axis of the useful beam. For non-

isocentric equipment, this distance must be that specified by the manufacturer.

(39) "Patient" means an individual subjected to machine produced external beam radiation for the purposes of medical therapy.

(40) "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(41) "Periodic quality assurance check" means a procedure, which is performed at regular intervals to ensure that previously determined machine characteristics continue to be valid.

(42) "Phantom" means an object responding in essentially the same manner as tissue, with respect to absorption or scattering of the incident ionizing radiation in question.

(43) "Practical range of electrons" corresponds to classical electron range where the only remaining contribution to dose is from Bremsstrahlung x-rays.

(44) "Prescribed dose" means the total dose and dose per fraction as documented in the physician's written directive. The prescribed dose is an estimation from measured data from a specified therapeutic machine using assumptions that are clinically acceptable for that treatment technique and historically consistent with the clinical calculations previously used for patients treated with the same clinical technique.

(45) "Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been delivered.

(46) "Primary protective barrier" See protective barrier.

(47) "Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) Primary protective barrier means the material, excluding filters, placed in the useful beam.

(b) Secondary protective barrier means the material, which attenuates stray radiation.

(48) "Qualified Expert" means an individual qualified in accordance with 333-100-0005.

(49) "Qualified Medical Physicist" means an individual qualified in accordance with 333-123-0015(2)(b).

(50) "Qualified Radiation Therapy Physician" means an individual qualified in accordance with 333-123-0015(1).

(51) "Radiation detector" means a device, which, in the presence of radiation provides, by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(52) "Radiation field" See useful beam.

(53) "Radiation head" means the structure from which the useful beam emerges.

(54) "Redundant beam monitoring system" means a combination of two dose monitoring systems in which each system is designed to terminate irradiation in accordance with a pre-selected number of dose monitor units.

(55) "Scattered primary radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam.

(56) "Scattered radiation" means ionizing radiation emitted by interaction of ionizing radiation with matter, the interaction being accompanied by a change in direction of the radiation.

(57) "Secondary dose monitoring system" means a system, which will terminate irradiation in the event of failure of the primary dose monitoring system.

(58) "Secondary protective barrier" See protective barrier.

(59) "Service Engineer" means an individual who is qualified to service the radiation therapy equipment per manufacturer's standards.

(60) "Shadow tray" means a device attached to the radiation head to support auxiliary beam blocking material.

(61) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(62) "Sievert (Sv)" means the SI unit of dose equivalence. The unit of dose equivalence is the joule/kg. The previous unit of dose equivalence (rem) is being replaced by the Sievert. (1 Sv=100 rem).

(63) "Simulator (radiation therapy simulation system)" means any x-ray system intended for localizing the tissue volume to be exposed during radiation therapy and establishing the position and size of the therapeutic irradiation field. See Conventional Simulator and Virtual Simulator.

(64) "Source" means the focal point and/or material from which the radiation emanates.

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(65) "Source-skin distance (SSD)" See target-skin distance.

(66) "Stationary beam radiation therapy" means radiation therapy without displacement of one or more mechanical axes relative to the patient during irradiation.

(67) "Stray radiation" means the sum of leakage and scattered radiation.

(68) "Target" means that part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation or other particles.

(69) "Target-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the x-ray target and/or electron virtual source to the surface of the irradiated object or patient.

(70) "Tenth-value layer (TVL)" means the thickness of a specified material which attenuates X-radiation or gamma radiation to an extent such that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(71) "Termination of irradiation" means the stopping of irradiation in a fashion, which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(72) "Therapeutic radiation machine" is a complex system designed and used for external beam radiation therapy. This system includes some or all of the following: equipment producing ionizing radiation (including, but not limited to x-rays, electrons, protons and neutrons), beam shaping devices, computer control unit, verify and record system, electronic portal imaging, treatment planning computer and other ancillary systems.

(73) "Tube" means an x-ray tube, unless otherwise specified.

(74) "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(75) "Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam-limiting device when the exposure controls are in a mode to cause the therapeutic radiation machine to produce radiation.

(76) "Virtual source" means a point from which radiation appears to originate.

(77) "Wedge filter" means a filter which effects continuous change in transmission over all or a part of the useful beam.

(78) "Written directive" means an order, written or electronic, for the administration of radiation to a specific patient as specified in 333-123-0045(2).

(79) "X-ray tube" means any electron tube, which is designed to be used primarily for the production of x-rays.

Stat. Auth: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0010

### General Requirements, Operating Procedures, Surveys, Dosimetry, and Instrument Calibration for Facilities Using Therapeutic Radiation Machines

(1) Administrative Controls. The registrant is responsible for directing the operation of the therapeutic radiation machines that they have registered with the Agency. The registrant or the registrant's agent must ensure that the requirements of this Division are met in the operation of the therapeutic radiation machine(s) and:

(a) A therapeutic radiation machine that does not meet the requirements of these rules must not be used for irradiation of patients; and

(b) The use of therapeutic radiation machines shall be by, or under the supervision of, a licensed practitioner of the healing arts who meets the training/experience criteria established by 333-123-0015(1).

(2) Operating Procedures. A copy of the current operating and emergency procedures must be available at each therapeutic radiation department or clinic and at the therapeutic radiation machine control console; and

(a) Any alterations or changes to existing procedures and new radiation therapy treatment protocols must be approved by the Chief Medical Physicist and the Senior Radiation Therapy Physician or designee; and

(b) The date of the approval and the appropriate signatures must be placed on the first page of each radiation therapy procedure; and

(c) The registrant must retain a copy of all versions of the procedures for 5 years; and

(d) If the Qualified Medical Physicist is not a full-time employee of the registrant, the operating procedures must specify how to contact the Physicist. The procedures must list specific actions to be initiated until the Physicist assumes personal control.

(e) The therapeutic radiation machine must not be used for irradiation of patients unless the requirements of sections (1) and (2) have been met.

(f) Individuals must not be exposed to the useful beam except for medical therapy purposes and unless such exposure has been ordered in writing or electronically by a qualified radiation therapy physician.

(g) This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing arts purposes.

(h) Therapeutic radiation machines, when not in operation, must be secured to prevent unauthorized use.

(i) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices must be used.

(j) No individual other than the patient must be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV. At energies less than or equal to 150 kV, any individual, other than the patient, in the treatment room must be protected by a barrier sufficient to meet the requirements of 333-120-0100.

(k) When adjustable beam limiting devices are used, the position and shape of the radiation field must be indicated by a light field.

(l) Written safety procedures and rules must be developed by a Qualified Medical Physicist and must be available in the control area of a therapeutic radiation machine, including any restrictions required for the safe operation of the particular therapeutic radiation machine. The operator must be able to demonstrate familiarity with these rules.

(m) All individuals associated with the operation of a therapeutic radiation machine must be instructed in and must comply with the provisions of the registrant's quality assurance program. In addition to the requirements of 333-123-0015, these individuals are also subject to the requirements of divisions 111 and 120.

(3) Calibration Of Radiation Survey Instruments. Radiation Survey Instrument(s) for Photon and Electron Beam Therapy Systems 1 MV and Above. Each facility location authorized to use a therapeutic radiation machine in accordance with these rules must possess appropriately calibrated portable radiation monitoring equipment. As a minimum, such equipment must include a portable radiation survey instrument capable of measuring dose rates over the range 10  $\mu$ Sv/hr (1 mrem/hr) to 10 mSv/hr (1000 mrem/hr) with an energy response appropriate to the system being surveyed.

(a) The registrant must ensure that the survey instruments, which are used to show compliance with this Division, have been calibrated before first use, at intervals not to exceed 12 months, and following repair; and

(b) To satisfy the requirements of this rule, the registrant must:

(A) Calibrate all required scale readings up to 10 mSv (1000 mrem) per hour with an appropriate radiation source that is traceable to the National Institute of Standards and Technology (NIST); and

(B) The calibration must include at least 2 points on each scale tested. These points should be at approximately 1/3 and 2/3 of full-scale.

(c) To satisfy the requirements of section (3)(b)(B) of this rule, the registrant must:

(A) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 10 percent; and

(B) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 20 percent if a correction factor or graph is conspicuously attached to the instrument.

(d) The registrant must retain a record of each calibration required in section (3)(a) of this rule for 3 years. The record must include:

(A) A description of the instrument and the calibration procedure; and

(B) A description of the radiation source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

(e) The registrant may obtain the services of individuals licensed by the Agency, the US Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Records of calibrations must contain information required by section (3)(d) of this rule and be maintained by the registrant.

(4) Radiation Protection Surveys. The registrant must ensure that radiation protection surveys are performed at new facilities, and existing facilities not previously surveyed. Surveys must be conducted with an operable radiation survey instrument calibrated in accordance with section (3) of this rule. In new facilities, a radiation protection survey must be completed prior to the first clinical use of a therapeutic radiation machine following installation.

(a) For machines capable of photon output at 10MV or above, registrants must perform or arrange to have performed a radiation survey to monitor neutron dose rates. The radiation survey instrument(s) used must be capable of measuring neutron dose rates over the range of 10  $\mu$ Sv/hr (1

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mrem/hr) to 10 mSv/hr (1000 mrem/hr). The radiation survey instrument(s) used to measure must be operable and calibrated in accordance with section (3) of this rule. Neutron monitoring must be done prior to first patient treatment; and

(b) The survey must be performed with the therapeutic radiation machine in a BEAM-ON condition, with the largest clinically available treatment field and with a scattering phantom in the useful beam of radiation; and

(c) The radiation protection survey must be performed by, or under the direction of, a Qualified Medical Physicist or a Qualified Expert as defined in 333-100-0005.

(d) The Qualified Medical Physicist or Qualified Expert must verify that:

(A) Radiation levels in restricted areas are not likely to cause personnel to receive exposures in excess of the limits specified in 333-120-0100(1); and

(B) Radiation levels in unrestricted areas do not exceed the limits specified in 333-120-0180 and 333-120-0190.

(e) In addition, a radiation protection survey must also be performed:

(A) Prior to any subsequent medical use; and

(B) After making any change in the treatment room shielding; and

(C) After making any change in the location of the therapeutic radiation machine within the treatment room; and

(D) After relocating the therapeutic radiation machine; or

(E) Before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room.

(f) The radiation protection survey record must indicate all instances where the facility, in the opinion of the Qualified Medical Physicist or a Qualified Expert, is in violation of applicable regulations. The survey record must also include the:

(A) Date of the measurements; and

(B) Reason the survey is required; and

(C) Manufacturer's name, model number and serial number of the therapeutic radiation machine; and

(D) Manufacturer and model of the instrument(s) used to measure radiation levels and date last calibrated; and

(E) A floor plan of the areas surrounding the treatment room that were surveyed; and

(F) Measured dose rate at several points in each area expressed in mSv/hr or mrems/hr; and

(G) Calculated maximum level of radiation over a period of 1 week for each restricted and unrestricted area; and

(H) Signature of the individual responsible for conducting the survey.

(g) If the results of the radiation protection survey indicate any radiation levels in excess of the respective limit specified in 333-120-0180, the registrant must lock the control in the "OFF" position and not use the unit. The control must remain locked:

(A) Except as may be necessary to repair, replace, or test the therapeutic radiation machine, the therapeutic radiation machine shielding, or the treatment room shielding; or

(B) Until the registrant has received a specific exemption from the Agency.

(h) If the radiation protection survey, indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by 333-120-0180(1) and (2), before beginning the treatment program the registrant must:

(A) Either equip the unit with beam direction interlocks or add additional radiation shielding to ensure compliance with 333-120-0180(1) and (2); and

(B) Perform the survey required by these rules again; and

(C) Include in the report required by section (4)(f) of this rule the results of the initial survey, a description of the modification made to comply with section (4)(g)(A) of this rule, and the results of the second survey; or

(D) Request and receive a registration amendment under 333-120-0180(3) that authorizes radiation levels in unrestricted areas greater than those permitted by 333-120-0180(1) and (2).

(5) Dosimetry Equipment. The registrant must have a calibrated dosimetry system available for use. The calibration must be traceable to the appropriate national standard. The calibration must have been performed within the previous 24 months and after any servicing that may have affected system calibration and:

(a) The dosimetry system must have been calibrated at an energy appropriate for the radiation being measured.

(b) The registrant must have available for use a dosimetry system for quality assurance check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with section (5)(a) of this rule. This comparison must have been performed within the previous 12 months and after each servicing that may have affected system calibration. The quality assurance system may be the same system used to meet the requirement in section (5)(a) of this rule.

(c) The registrant must maintain a record of each dosimetry system calibration, intercomparison, and comparison, for the duration of the license and/or registration. For each calibration, intercomparison, or comparison, the record must include:

(A) The date;

(B) The model numbers and serial numbers of the instruments that were calibrated, inter-compared, or compared as required by sections (5)(a) and (b) of this rule;

(C) The correction factors that were determined;

(D) The names of the individuals who performed the calibration, intercomparison, or comparison; and

(E) Evidence that the intercomparison was performed by, or under the direct supervision and in the physical presence of, a Qualified Medical Physicist.

(6) Reports Of External Beam Radiation Therapy Surveys And Measurements. The registrant for any therapeutic radiation machine subject to 333-123-0025 must furnish a copy of the records required in section (5)(c) of this rule to the Agency within 30 days following completion of the action that initiated the record requirement.

(7) Records Retention. All records required in this Division must be retained until disposal is authorized by the Agency unless another retention period is specifically authorized in the rule in this Division.

(a) All required records must be retained in an active file from at least the time of generation until the next Agency inspection.

(b) Any required record generated before the last Agency inspection may be microfilmed or otherwise archived as long as a complete copy of said record can be retrieved until such time as the Agency authorizes final disposal.

(c) The registrant must maintain the following information in a separate file or package for each therapeutic radiation machine, for inspection by the Agency:

(A) Report of acceptance testing; and

(B) Records of all surveys, calibrations, and periodic quality assurance checks of the therapeutic radiation machine required by 333-123-0040, as well as the name(s) and business addresses of person(s) who performed such activities; and

(C) Records of maintenance and/or modifications performed on the therapeutic radiation machine after January 30, 2007, as well as the name(s) of person(s) who performed such services; and

(D) Signature of the Qualified Medical Physicist or service engineer authorizing the return of therapeutic radiation machine to clinical use after service, repair, or upgrade.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0015

### Training and Qualification Requirements for Individuals in the External Beam Radiation Therapy Area

(1) Radiation Therapy Physician. The registrant for any therapeutic radiation machine subject to 333-123-0030 must require that the Radiation Therapy Physician be:

(a) Licensed by an appropriate Oregon medical licensing board; and

(b) Certified in:

(A) Radiology, Therapeutic Radiology or Radiation Oncology by the American Board of Radiology; or

(B) Radiation Oncology by the American Osteopathic Board of Radiology; or

(C) Radiology, with specialization in Radiotherapy, as a British Fellow of the Faculty of Radiology or Fellow of the Royal College of Radiology; or

(D) Therapeutic Radiology by the Canadian Royal College of Physicians and Surgeons; or

(c) Actively pursuing board certification in therapeutic radiology, and completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of 3 years full-time supervised clinical experience.

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(A) To satisfy the requirement for instruction, the classroom and laboratory training must include:

- (i) Radiation physics and instrumentation; and
- (ii) Radiation protection; and
- (iii) Mathematics pertaining to the use and measurement of ionization radiation; and

(iv) Radiation biology.

(B) To satisfy the requirement for supervised work experience, training must be under the supervision of a Radiation Therapy Physician qualified pursuant to sections (1)(a) or (b) of this rule and must include:

- (i) Review of the full calibration measurements and periodic quality assurance checks; and
- (ii) Evaluation of prepared treatment plans and calculation of treatment times and patient treatment settings; and
- (iii) Using administrative controls to prevent medical treatment events; and
- (iv) Implementing emergency procedures to be followed in the event of the abnormal operation of an external beam radiation therapy unit or console; and

(v) Checking and using radiation survey meters.

(C) To satisfy the requirement for a period of supervised clinical experience, training must include 1 year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional 2 years of clinical experience in therapeutic radiology under the supervision of a Qualified Radiation Therapy Physician. The supervised clinical experience must include:

(i) Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and any limitations/contraindications; and

(ii) Selecting proper dose and how it is to be administered; and

(iii) Calculating the external beam radiation therapy doses and collaborating with the Qualified Radiation Therapy Physician in the review of patients' progress and consideration of the need to modify originally prescribed doses and/or treatment plans as warranted by patients' reaction to radiation; and

(iv) Post-administration follow-up and review of case histories.

(d) To demonstrate compliance with sections (1)(a) through (c) of this rule, the individual must obtain written documentation that he or she has satisfactorily completed these requirements and have achieved a level of competency sufficient to function independently as a qualified radiation therapy physician. The documentation must be from the entities or individual(s) specified in this rule.

(e) Notwithstanding the requirements of sections (1)(a) and (b) of this rule, the registrant for any therapeutic radiation machine subject to 333-123-0025 may also submit the training of the prospective Radiation Therapy Physician for Agency review on a case-by-case basis.

(f) A physician must not act as a Radiation Therapy Physician for any therapeutic radiation machine until said physician's training has been reviewed and approved by the appropriate state licensing body.

(g) A registrant may permit any physician to act as a visiting Radiation Therapy Physician under the term of the registrant's Certificate of Registration for up to 60 days per calendar year under the following conditions:

(A) The visiting Radiation Therapy Physician has the prior written permission of the registrant's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee (where applicable); and

(B) The visiting Radiation Therapy Physician meets the requirements established in section (1) of this rule; and

(C) The registrant maintains copies of all records specified in section (1)(i) of this rule for 5 years from the date of the last visit.

(2) Medical Physicist Qualifications. The registrant for any therapeutic radiation machine subject to 333-123-0025 must require that the Medical Physicist(s), who are providing consultative services to them be licensed with the Agency, under the provisions of 333-101-0020, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units (The licensing requirement is only applicable to those physicists who provide medical physics consultation to facilities other than those of the registrant of which they are an employee).

(a) All Medical Physicists practicing in therapeutic radiological physics must be certified in Therapeutic Radiological Physics or Radiation Oncology by the:

(A) American Board of Radiology; or

(B) American Board of Medical Physics; or

(C) Canadian College of Physicists in Medicine.

(b) To demonstrate compliance, the individual must obtain written documentation that he or she is Board certified. The documentation must be from the credentialing body.

(c) Medical Physicists who, prior to January 1, 2007, have been actively working in the area of therapeutic radiation in the state of Oregon or licensed with the Agency to provide therapeutic radiation medical physics services in Oregon, are exempt from the certification requirement in section (2)(b) of this rule.

(d) Medical Physicists who, on or after January 1, 2007, wish to work in the area of therapeutic radiation or to be licensed with the Agency to provide therapeutic radiation services, must meet the certification requirements in section (2)(b) of this rule.

(e) Medical Physicists who do not meet the requirements of section (2)(b) of this rule must work under the supervision of a Qualified Medical Physicist.

(3) Therapeutic Radiation Machine Operator's Qualifications. Individuals who will be operating a therapeutic radiation machine for medical use must be registered with the American Registry of Radiologic Technologists (ARRT) as a radiation therapist with the credential RT(T)(ARRT). Individuals who do not meet this criterion must submit evidence that they have satisfactorily completed a radiation therapy technologist training program that complies with the requirements of the Joint Review Committee on Education in Radiologic Technology.

(a) Individuals who have been operating a therapeutic radiation machine prior to January 1, 2007 shall be exempt from the requirement in section (3) of this rule.

(b) The names and training records of all personnel currently operating a therapeutic radiation machine must be kept on file at the facility. Training records of former operators must be retained for a period of at least 2 years beyond the last date they were authorized to operate a therapeutic radiation machine at that facility.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0020

### Reports and Notifications of Unplanned Medical Treatment

(1) A registrant must report any medical treatment event that causes an error in the treatment of a patient. Medical treatment events occur when the administration of an external beam radiation therapy dose:

(a) Administration results or will result in unintended permanent functional organ damage or physiological injury as determined by a Qualified Radiation Therapy Physician; or

(b) Involves the wrong patient, wrong treatment modality, or wrong treatment site; or

(c) Consists of 3 or fewer treatment fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose; or

(d) If the calculated weekly administered dose differs from the weekly prescribed dose by more than 30 percent; or

(e) If the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(2) The registrant must notify the Agency by telephone no later than the next calendar day after the discovery of a medical treatment event.

(3) The registrant must submit a written report to the Agency within 15 days after the discovery of a medical treatment event. The written report must include:

(a) The registrant's name; and

(b) The name of the prescribing physician; and

(c) A brief description of the event; and

(d) Why the event occurred; and

(e) The effect, if any, on the patient(s) who received the administration; and

(f) Actions, if any, that have been taken, or are planned, to prevent recurrence; and

(g) Certification that the registrant notified the patient or the patient's legally authorized representative(s), and if not, why not; and

(h) The report may not contain the individual's name or any other information that could lead to the identification of the individual.

(4) The registrant shall notify the referring physician and also notify, the patient who is the subject of the medical treatment event, or their lawfully authorized representative no later than 24 hours after its discovery unless:

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(a) The referring physician personally informs the registrant that he or she will inform the affected patient; or

(b) Based on his or her medical judgment the affected patient will not be informed because it would be harmful to the patient.

(5) The registrant is not required to notify the affected patient without first consulting the referring physician.

(6) If the referring physician or the affected patient cannot be reached within 24 hours, the notification will be as soon as possible.

(7) The registrant may not delay any appropriate medical care for the affected patient, including any necessary remedial care taken because of the medical treatment event.

(8) If a verbal notification is made, the registrant must inform the affected patient, or the patient's lawfully authorized representative(s), that a written description of the event can be obtained from the registrant upon request. The registrant must provide such a written description if requested.

(9) Aside from the notification requirement, nothing in this rule affects any rights or duties of registrants and physicians in relation to each other, to the patient affected by the medical treatment event, or to the patient's lawfully authorized representative(s).

(10) A copy of the record required must be provided to the referring physician if other than the registrant within 15 days after discovery of the medical treatment event.

(11) Records Of Medical Treatment Event. A registrant must retain a record of a medical treatment event, for 3 years. The record must be handled in accordance with the Health Insurance Portability and Accountability Act (HIPAA).

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Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0025

### Requirements for Therapeutic Radiation Machines

(1) Grenz Ray. When the x-ray tube is operated at its maximum rated tube current for the maximum kV, the leakage air kerma rate must not exceed the value specified at the distance specified for that classification of therapeutic radiation machine.

(2) For therapeutic radiation systems which operate at 5kV to 50 kV or are used for Grenz Ray application:

(a) The leakage air kerma rate measured at any position 5 cm from the tube housing assembly must not exceed 1 mGy (100 mRad) in any 1 hour.

(b) A timer with a display must be provided at the treatment control panel. The timer must have a pre-set time selector and an elapsed time or time remaining indicator. The timer must:

(A) Activate with an indication of BEAM-ON and retain its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, the timer must be reset; and

(B) Terminate irradiation when a pre-selected time has elapsed; and

(C) Permit accurate pre-setting and determination of exposure times as short as 1 second; and

(D) Must not permit an exposure if set at zero; and

(E) Be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(c) The control panel, in addition to the displays required by other provisions in these rules, must have:

(A) An indication of whether x-rays are being produced; and

(B) A means for indicating x-ray tube potential and current; and

(C) A means for terminating an exposure at any time; and

(D) A locking device which will prevent unauthorized use of the therapeutic radiation machine; or

(d) There must be a means of determining the central axis target-to-skin distance (TSD) within 1 cm and of reproducing this measurement to within 2 mm thereafter.

(3) Therapeutic Radiation Machines Operating At >50 Kv And <1 Mev. The leakage air kerma rate measured at a distance of 1 m from the target in any direction may not exceed 1 cGy (1 rad) in any 1 hour. This air kerma rate measurement may be averaged over areas no larger than 100 square centimeters. In addition, the air kerma rate at a distance of 5 cm from the surface of the tube housing assembly must not exceed 30 cGy (30 rad) per hour.

(a) For each therapeutic radiation machine, the registrant must determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in this rule for the specified operating conditions. Records on leakage radiation measurements must be maintained at the installation for inspection by the Agency.

(b) Permanent Beam Limiting Devices. Permanent diaphragms or cones used for limiting the useful beam must provide at least the same degree of attenuation as required for the tube housing assembly.

(c) Adjustable or Removable Beam Limiting Devices. Adjustable or removable beam limiting devices, diaphragms, cones or blocks must not transmit more than 5 percent of the useful beam for the most penetrating beam used.

(d) When adjustable beam limiting devices are used, the position and shape of the radiation field must be indicated by a light field.

(e) Filter System. The filter system must be so designed that:

(A) Filters cannot be accidentally displaced at any possible tube orientation; and

(B) For equipment installed after January 30, 2007, an interlock system prevents irradiation if the proper filter is not in place; and

(C) The air kerma rate escaping from the filter slot does not exceed 1 cGy (1 rad) per hour at 1 m under any operating conditions; and

(D) Each filter is labeled to indicate the material it is constructed of and its thickness.

(f) Tube Immobilization. The x-ray tube must be so mounted that it cannot accidentally turn or slide with respect to the housing aperture and the tube housing assembly must be capable of being immobilized for stationary portal treatments.

(g) Source Marking. The tube housing assembly must be so marked that it is possible to determine the location of the source to within 5 mm, and such marking must be readily accessible for use during calibration procedures.

(h) Timer. A suitable irradiation control device must be provided to terminate the irradiation after a pre-set time interval.

(i) A timer with a display must be provided at the treatment control panel and the timer must:

(A) Have a pre-set time selector and an elapsed time or time remaining indicator; and

(B) Be a cumulative timer that activates with an indication of BEAM-ON and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it must be necessary to reset the elapsed time indicator; and

(C) Terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation; and

(D) Permit accurate pre-setting and determination of exposure times as short as 1 second; and

(E) Not permit an exposure if set at zero; and

(F) Not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer error correction to compensate for mechanical lag; and

(G) Timer must be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(j) Control Panel Functions. The control panel, in addition to the displays required by other provisions in this rule, must have:

(A) An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible; and

(B) An indication of whether x-rays are being produced; and

(C) A means for indicating x-ray tube potential and current; and

(D) The means for terminating an exposure at any time; and

(E) A locking device which will prevent unauthorized use of the therapeutic radiation machine; and

(F) For therapeutic radiation machines manufactured after January 30, 2007, a positive display of specific filter(s) in the beam.

(k) Multiple Tubes. When a control panel may energize more than one x-ray tube:

(A) It must be possible to activate only one x-ray tube at any time; and

(B) There must be an indication at the control panel identifying which x-ray tube is activated; and

(C) There must be an indication at the tube housing assembly when that tube is energized.

(l) Target-To-Skin Distance (TSD). There must be a means of determining the central axis TSD to within 1 cm and of reproducing this measurement to within 2 mm thereafter.

(m) Shutters. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within 5 seconds (sec) after the x-ray ON switch is energized, the beam must be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition, after the unit is at operating parameters, the shutter must be controlled by the operator from the control panel. An indication of shutter position must appear at the control panel.

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(4) Photon And Electron Beam Therapeutic Radiation Machines 1 Mv And Above.

(a) Leakage Radiation Outside The Maximum Useful Beam In Photon And Electron Modes. The absorbed dose due to leakage radiation (excluding neutrons) at any point outside the maximum sized useful beam, but within a circular plane of radius 2 meters which is perpendicular to and centered on the central axis of the useful beam at the nominal treatment distance (i.e., patient plane), must not exceed a maximum of 0.2 percent and an average of 0.1 percent of the absorbed dose on the central axis of the beam at the nominal treatment distance. Measurements must be averaged over an area not exceeding 100 square centimeters at a minimum of 16 points uniformly distributed in the plane; and

(b) Except for the area defined in section (3)(a) of this rule, the absorbed dose due to leakage radiation (excluding neutrons) at 1 m from the electron path between the electron source and the target or electron window, must not exceed 0.5 percent of the absorbed dose on the central axis of the beam at the nominal treatment distance. Measurements must be averaged over an area not exceeding 100 square centimeters; and

(c) For equipment manufactured after January 30, 2007, the neutron absorbed dose outside the useful beam must be in compliance with International Electrotechnical Commission (IEC) Document 60601-2-1 dated June 30, 1998; and

(d) For each therapeutic radiation machine, the registrant must determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in sections (3)(a) through (c) of this rule for the specified operating conditions. Records on leakage radiation measurements must be maintained at the installation for inspection by the Agency.

(e) Leakage Radiation Through Beam Limiting Devices. The attenuation of leakage radiation through a beam-limiting device must meet the following requirements:

(A) Photon Radiation. All adjustable or interchangeable beam limiting devices must attenuate the useful beam such that at the nominal treatment distance and the maximum absorbed dose anywhere in the area shielded by the beam limiting device(s) must not exceed 2 percent (or the amount specified by the manufacturer), of the maximum absorbed dose on the central axis of the useful beam measured in a 100 square centimeters radiation field, or maximum available field size if less than 100 square centimeters; and

(B) Electron Radiation. All adjustable or interchangeable electron applicators must attenuate the radiation, including but not limited to photon radiation generated by electrons incident on the beam limiting device and electron applicator and other parts of the radiation head, such that the absorbed dose in a plane perpendicular to the central axis of the useful beam at the nominal treatment distance must not exceed: and

(C) A maximum of 2 percent and average of 0.5 percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit must apply beyond a line 7 cm outside the periphery of the useful beam; and

(D) A maximum of 10 percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit must apply beyond a line 2 cm outside the periphery of the useful beam.

(f) Measurement Of Leakage Radiation. Measurement of leakage radiation shall be done after installation and before clinical usage and must include:

(A) Photon Radiation. Measurements of leakage radiation through the beam limiting devices must be made with the beam limiting devices closed and any residual aperture blocked by at least 2 tenth value layers of suitable absorbing material. In the case of overlapping beam-limiting devices, the leakage radiation through each set must be measured independently at the depth of maximum dose. Measurements must be made using a radiation detector of area not exceeding 10 square centimeters; and

(B) Electron Radiation. Measurements of leakage radiation through the electron applicators must be made with the electron beam directed into the air and using a radiation detector of area up to but not exceeding 1 square centimeters suitably protected against radiation, which has been scattered from material beyond the radiation detector. Measurements must be made using 1 cm of tissue/water equivalent material for build up.

(g) Filters/Wedges. Each wedge filter that is removable from the system must be clearly marked with an identification number. For removable wedge filters, the nominal wedge angle must appear on the wedge or wedge tray (if permanently mounted to the tray). If the wedge or wedge tray is significantly damaged, the wedge transmission factor must be re-measured; and

(A) For equipment manufactured after January 30, 2007 which utilizes wedge filters, interchangeable field flattening filters, or interchangeable beam scattering foils; and

(B) Irradiation must not be possible until a selection of a filter or a positive selection to use no filter has been made at the treatment control panel, either manually or automatically; and

(C) An interlock system must be provided to prevent irradiation if the wedge, flattening filter or scattering foil selected is not in the correct position; and

(D) A display must be provided at the treatment control panel showing the wedge or beam modifying filter(s) in use; and

(E) An interlock must be provided to prevent irradiation if any filter and/or beam scattering foil selection operation does not agree with the energy/mode selected by the operator at the control panel.

(h) Stray Radiation in the Useful Beam. For equipment manufactured after January 30, 2007, the registrant must determine during acceptance testing, or obtain from the manufacturer, stray x-ray radiation, and absorbed dose at the surface and neutron data. This data must be sufficient to ensure compliance with International Electrotechnical Commission (IEC) Document 60601-2-1 dated June 30, 1998.

(i) Beam Monitors. All therapeutic radiation machines subject to these rules must be provided with redundant beam monitoring systems. The sensors for these systems must be fixed in the useful beam during treatment to indicate the dose monitor unit rate.

(j) Equipment manufactured after January 30, 2007 must be provided with at least 2 independently powered integrating dose meters. Alternatively, common elements may be used if the production of radiation is terminated upon failure of any common element.

(k) Equipment manufactured on or before January 30, 2007 must be provided with at least 1 radiation detector. This detector must be incorporated into a useful beam monitoring system; and

(l) The detector and the system into which that detector is incorporated must meet the following requirements:

(A) Each detector must form part of a beam monitoring system from whose readings in dose monitor units the absorbed dose at a reference point can be calculated; and

(B) Each beam monitoring system must be capable of independently monitoring, interrupting, and terminating irradiation; and

(m) For equipment manufactured after January 30, 2007, the design of the beam monitoring systems must ensure that the:

(A) Malfunctioning of one beam monitoring system must not affect the correct functioning of the other system(s); and

(B) Failure of either system must terminate irradiation or prevent the initiation of radiation.

(n) Each beam monitoring system must have a legible display at the treatment control panel. For equipment manufactured after January 30, 2007, each display must:

(A) Maintain a display of the patient treatment parameters until intentionally reset;

(B) Have only one scale and no electrical or mechanical scale multiplying factors;

(C) Utilize a design such that increasing dose is displayed by increasing numbers; and

(D) In the event of power failure the beam monitoring information required in section (3)(k) of this rule must be displayed at the control panel, and at the time of failure, must be retrievable in at least one system for a 20 minute period of time.

(o) Beam Symmetry. A bent-beam linear accelerator with beam flattening filter(s) subject to this rule must be provided with auxiliary device(s) to monitor beam symmetry;

(A) The integrating dose meters referenced in section (3)(k) of this rule must be able to detect field asymmetry greater than 10 percent; and

(B) The integrating dose meters referenced in section (3)(k) of this rule must be configured to terminate irradiation if the specifications in section (3)(o)(A) of this rule cannot be maintained.

(p) Selection And Display Of Dose Monitor Units. Irradiation must not be possible until a new selection of a number of dose monitor units has been made at the treatment control panel; and

(A) The pre-selected number of dose monitor units must be displayed at the treatment control panel until reset manually for the next irradiation; and

(B) After termination of irradiation, it must be necessary to reset the dosimeter display before subsequent treatment can be initiated; and

## ADMINISTRATIVE RULES

(C) For equipment manufactured after January 30, 2007, after termination of irradiation, it must be necessary for the operator to reset the pre-selected dose monitor units before irradiation can be initiated.

(q) Air Kerma Rate/Absorbed Dose Rate. For equipment manufactured after January 30, 2007, a system must be provided from which readings the air kerma rate or absorbed dose rate at a reference point can be calculated. [The radiation detectors specified in section (3)(k) of this rule may form part of this system]. In addition:

(A) The dose monitor unit rate must be displayed at the treatment control panel; and

(B) If the equipment can deliver under any conditions an air kerma rate or absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer, a device must be provided which terminates irradiation when the air kerma rate or absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which irradiation is terminated at must be maintained in a record by the registrant.

(r) If the equipment can deliver, under any fault condition(s), an air kerma rate or absorbed dose rate at the nominal treatment distance of more than 10 times the maximum value specified by the manufacturer:

(A) A device must be provided to prevent the air kerma rate or absorbed dose rate anywhere in the radiation field from exceeding twice the specified maximum value; and

(B) Terminate irradiation if the excess absorbed dose at the nominal treatment distance exceeds 4 Gy (400 rad); and

(C) For each therapeutic radiation machine, the registrant must determine, or obtain from the manufacturer, the maximum value(s) specified in section (3)(p) of this rule for the specified operating conditions. Records of these maximum value(s) must be maintained at the facility for 5 years or until inspected by the Agency.

(s) Termination or Interruption of Irradiation by the Beam Monitoring System or Systems During Stationary Beam Radiation Therapy. Each primary system must terminate irradiation when the pre-selected number of dose monitor units has been detected by the system; and

(A) If the original design of the equipment included a secondary dose monitoring system, that system must be capable of terminating irradiation when not more than 15 percent or 40 dose monitor units above the pre-selected number of dose monitor units set at the control panel has been detected by the secondary dose monitoring system; and

(B) For equipment manufactured after January 30, 2007, an indicator on the control panel must show which monitoring system has terminated irradiation; and

(C) It must be possible to terminate irradiation and equipment movement or go from an interruption condition to termination condition at any time from the operator's protected position at the treatment control panel; and

(D) Interruption Of Radiation. If a therapeutic radiation machine has an interrupt mode, it must be possible to interrupt irradiation and equipment movements at any time from the treatment control panel. Following an interruption it must be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a pre-selected value during an interruption, irradiation and equipment movements must be automatically terminated.

(t) Timer. A suitable irradiation control device must be provided to terminate the irradiation after a pre-set time interval; and

(A) The timer must be provided with a display at the treatment control panel. The timer must have a pre-set time selector and an elapsed time indicator; and

(B) The timer must be a cumulative timer that activates with an indication of "BEAM-ON" and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it must be necessary to reset the elapsed time indicator; and

(C) The timer must terminate irradiation when a pre-selected time has elapsed, if the dose monitoring systems have not previously terminated irradiation.

(u) Selection Of Radiation Type. Equipment capable of both x-ray therapy and electron therapy must meet the following additional requirements:

(A) Irradiation must not be possible until a selection of radiation type (x-rays or electrons) has been made at the treatment control panel and the patient's chart has been checked to verify that the selected radiation type is the one specified in the chart; and

(B) The radiation type selected must be displayed at the treatment control panel before and during irradiation.

(v) Interlocks must be provided to:

(A) Ensure that the equipment can principally emit only the radiation type that has been selected; and

(B) Prevent irradiation with x-rays, except to obtain an image, when electron applicators are fitted; and

(C) Prevent irradiation with electrons when accessories specific for x-ray therapy are fitted; and

(D) Prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel.

(w) Selection Of Energy. Equipment capable of generating radiation beams of different energies must meet the following requirements:

(A) Irradiation must not be possible until a selection of the appropriate energy has been made at the treatment control panel and the patient's chart has been checked to verify that the selected energy is that which is specified in the patient's chart; and

(B) The nominal energy value selected must be displayed at the treatment control panel until reset manually for the next irradiation. After termination of irradiation, it must be necessary to reset the nominal energy value selected before subsequent treatment can be initiated; and

(C) Irradiation must not be possible until the appropriate flattening filter or scattering foil for the selected energy is in its proper location and the patient's chart has been checked to verify that the flattening filter or scattering foil is that which is specified in the chart; and

(D) For equipment manufactured after January 30, 2007, the selection of energy must comply with International Electrotechnical Commission (IEC) Document 60601-2-1 dated June 30, 1998.

(x) Selection of Stationary Beam Radiation Therapy or Moving Beam Radiation Therapy. Therapeutic radiation machines capable of both stationary beam radiation therapy and moving beam radiation therapy must meet the following requirements:

(A) Irradiation must not be possible until a selection of stationary beam radiation therapy or moving beam radiation therapy has been made at the treatment control panel and the patient's chart has been checked to verify that the selection of stationary or moving beam radiation is that which is specified in the patient's chart; and

(B) The mode of operation must be displayed at the treatment control panel and interlocks must be provided to:

(C) Ensure that the equipment can operate only in the mode that has been selected; and

(D) Prevent irradiation if any selected parameter in the treatment room does not agree with the selected parameter at the treatment control panel.

(y) Moving beam radiation therapy must be controlled to obtain the selected relationships between incremental dose monitor units and incremental movement. For equipment manufactured after January 30, 2007:

(A) An interlock system must be provided to terminate irradiation if the number of dose monitor units delivered in any 10° of rotation or 1 cm of linear motion differs by more than 20 percent from the selected value; and

(B) Where incident radiation beam angle terminates the irradiation in moving beam radiation therapy, the dose monitor units delivered must differ by less than 5 percent from the dose monitor unit value selected; and

(C) An interlock must be provided to prevent motion of more than 5° or 1 cm beyond the selected limits during moving beam radiation therapy; and

(D) An interlock must be provided to require that a selection of direction be made at the treatment control panel in all units, which are capable of both clockwise, and counter-clockwise moving beam radiation therapy; and

(E) Moving beam radiation therapy must be controlled with both primary position sensors and secondary position sensors to obtain the selected relationships between incremental dose monitor units and incremental movement; and

(F) Where the beam monitor system terminates the irradiation in moving beam radiation therapy, the termination of irradiation must be as required by section (3)(y)(A) of this rule; and

(G) An interlock system must be provided to terminate irradiation if movement; and

(H) Interruption occurs during stationary beam radiation therapy; or

(I) Treatment does not start or stop during moving beam radiation therapy unless such stoppage is a pre-planned function.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

# ADMINISTRATIVE RULES

## 333-123-0030

### Facility Design Requirements for Therapeutic Radiation Machines

(1) Grenz Ray. In addition to shielding adequate to meet the requirements of division 120, treatment rooms must be provided with warning lights, in a readily observable position (preferably at eye level) out side of all access doors to the Grenz Ray room. The warning lights must indicate when the useful beam is "ON" or when the room is being used for Grenz Ray purposes.

(a) Except as provided in 333-106-0025, no individual other than the patient and operator must be in the treatment room during Grenz Ray radiation therapy treatment provided the operator is protected by a barrier sufficient to meet the requirements of division 120.

(b) A method must be provided to secure the room where the Grenz Ray radiation machine is located, against unauthorized entry.

(2) Therapeutic Radiation Machines 50 Kv To < 1 Mev. In addition to shielding adequate to meet requirements of division 120, the treatment room must meet the following design requirements:

(a) Provision must be made for continuous two-way aural communication between the patient and the operator at the control panel; and

(b) There must be continuous observation of the patient during irradiation. The viewing system must be configured such that the operator can observe the patient from the control panel.

(c) Treatment rooms that contain a therapeutic radiation machine capable of operating above 150 kV must meet the following additional requirements:

(A) All protective barriers must be fixed except for entrance doors or beam interceptors; and

(B) The control panel must be located outside the treatment room or in a totally enclosed booth. If within the treatment room, the booth must have a ceiling to provide total enclosure. The booth walls must meet the requirements of a protective barrier as specified in division 120; and

(C) Interlocks must be provided such that all entrance doors, including doors to any interior booths, will be closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, the machine must be incapable of resuming operation with manual reinitiation at the control panel, and the machine must remain inoperable until the door is closed; and

(D) When any door, referred to in section 30(2)(c)(C) of this rule, is opened while the x-ray tube is activated, the air kerma rate at a distance of 1 meter from the source must be reduced to less than 1 mGy (100 mRad) per hour.

(3) Facility Design Requirements for Therapeutic Radiation Machines Operating > 1 Mv. Each therapeutic radiation machine subject to 333-123-0025 must be provided with such primary and/or secondary barriers as are necessary to ensure compliance with division 120; and

(a) Facility design information for all new installations of a therapeutic radiation machine or installations of a therapeutic radiation machine of higher energy into a room not previously approved for that energy must be submitted for Agency approval before actual installation of the therapeutic radiation machine.

(b) In addition to shielding adequate to meet requirements of division 120, the following design requirements are made.

(c) Protective Barriers. All protective barriers must be fixed, except for access doors to the treatment room or movable beam interceptors.

(d) Control Panel. In addition to other requirements specified in this Division, the control panel must also:

(A) Be located outside the treatment room; and

(B) Provide an indication of whether electrical power is available at the control panel and if activation of the radiation is possible; and

(C) Provide an indication of whether radiation is being produced; and

(D) Include an access control (locking) device that will prevent unauthorized use of the therapeutic radiation machine.

(e) Viewing Systems. Windows, mirrors, closed-circuit television or an equivalent viewing system must be provided to permit continuous observation of the patient following positioning and during irradiation and must be so located that the operator may observe the patient from the treatment control panel. The therapeutic radiation machine must not be used for patient irradiation unless at least one viewing system is operational.

(f) Aural Communications. Provision must be made for continuous two-way aural communication between the patient and the operator at the control panel. The therapeutic radiation machine must not be used for irradiation of patients unless continuous two-way aural communication is possible.

(g) Room Entrances. Treatment room entrances must be provided with warning lights in a readily observable position near the outside of all

access doors, which will indicate when the useful beam is "ON" and when it is "OFF".

(h) Entrance Interlocks. Interlocks must be provided such that all access controls are activated before treatment can be initiated or continued. If the radiation beam is interrupted by any access control, it must not be possible to restore the machine to operation without resetting the access control and reinitiating irradiation by manual action at the control panel;

(i) Beam Interceptor Interlocks. If the shielding material in any protective barrier requires the presence of a beam interceptor to ensure compliance with division 120, locks must be provided to prevent the production of radiation, unless the beam interceptor is in place, whenever the useful beam is directed at the designated barrier(s);

(j) Emergency Cutoff Switches. At least 1 emergency power cutoff switch must be located in the radiation therapy room and must terminate all equipment electrical power including radiation and mechanical motion. All emergency power cutoff switches must include a manual reset so that the therapeutic radiation machine cannot be restarted from the unit's control console without resetting the emergency cutoff switch;

(k) Safety Interlocks. All safety interlocks must be designed so that any defect or component failure in the safety interlock system prevents or terminates operation of the therapeutic radiation machine.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0035

### Calibration, Acceptance Testing and Commissioning of Therapeutic Radiation Machines

(1) Full calibration, acceptance testing and commissioning of a therapeutic radiation machine subject to 333-123-0025 of this rule must be performed by, or under the direct supervision of a Qualified Medical Physicist.

(2) Acceptance testing and commissioning shall be performed in accordance with industry standards of practice and the manufacturer's contractual specifications. Acceptance testing and commissioning shall be conducted before the first medical use following installation or re-installation of the therapeutic radiation machine.

(3) Full calibration must include all applicable parameters in accordance with industry standards of practice, carried out to determine that all parameters of the radiation therapy machine are within acceptable limits:

(a) Before the first medical use after installation or reinstallation; and

(b) Whenever quality assurance check measurements indicate that the radiation output differs by more than 5 percent from the value obtained at the last full calibration and the difference cannot be reconciled. Therapeutic radiation machines with multi-energy and/or multi-mode capabilities must only require measurements for those modes and/or energies that are not within their acceptable range; and

(c) Following any component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam. If the repair, replacement or modification does not affect all modes and/or energies, measurements must be performed on the effected mode/energy that is in most frequent clinical use at the facility. The remaining energies/modes may be validated with periodic quality assurance check procedures against the criteria in 333-123-0040; and

(d) At intervals not exceeding 1 year, although it shall not be necessary to complete all elements of a full calibration at the same time, all applicable parameters (for all energies) shall be completed at intervals not exceeding 12 calendar months.

(4) The registrant must maintain a record of each full calibration for the duration of the registration. The record must include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number for both the therapeutic radiation machine and the x-ray tube;

(c) The model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine; and

(d) The signature of the Qualified Medical Physicist responsible for performing the calibration.

(5) The calibration record must be maintained in an auditable form for the duration of the registration. The record must include:

(a) The date of the calibration;

(b) The manufacturer's name, model number and serial number for the therapeutic radiation machine;

(c) The model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine; and

(d) The signature of the Qualified Medical Physicist responsible for performing the calibration.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

# ADMINISTRATIVE RULES

## 333-123-0040

### Quality Assurance And Safety Checks

(1) Periodic quality assurance checks must be performed on all therapeutic radiation machines subject to 333-123-0025 at intervals in accordance with industry standards of practice; and

(a) Quality assurance checks must include determination of central axis radiation output and a representative sampling of periodic quality assurance checks in accordance with the written procedures established by the Qualified Medical Physicist.

(b) Quality assurance checks required in this rule must be conducted using a dosimetry system that has been intercompared within the previous 12 months with the dosimetry system described in 333-123-0010(5) of this rule.

(c) The quality assurance procedures established by the Qualified Medical Physicist must:

(A) Specify the frequency at which tests or measurements are to be conducted; and

(B) Specify equipment required for the test; and

(C) Include the name of personnel conducting the test; and

(D) Include the acceptable tolerance for each parameter measured in the quality assurance check and the response triggered by test results that exceed tolerance levels.

(d) The registrant must have the Qualified Medical Physicist review and sign the results of each radiation output quality assurance check within 1 month of the date that the check was performed. The results of each periodic radiation output check must be reviewed according to the following procedures:

(A) The Radiation Therapy Physician and Qualified Medical Physicist must be immediately notified if any parameter is not within its acceptable tolerance. The therapeutic radiation machine must not be used clinically until the Qualified Medical Physicist has determined that all parameters are within their acceptable tolerances; and

(B) Notwithstanding the other requirements of this rule, the registrant must ensure that no therapeutic radiation machine is used to administer radiation to humans unless the quality assurance checks required by section (1) of this rule have been performed within the 30 day period immediately prior to said administration.

(2) Safety Checks. Therapeutic radiation machines subject to 333-123-0025 of this rule must have applicable safety quality assurance check in accordance with industry standards of practice and performed at intervals not to exceed 1 week to ensure proper functioning and operation of:

(a) Electrical interlocks at each external beam radiation therapy room entrance; and

(b) The "BEAM-ON" and termination switches; and

(c) Beam condition indicator lights on the access door(s), control console, and in the radiation therapy room; and

(d) Viewing and auditory systems; and

(e) If applicable, electrically operated treatment room doors from inside and outside the treatment room; and

(f) At least one emergency power cutoff switch. If more than one emergency cutoff switch is installed and not all switches are tested at once, each switch must be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the weekly treatment schedule in order to minimize possible stability problems with the therapeutic radiation machine or interruption of patient treatment schedules.

(3) The registrant must promptly repair any system identified in this rule that is not operating properly.

(4) The registrant must maintain a record of each quality assurance check required by section (1) of this rule for 3 years. The record must include:

(a) The date of the quality assurance check;

(b) The manufacturer's name, model number, and serial number of the therapeutic radiation machine control panel;

(c) The record must also include the manufacturer's name, model number and serial number and calibration date for the instrument(s) used to measure the radiation output of the therapeutic radiation machine; and

(d) The signature of the individual who performed the periodic quality assurance check.

(5) Quality assurance for a conventional or virtual simulator must include acceptance testing and periodic verification of system performance in accordance with industry standards of practice for a conventional simulator or computed tomography simulators.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0045

### Quality Assurance Program

(1) Each registrant or applicant subject to 333-123-0025 must develop, implement, and maintain a quality assurance program to assure that radiation will be administered as directed by the Qualified Radiation Therapy Physician and in a manner that is safe for the patient, the general public, and radiation therapy staff.

(2) The program must include:

(a) Written or Electronic Directives:

(A) A written or electronic directive must be dated and signed by an radiation therapy physician before the administration of radiation; and

(B) If because of the patient's condition, a delay in the order to provide a written or electronic revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented as soon as possible in writing in the patient's record and a revised written directive is signed by an authorized user within 48 hours of the oral revision; and

(C) The written directive must contain the patient's full name and patient identification number, the type and energy of the beam, the total dose, dose per fraction, treatment site, and number of fractions; and

(D) A written revision to an existing written directive may be made if the revision is dated and signed by a radiation therapy physician before the administration of the external beam dose, or the next fractional dose; and

(E) The registrant must retain copies of written directives for 3 years; and

(F) Any unintended deviation from the written directive must be identified, evaluated and appropriate corrective action taken to prevent recurrence.

(b) The Quality Assurance program must include a process for ensuring that:

(A) Prior to the administration of each course of radiation treatments, the patient's identity is verified by more than one method as the individual named in the written or electronic directive; and

(B) Each administration is in accordance with the written or electronic directive; and

(C) External beam radiation therapy final plans of treatment and related calculations are in accordance with the respective written or electronic directive; and

(D) Manual or computer generated dose calculations and dose distribution plots are in accordance with the written or electronic directive; and

(E) Monitor units used, are verified and that set-up parameters and machine settings are correctly transferred to the control systems of radiation therapy machines; and

(F) At a minimum, prior to the administration of the first radiation treatment, a Port film or Portal image must be taken to check that the radiation field is properly aligned to the intended treatment area. The Port film or Portal image must be viewed and evaluated and the beam alignment approved by the Radiation Therapy Physician before radiation therapy commences. Thereafter, a weekly Port film or Portal image must be reviewed and signed by a Radiation Therapy Physician.

Stat. Auth.: ORS 453.605 – 453.807

Stats. Implemented: ORS 453.605 – 453.807

Hist.: PH 23-2006, f. & cert. ef. 10-19-06

## 333-123-0050

### Qualified Medical Physicist Support in Facilities Having Therapeutic Radiation Machines with Energies of 1 Mv and Above

(1) The Qualified Medical Physicist is responsible for:

(a) Full calibration(s) required by 333-123-0035(3) and radiation protection surveys required by 333-123-0010(4); and

(b) Supervision and review of dosimetry; and

(c) Beam data acquisition and transfer for computerized dosimetry, and supervision of its use; and

(d) Quality assurance, including quality assurance check review required by 333-123-0040(2)(c); and

(e) Consultation with the authorized user in treatment planning, as needed; and

(f) Performing in a timely manner, calculations/assessments, regarding treatment errors, and report to the responsible user.

(2) Acceptance Testing, Commissioning and Full Calibration Measurements.

(a) Acceptance testing, commissioning and full calibration of a therapeutic radiation machine subject to this rule must be performed by, or under the direct supervision of, a Qualified Medical Physicist.

# ADMINISTRATIVE RULES

(b) Acceptance testing must be performed in accordance with the manufacturer's contractual specifications. Commissioning must be performed according to the Medical Physicist's procedures before the first medical use following installation or after reinstallation of the therapeutic radiation machine.

Stat. Auth.: ORS 453.605 – 453.807  
Stats. Implemented: ORS 453.605 – 453.807  
Hist.: PH 23-2006, f. & cert. ef. 10-19-06

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**Rule Caption:** Amendment of the Oregon Death with Dignity Act administrative rules.

**Adm. Order No.:** PH 24-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 10-19-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 333-009-0000, 333-009-0010, 333-009-0020, 333-009-0030

**Subject:** The Oregon Department of Human Services, Public Health Division (Division) is permanently amending the Death with Dignity Oregon Administrative Rules to update and correct references and to provide more specific timelines and directions for filing report forms with the Division.

**Rules Coordinator:** Christina Hartman—(971) 673-1291

## 333-009-0000

### Definitions

For the purpose of OAR 333-009-0000 through 333-009-0030, the following definitions apply.

(1) "Act" means the "Oregon Death with Dignity Act" or Measure 16 as adopted by the voters on November 8, 1994.

(2) "Adult" means an individual who is 18 years of age or older.

(3) "Attending Physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(4) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating, if those persons are available.

(5) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(6) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(7) "Dispensing Record" means a copy of the pharmacy dispensing record form.

(8) "Department" means the Department of Human Services.

(9) "Health Care Facility" shall have the meaning given in ORS 442.015.

(10) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by the law of this state to administer health care or dispense medication in the ordinary course of business or practice of a profession and includes a health care facility.

(11) "Patient" means a person who is under the care of a physician.

(12) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(13) "Qualified patient" means a capable adult who is a resident of Oregon and has satisfied the requirements of this Act in order to obtain a prescription for medication to end his or her life in a humane and dignified manner.

Stat. Auth.: ORS 127.865  
Stats. Implemented: ORS 127.800-127.995  
Hist.: HD 15-1997(Temp), f. & cert. ef. 11-6-97; OHD 4-1998, f. & cert. ef. 5-4-98; OHD 12-1999, f. & cert. ef. 12-28-99; PH 24-2006, f. & cert. ef. 10-19-06

## 333-009-0010

### Reporting

(1) To comply with ORS 127.865(2), within seven calendar days of writing a prescription for medication to end the life of a qualified patient the attending physician shall send the following completed, signed and

dated documentation by mail to the State Registrar, Center for Health Statistics, 800 NE Oregon Street, Suite 205, Portland OR 97232, or by facsimile to (971) 673-1201:

(a) The patient's completed written request for medication to end life, either using the "Written Request for Medication to End My Life in a Humane and Dignified Manner" form prescribed by the Department or a substantially the form described in ORS 127.897;

(b) One of the following reports prescribed by the Department:

(A) "Attending Physician's Compliance Form"; or

(B) "Attending Physician's Compliance Short Form" accompanied by a copy of the relevant portions of the patient's medical record documenting all actions required by the Act;

(c) "Consulting Physician's Compliance Form" prescribed by the Department; and

(d) "Psychiatric/Psychological Consultant's Compliance Form" prescribed by the Department, if an evaluation was performed.

(2) Within 10 calendar days of a patient's ingestion of lethal medication obtained pursuant to the Act, or death from any other cause, whichever comes first, the attending physician shall complete the "Oregon Death with Dignity Act Attending Physician Interview" form prescribed by the Department.

(3) To comply with ORS 127.865(1)(b), within 10 calendar days of dispensing medication pursuant to the Death with Dignity Act, the dispensing health care provider shall file a copy of the "Pharmacy Dispensing Record Form" prescribed by the Department with the State Registrar, Center for Health Statistics, 800 NE Oregon St., Suite 205, Portland, OR 97232 or by facsimile to (971) 673-1201. Information to be reported to the Department shall include:

(a) Patient's name and date of birth;

(b) Prescribing physician's name and phone number;

(c) Dispensing health care provider's name, address and phone number;

(d) Medication dispensed and quantity;

(e) Date the prescription was written; and

(f) Date the medication was dispensed.

**Note:** Forms referenced are available from the agency at <http://egov.oregon.gov/DHS/ph/pas/pasforms.shtml>.

Stat. Auth.: ORS 127.865

Stats. Implemented: ORS 127.800-127.995

Hist.: HD 15-1997(Temp), f. & cert. ef. 11-6-97; OHD 4-1998, f. & cert. ef. 5-4-98; OHD 12-1999, f. & cert. ef. 12-28-99; PH 24-2006, f. & cert. ef. 10-19-06

## 333-009-0020

### Record Review/Annual Report

(1) The Department shall annually review records maintained pursuant to this Act.

(2) The Department shall generate and make available to the public an annual statistical report of information collected under this Act.

Stat. Auth.: ORS 127.800

Stats. Implemented: ORS 127.800 - 127.897

Hist.: HD 15-1997(Temp), f. & cert. ef. 11-6-97; OHD 4-1998, f. & cert. ef. 5-4-98; PH 24-2006, f. & cert. ef. 10-19-06

## 333-009-0030

### Confidentiality/Liability

(1) All information collected pursuant to ORS 127.800 to 127.897 including, but not limited to, the identity of patients, physicians and other health care providers, and health care facilities shall not be a public record and may not be made available for inspection by the public.

(2) All information collected pursuant to ORS 127.800 to 127.897 and the annual statistical report referred to in 333-009-0020(2) shall be considered a special morbidity and mortality study under ORS 432.060. Summary information released in statistical reports shall be aggregated to prevent identification of individuals, physicians, or health care facilities.

(3) Pursuant to ORS 432.060, providing morbidity and mortality information to the Department does not subject any physician, hospital, health care facility or other organization or person furnishing such information to an action for damages.

(4) Access to death certificate information shall be in accordance with OAR 333-011-0096 pursuant to ORS 432.121.

Stat. Auth.: ORS 127.800

Stats. Implemented: ORS 127.800 - 127.995, 432.060,432.121

Hist.: HD 15-1997(Temp), f. & cert. ef. 11-6-97; OHD 4-1998, f. & cert. ef. 5-4-98; PH 24-2006, f. & cert. ef. 10-19-06

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**Rule Caption:** Amendment of ambulatory surgical center rules to implement HB 2800 (2005 Legislative Session).

# ADMINISTRATIVE RULES

**Adm. Order No.:** PH 25-2006

**Filed with Sec. of State:** 10-31-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 333-076-0101, 333-076-0125, 333-076-0130, 333-076-0135

**Subject:** The Oregon Department of Human Services, Public Health Division is permanently amending the rules related to ambulatory surgical centers, in order to implement House Bill 2800 (2005 Legislative Session).

**Rules Coordinator:** Christina Hartman—(971) 673-1291

## 333-076-0101

### Definitions

As used in OAR chapter 333, division 76 unless the context requires otherwise, the following definitions apply:

(1) "Health Care Facility" (HCF) has the meaning given the term in ORS 442.015, and includes but is not limited to the following classifications:

(a) "Hospital" means an establishment with an organized medical staff with facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims, or to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. "Special Inpatient Care Facilities" are facilities with inpatient beds and other facilities designed and utilized for special health care purposes, to include but not be limited to: rehabilitation center, college infirmary, chiropractic facility, facility for the treatment of alcoholism or drug abuse, or inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Division, after determination of the need for such classification and the level and kind of health care appropriate for such classification;

(b) "Long Term Care Facility" (LTCF) means an establishment with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of the Department of Human Services, to provide treatment for two or more unrelated patients. "Long term care facility" includes the terms "skilled nursing facility" and "intermediate care facility" but such definition shall not be construed to include facilities licensed and operated pursuant to ORS 443.400–443.455; and

(c) "Ambulatory Surgical Center" (ASC) means a health care facility which performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements:

(A) In the case of outpatient surgery involving termination of pregnancy, procedures routinely and customarily done in physician's offices are the following:

- (i) Dilation and curettage;
- (ii) Suction curettage;
- (iii) Sharp curettage; and
- (iv) Dilation and evacuation.

(B) A freestanding birthing center means a health care facility licensed for the primary purpose of performing low risk deliveries.

(2) "Authentication" means verification that an entry in the patient medical record is genuine.

(3) "Certified Nursing Assistant" (CNA) means a person who is certified by an Oregon State Board of Nursing approved training program to assist licensed nursing personnel in the provision of nursing care.

(4) "Certified Nurse Anesthetist" (CRNA) means a registered nurse certified by the American Association of Nurse Anesthetists.

(5) "Certified Nurse Midwife" (CNMW) means a registered nurse certified by the Oregon State Board of Nursing as a nurse practitioner midwife.

(6) "Chiropractor" means a person licensed under ORS Chapter 684 to practice chiropractic.

(7) "Division" means the Public Health Division of the Oregon Department of Human Services.

(8) "Governing Body" means the body or person legally responsible for the direction and control of the operation of the facility.

(9) "Governmental Unit" means the state, or any county, municipality, or other political subdivision, or any related department, division, board or other agency.

(10) "Health Care Facility Licensing Law" means ORS 441.015–441.990 and rules thereunder.

(11) "Inpatient Beds" means a bed in a facility available for occupancy by a patient who will or may be cared for and treated on an overnight basis.

(12) "Institutional Health Services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

(13) "Licensed" means that the person or facility to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a health care facility means that the facility is currently and has been duly and regularly licensed by the Division.

(14) "Licensed Nurse" means a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(15) "Licensed Practical Nurse" (LPN) means a person licensed under ORS Chapter 678 to practice practical nursing.

(16) "Major Alteration" means changes other than repair or replacement of building materials and equipment with materials and equipment of a similar type.

(17) "Naturopath" means a person licensed under ORS Chapter 685 to practice naturopathy.

(18) "New Construction" means a new building or an addition to an existing building.

(19) "NFPA" means National Fire Protection Association.

(20) "Nurse Practitioner" means a registered nurse who has been certified by the Board of Nursing as qualified to practice in an expanded specialty role within the practice of nursing.

(21) "Nursing Assistant" means a person certified as meeting the educational requirements established by the Oregon State Board of Nursing (OSBN). Responsibilities shall be limited to functions included in a course curricula approved by OSBN.

(22) "Oregon Sanitary Code" means the Food Sanitation Rules, OAR 333-150-0000.

(23) "Patient Audit" means review of the medical record and/or physical inspection of a patient.

(24) "Person" means an individual, a trust or estate, or a partnership or corporation (including associations, joint stock companies and insurance companies, a state or a political subdivision or instrumentality including a municipal corporation).

(25) "Physician" means a person licensed under ORS Chapter 677 to practice medicine by the Board of Medical Examiners.

(26) "Physician's Assistant" means a person who is registered as a physician's assistant in accordance with ORS Chapter 677.

(27) "Podiatrist" means a person licensed under ORS Chapter 677 to practice podiatry.

(28) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in subsection (2) of ORS 441.055 and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(29) "Registered Nurse" (RN) means a person licensed as a Registered Nurse under ORS Chapter 678.

Stat. Auth.: ORS 441.030, 441.057, 441.160–441.192

Stats. Implemented: ORS 441.030, 441.057, 441.160, 678.362

Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06

## 333-076-0125

### Personnel

(1) The facility shall maintain a sufficient number of qualified personnel to provide effective patient care and all other related services.

(2) There shall be written personnel policies and procedures which shall be made available to personnel.

(3) Provisions shall be made for orientation.

(4) Provisions shall be made for an annual continuing education plan.

(5) There shall be a job description for each position which delineates the qualifications, duties, authority and responsibilities inherent in each position.

(6) There shall be an annual work performance evaluation for each employee with appropriate records maintained.

(7) There shall be an employee health program for the protection of patients:

# ADMINISTRATIVE RULES

(a) Pursuant to OAR 333-019-0010:

(A) To protect the public health, a person who works in an ambulatory surgery center may not attend or work at the center while in a communicable stage of any restrictable diseases unless authorized in accordance with section (7)(b) of this rule.

(B) At an ambulatory surgery center, restrictable diseases include: diphtheria, measles, *Salmonella* Typhi infection, shigellosis, Shiga-toxicogenic *Escherichia coli* (STEC) infection, hepatitis A, tuberculosis, open or draining skin lesions infected with *Staphylococcus aureus* or Streptococcus pyogenes and any illness accompanied by diarrhea or vomiting.

(b) The infection control committee of the health care facility shall adopt policies to restrict the working of employees with health care facility restrictable diseases. When measures have been taken to prevent the transmission of disease and these measures are in accordance with written procedures approved by the infection control committee of the facility after consultation with the local health officer, infectious employees may work in a health care facility. Nothing in these rules prohibits health care facilities and local health departments from adopting additional or more stringent rules for exclusion from these facilities.

(c) Pursuant to OAR 333-019-0041:

(A) Each ambulatory surgery center shall formally assess the risk of tuberculosis transmission among staff following the recommendations outlined in "Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in Health-Care Facilities," published by the Centers for Disease Control and Prevention (Morbidity and Mortality Weekly Report, vol. 43, number RR-13, October 28, 1994) or by following recommendations otherwise approved by the Division.

(B) All personnel working in an ambulatory surgery center shall within 30 days prior to or following employment have an examination, as provided in OAR 333-026-0015, to determine whether an employee has transmissible tuberculosis.

(C) An employee whose employment never requires him/her to be in a room where patients or residents might enter, and who does not handle clinical specimens or other material from patients or their rooms, may be exempted from the requirements of section (7)(c)(B) of this rule. An example of such an employee would be an administrative person or research worker whose place of work is remote from patient or residential care areas and who does not come in contact with clinical specimens.

(D) In the event that a case of communicable tuberculosis is diagnosed in an employee or patient of a health care facility, the facility shall conduct an investigation to identify contacts. The local health department shall assist in the investigation.

(E) The actions taken under sections (7)(c)(A)-(D) of this rule and all results thereof shall be fully documented for each employee. Such documentation is subject to review by authorized representatives of the Division.

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

Stat. Auth.: ORS 441.030, 441.057, 441.160-441.192

Stats. Implemented: ORS 441.030, 441.057, 441.160, 678.362

Hist.: HD 3-1990, f. 1-8-90, cert. ef. 1-15-90; PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06

## 333-076-0130

### Policies and Procedures

The governing body shall have a formal organizational plan with written policies, procedures and by-laws that are enforced and that clearly set forth the organizational plan with written responsibilities, accountability and relationships of professional and other personnel including volunteers.

(1) The clinical services of each ASC shall be under the supervision of a manager who shall be an RN or a physician.

(2) The following are written policies and procedures that the ASC shall develop and implement:

(a) Types of procedures which may be performed in the facility;

(b) Types of anesthesia which may be used including storage procedures. Where inhalation anesthetics and medical gases are used there shall be procedures to assure safety in storage and use;

(c) Criteria for evaluating patient before admission and before discharge or transfer;

(d) Nursing service activities;

(e) Infection control;

(f) Visitor's conduct and control;

(g) Criteria and procedures for admission of physicians, dentists, or other individuals within the scope of his or her license, to the staff;

(h) Content and form of medical records;

(i) Procedures for storage and dispensing of clean and sterile supplies and equipment and the processing and sterilizing of all supplies, instru-

ments and equipment used in procedures unless disposable sterile packs are used;

(j) Procedures for the disposal of pathological and other potentially infectious waste and contaminated supplies. Guidelines established by the Division shall be used in developing these procedures;

(k) Procedures for the procurement, storage and dispensing of drugs;

(l) If the program calls for the serving of snacks or other foods procedures shall be written covering space, equipment and supplies. Arrangements may be made for outside services. All food services shall meet the requirements of the Food Sanitation Rules, OAR 333-150-0000;

(m) Procedures for the cleaning, storage and handling of soiled linen and the storage and handling of clean linen;

(n) Policies and procedures relating to routine laboratory testing;

(o) A policy and procedure which assures at least annual training in emergency procedures, including, but not limited to:

(A) Procedures for fire and other disaster;

(B) Infection control measures; and

(C) For staff involved in direct patient care, procedures for life threatening situations including, but not limited to, cardiopulmonary resuscitation and the life saving techniques for choking; and

(p) Policies and procedures for essential life saving measures and stabilization of a patient and arrangements for transfer to an appropriate facility.

Stat. Auth.: ORS 441.030, 441.057, 441.160-441.192

Stats. Implemented: ORS 441.030, 441.057, 441.160, 678.362

Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(2)(a) & (b)(A) - (Q); PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06

## 333-076-0135

### Nursing Services

(1) An RN shall be responsible for the nursing care provided to the patients.

(2) The number and types of nursing personnel, including RNs, LPNs and nursing and surgical assistants shall be based on the needs of the patients and the types of services performed.

(3) At least one RN and one other nursing staff member shall be on duty at all times patients are present.

(4)(a) For purposes of this rule, "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 operating room team members during surgery.

(b) The duties of a circulating nurse performed in an operating room of a Type I ambulatory surgical center shall be performed by a registered nurse licensed under ORS 678.010-678.410.

(c) In any case 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.

(d) Nothing in this rule precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(5) Nurses who supervise the recovery area shall have current training in resuscitation techniques and other emergency procedures.

Stat. Auth.: ORS 441.030, 441.057, 441.160-441.192

Stats. Implemented: ORS 441.030, 441.057, 441.160, 678.362

Hist.: HD 11-1980, f. & ef. 9-10-80; HD 25-1983(Temp), f. & ef. 12-21-83; HD 23-1985, f. & ef. 10-11-85; Renumbered from 333-023-0163(1); HD 3-1990, f. 1-8-90, cert. ef. 1-15-90, Renumbered from 333-076-0100(4)(a) - (c); PH 4-2006(Temp), f. & cert. ef. 3-2-06 thru 8-1-06; Administrative correction 8-22-06; PH 25-2006, f. 10-31-06, cert. ef. 11-1-06

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

**Rule Caption:** Amends maximum cost for Community-Based Care for Medicaid Long-Term Care Services.

**Adm. Order No.:** SPD 27-2006(Temp)

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 10-23-06 thru 4-20-07

**Notice Publication Date:**

**Rules Amended:** 411-027-0000

**Subject:** The Rule amendment changes the maximum monthly cost for Community-Based Long-Term Care services for Medicaid recip-

# ADMINISTRATIVE RULES

ients eligible for services under the Title 1915(c) Waiver from the current amount to the comparable amount paid for Nursing Facility services. The amendment also makes housekeeping changes.

**Rules Coordinator:** Lisa Richards—(503) 945-6398

## 411-027-0000

### Payment Limitations in Community-Based Care

#### (1) Payment for Services:

(a) Department service payments under this rule are limited to home and community-based care services provided under Oregon's Title XIX 1915(c) Waiver for Aged and Disabled Persons.

#### (b) Community-based care services include, but are not limited to:

(A) In-Home Care Services (client-employed providers and home care agencies);

(B) Residential Care Facility Services;

(C) Assisted Living Facility Services;

(D) Adult Foster Home Services;

(E) Specialized Living Services;

(F) Adult Day Care Services; and

(G) Home-Delivered Meals.

#### (2) Payment Basis:

(a) Unless otherwise specified, service payment will be based upon each client's assessed need for care as documented by the Seniors and People with Disabilities Division (SPD) Client Assessment/Planning System (CA/PS).

(b) Payments for community-based care services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income will contribute to the cost of care pursuant to OAR 461-160-0610 and 461-160-0620.

(c) Case plans will be based upon the least costly means of providing adequate care consistent with client choice. Client choice means that the person has a choice of services that are available within the approved SPD rate schedule. Any services that are available at a rate higher than the SPD rate schedule will only be a choice if the client meets the criteria in the exception policy in OAR 411-027-0050.

(d) Service delivery area (SDA) and Type B Area Agency on Aging (AAA) staff will monitor the progress of the client. When a change occurs in the client's care needs that may warrant a change in the service payment rate, staff will update the case plan.

#### (3) Payment Limitations:

(a) The total continuing cost of, waiver services for a client in a community-based care setting must not exceed the comparable nursing facility rate.

(b) Notwithstanding subsection (3)(a) of this rule, the Department may authorize service payment rates that exceed the comparable nursing facility rate when:

(A) There is a specific rehabilitation plan approved by SPD, with goals and a definite time frame for delivery, that will improve the client's self-sufficiency;

(B) SPD determines that intensive convalescent care is required for a limited period of time; or

(C) SPD determines that intensive long-term care or special technology is required, but is otherwise available locally only in an acute care facility (hospital); and

(D) SPD has reviewed the costs of service to be provided and determined their reasonability.

(c) If service payment is authorized under subsection (3)(b) of this rule:

(A) The case plan shall reflect specific provider responsibilities, the time period for the delivery of services and corresponding payment rate adjustments;

(B) SPD will give the provider written authorization for the services provided and the time period for delivery; and

(C) SDA and Type B AAA staff will monitor the progress of the client. When a change occurs in the client's care needs that may warrant a change in the service payment rate, staff will update the case plan and recommend an adjustment in the service payment rate to SPD.

(5) All service payments must be prior authorized by the SDA or Type B AAA local unit or by SPD.

(a) FPA will publish the established provider payment rate schedule. When SPD has established a rate schedule, SDA and Type B AAA long-term care case managers may prior authorize service payments from that

schedule based on the client's living situation and assessed need for care documented on the SPD CA/PS.

(b) Any rate that differs from the SPD published rate based on the client's living situation and assessed need for care must be pre-authorized by SPD.

(6) The Department will not make payment to a spouse for providing community-based care services except for In-Home Care Services as provided in OAR chapter 411, division 030 (state funded spousal pay program).

#### (7) Payments for Adult Day Services:

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted adult day services program as defined in OAR 411-066-0000 through 411-066-0020 in accordance with the published rate schedule.

(b) Adult day services may be authorized as part of an overall plan of care for service-eligible clients and may be used in combination with other community-based services if day services is the appropriate resource to meet a special need.

(c) Adult day services may be authorized for payment as a single service or in combination with other community-based care services. Adult day services will not be authorized nor paid for if another provider has been authorized payment for the same service. Payments authorized for adult day services will be included in computing the total cost of care.

(d) The Department will pay for a half day of program services when four or less hours of care are provided, and will pay for a full day of program services when more than four, but less than twenty-four, hours are provided.

#### (8) Payment For Home Delivered Meals:

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted home delivered meals as defined in OAR 411-066-0000 through 411-066-0020 in accordance with the published rate schedule.

(b) Home-delivered meals may be authorized as part of an overall plan of care for service-eligible clients and may be used in combination with other community-based services if meals is the appropriate resource to meet a special need.

#### (9) Payments to Assisted Living Facilities (ALF's):

(a) Local SDA and Type B AAA units may authorize payments to any Medicaid-contracted Assisted Living Facility as defined in OAR 411-056-0005.

(b) In all instances, placement in ALFs is contingent upon the client meeting the payment levels described in paragraph (7)(c)(C) of this rule.

#### (c) Monthly Service Payment Determination:

(A) Monthly service payment for SPD clients is based on degree of impairment in each of the six Activities of Daily Living (ADL) as determined by the SPD CA/PS and the payment levels described in paragraph (7)(c)(C) of this rule. The initial service plan must be developed prior to admission and must be revised if needed within 30 days. The service plan be reviewed and updated at least quarterly or more often as needed, as per OAR 411-056-0015(2)(g).

(B) Activities of Daily Living (ADL) are weighted for purposes of determining the monthly service payment as follows:

(i) Critical activities of daily living (ADL): toileting, eating and behavior;

(ii) Less critical ADLs: mobility, bathing/personal hygiene and dressing/grooming.

(iii) Essential factors: Other essential factors considered are medical problems, structured living, medical management and other needs.

#### (C) Payment (Impairment) Levels:

(i) Level 5 — Client is dependent in three to six ADLs; OR dependent in behavior AND one or two other ADLs.

(ii) Level 4 — Client is dependent in one or two ADLs; OR requires assistance in four to six ADLs plus assistance in behavior.

(iii) Level 3 — Client requires assistance in four to six ADLs; OR requires assistance in toileting, eating and behavior.

(iv) Level 2 — Client requires assistance in toileting, eating and behavior; OR requires assistance in behavior AND eating or toileting.

(v) Level 1 — Client requires assistance in two or more of the critical ADLs; OR requires assistance in any three ADLs; OR requires assistance in toileting, eating or behavior and assistance in at least one other essential factor; OR requires assistance in one critical ADL and one other ADL.

(D) The reimbursement rate for Department clients will not be more than the rates charged private paying clients receiving the same type and quality of care.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

# ADMINISTRATIVE RULES

Hist.: SSD 9-1984(Temp), f. & ef. 11-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 10-1985, f. & ef. 8-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 13-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 2-1993, f. 3-19-93, cert. ef. 4-1-93; SSD 9-1993, f. & cert. ef. 12-1-93; SDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDSD 1-1999, f. & cert. ef. 3-1-99; SDSD 2-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 1-2001(Temp) f. & cert. ef. 2-5-01 thru 8-3-01; Suspended by SDSD 5-2001(Temp), f. & cert. ef. 3-8-01 thru 8-3-01; Administrative correction 11-20-01; SDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 21-2004(Temp), f. 7-31-04 cert. ef. 8-1-04 thru 1-5-05; SPD 39-2004, f. 12-30-04, cert. ef. 1-5-05; SPD 27-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07

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**Rule Caption:** Clarifies criminal history re-check requirements, limited enrollment, job descriptions, imminent danger and fraud overpayment recovery.

**Adm. Order No.:** SPD 28-2006(Temp)

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 10-23-06 thru 4-20-07

**Notice Publication Date:**

**Rules Amended:** 411-031-0020, 411-031-0040

**Subject:** Seniors and People with Disabilities is adopting these temporary administrative rules that include the following changes:

- a) Clarifying the definition of fraud for overpayments;
- b) Clarification of "restricted" Homecare Workers;
- c) Criminal history re-check language is being update to reflect current program requirements;
- d) Unnecessary language about job descriptions is being removed;
- e) Minor corrections to the definition of Homecare Worker and Imminent Danger are being made; and
- f) Live-in paid leave is being clarified to indicate leave is earned irrespective of the number of clients served.

**Rules Coordinator:** Lisa Richards—(503) 945-6398

## 411-031-0020

### Definitions

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as defined in OAR chapter 411, division 015.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in OAR 411-020-0000 through 411-020-0130.

(3) "Area Agency on Aging (AAA)" means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) "Burden of proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Case Manager" means an SPD/AAA employee who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan, and monitors the services delivered.

(7) "Client" or "Client-Employer" means the individual eligible for in-home services.

(8) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the Client-Employer. These functions are clearly described in OAR 411-031-0040.

(9) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(10) "Department" means the Oregon Department of Human Services, which includes Seniors and People with Disabilities.

(11) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(12) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(13) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0020 and 411-031-0040, who is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. Independent Choices Program providers and Personal Care Attendants enrolled through Developmental Disability Services or Mental Health Services are excluded from the term Homecare Worker.

(14) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(15) "Imminent Danger" means there is reasonable cause to believe a person's life or physical, emotional or financial well-being is in danger if no intervention is initiated immediately.

(16) "In-Home Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(17) "Lack of skills, knowledge and ability to adequately or safely perform the required work" means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(18) "Lack of ability or willingness to maintain Client-Employer confidentiality" means the Homecare Worker is unable or unwilling to keep personal information about their Client-Employer private. Unless given specific permission by the Client-Employer or his or her legal representative, the Homecare Worker must not share any personal information about the eligible individual including medical, social service, financial, public assistance, legal, or interpersonal details.

(19) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five (5) days in a calendar week.

(20) "Office of Administrative Hearings" means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(21) "Oregon Project Independence (OPI)" means the program of in-home services defined in OAR chapter 411, division 032.

(22) "Preponderance of the evidence" means that one party's evidence is more convincing than the other party's.

(23) "Provider" means the individual who actually renders the service.

(24) "Provider enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(25) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

(26) "Self-Management tasks" or "Instrumental Activities of Daily Living (IADL)" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(27) "Seniors and People with Disabilities (SPD)" means the part of the Oregon Department of Human Services responsible for the administration of programs to seniors and people with disabilities, including the state local offices that administer benefits and services to eligible individuals in regional areas throughout the state.

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(28) "Services are not provided as required," means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(29) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(30) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(31) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 410-007-0210. A "denied" criminal history check results in the denial or termination of the Homecare Workers' provider enrollment.

(32) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client, or manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(33) "Violations of Protective Service and abuse rules" means the Homecare Worker violated protective service and abuse rules as described in OAR 411-020-0002, section (1). Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07

## 411-031-0040

### Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each Client-Employer may create a job description for the potential employee in coordination with the services authorized by the Case Manager.

(3) Homecare Worker Liabilities: The only benefits available to Homecare Workers are those negotiated in the collective bargaining agreement between the Home Care Commission and the Service Employee's International Union, Local 503, OPEU. This agreement does not include participation in the Public Employees Retirement System (PERS) or the Oregon Public Service Retirement Plan (OPSRP). Homecare Workers are not state employees.

(4) Client-Employer Absences: When a Client-Employer is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider, who is the only live-in provider for a client, may be retained to ensure his or her presence upon the Client-Employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(5) Selection of Homecare Worker: The Client-Employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The Client-Employer has the right to employ any individual who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office determines whether the employee meets minimum qualifications to provide the authorized services paid by the Department.

(6) Employment Agreement: The Client-Employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. The Department will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by the Department is authorized.

(7) Terms of Employment: The terms of the employment relationship are the responsibility of the Client-Employer to establish at the time of hire. These terms of employment include dismissal or resignation notice, work scheduling, and absence reporting as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) Provider Enrollment

(a) Enrollment Standards: A Homecare Worker must meet all of the following standards to be enrolled with the Department's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must be "approved" following a criminal history check as defined in OAR 410-007-0210.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in subsection (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in subsection (8)(e) of this rule.

(b) The Department may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant lacks the ability or willingness to maintain Client-Employer confidentiality;

(E) The applicant has an unacceptable criminal history;

(F) The applicant is not 18 years of age;

(G) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal health care programs; or

(H) SPD/AAA has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Clearance Rechecks: Criminal history clearance re-checks will be conducted at least every other year from the date the Homecare Worker is enrolled. SPD/AAA may conduct a re-check more frequently based on additional information discovered about the Homecare Worker, such as possible criminal activity or other allegations that could pose a significant risk to the physical, emotional or financial well-being of children, seniors or persons with disabilities.

(A) When a Homecare Worker is approved without restrictions following a criminal history check fitness determination, the approval will meet the Homecare Worker enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a County, Council of Governments or a non-profit organization.

(B) Criminal history check approval is effective for two years unless:

(i) Based on an allegations against the Homecare Worker that could pose a significant risk to the physical, emotional or financial well-being of children, seniors or persons with disabilities, a new fitness determination is conducted resulting in a change in approval status; or

(ii) Approval under probationary status has ended following a final fitness determination, as described in OAR 410-007-0210, 410-007-0310, and 410-007-0320; or

(iii) The approval has ended because DHS has inactivated or terminated the Homecare Worker's provider enrollment for one or more reasons described in OAR 411-031-0040 or 411-031-0050.

(C) Prior criminal history check approval for another DHS provider type is inadequate to meet criminal history check requirements for Homecare Worker enrollment.

(d) Limited enrollment

(A) SPD/AAA may approve a limited enrollment for a provider as an Exclusive Homecare Worker based on the applicant's personal choice to provide services only to specific family members, friends or neighbors.

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(i) To remove Exclusive Homecare Worker status and be designated as a Career Homecare Worker, a Homecare Worker must complete a new application and be approved.

(ii) Applicants who choose to provide services only to family, friends or neighbors, if approved, must only be enrolled as Restricted Homecare Workers when:

(I) The applicant has potentially disqualifying criminal history such that following a weighing test he or she would be denied as a Career Homecare Worker; or

(II) The applicant lacks the skills, knowledge or abilities (as described in OAR 411-031-0020) to be approved as a Career Homecare Worker; or

(III) The applicant is at least 16 years of age and has been approved by SPD Central Office for an exception to the age requirements for provider enrollment as described in OAR 411-031-0040(8)(a)(E).

(B) Restricted Homecare Workers are approved under a limited enrollment to provide services to specific individuals. To remove Restricted Homecare Worker status and be designated as a Career Homecare Worker, the applicant must complete a new application and criminal history check and be approved.

(i) Criminal History: After conducting a weighing test as described in OAR 410, division 007, SPD/AAA may approve a Homecare Worker with prior criminal history under a restricted enrollment to provide services to specific individuals who are family members, neighbors or friends.

(ii) Based on the applicant's lack of skills, knowledge or abilities (as described in OAR 411-031-0020), SPD/AAA may approve an applicant as a Restricted Homecare Worker to provide services only to specific individuals who are family members, neighbors or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in OAR 411-031-0040(8)(a)(E), a Homecare Worker who is at least 16 years of age may be approved as a Restricted Homecare Worker.

(e) Homecare Worker Orientation: Homecare Workers must participate in an orientation arranged through an SPD/AAA office. The orientation should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

(B) The Homecare Worker fails to complete a criminal history check authorization or provide fingerprints in accordance with the criminal history check, when requested by the Department;

(C) The Homecare Worker informs the Department they will no longer be providing Homecare Worker services in Oregon; or

(D) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

### (9) Paid Leave

(a) Live-in Home Care Workers: The Department will authorize one twenty-four hour period of leave each month, irrespective of the number of clients served, when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one live-in provider for a client.

(A) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and case manager will coordinate the timely use of these hours. Usage may be in one-hour increments. Accrued leave must be taken while employed as a live-in.

(B) The Right to Retain Live-in Paid Leave: The Homecare Worker retains the right to access earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination.

(C) Transferability of Live-In Paid Leave: Live-in Homecare Workers who convert to hourly or separate from live-in service and return as an hourly Homecare Worker within one (1) year from the last date of live-in services will be credited with their unused hours of leave up to a maximum of sixteen (16) hours. Effective July 1, 2006, unused hours of leave will be

credited up to a maximum of thirty-two (32) hours. Paid leave cannot be cashed out.

(b) Hourly Homecare Workers: On July 1st of each year, active Homecare Workers who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede July (April, May, June) will be credited with one sixteen (16) hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede February (November, December, January) will be credited with sixteen (16) hours of paid time off. One sixteen hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from biennium to biennium.

(A) Utilization of Hourly Paid Leave: Such time off must be utilized in one (1) eight (8)-hour block subject to authorization. If the Homecare Worker's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(B) Limitations of Hourly Paid Leave: If the leave hours are not used within the biennium, the balance will be reduced to zero (0). Homecare Workers will not be compensated for paid leave unless the time off work is actually taken. Hourly paid leave cannot be cashed out.

(C) Transferability of Hourly Paid Leave: An hourly Homecare Worker who transfers to work as a live-in Homecare Worker (within the biennium that their hourly leave is earned) will maintain their balance of hourly paid leave and begin accruing live-in paid leave.

### (10) Department Fiscal and Accounting Responsibility:

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services waiver is prohibited.

(b) Timely Submission of Claims: In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

### (c) Ancillary Contributions:

(A) FICA: Acting on behalf of the Client-Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the Homecare Worker-employee contribution from payments; and

(ii) Submit the Client-Employer contribution and the amounts withheld from the Homecare Worker-employee to the Social Security Administration.

(B) Benefit Fund Assessment: The Workers' Benefit Fund assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. DHS calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client-Employer, the Department will:

(i) Deduct the Homecare Worker-employees' share of the Benefit Fund Assessment rate for each hour or partial hour worked by each paid Homecare Worker.

(ii) Collect the Client-Employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received.

(iii) Submit the client and Homecare Worker's contributions to the Workers' Benefit Fund.

(C) The Department will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of subsection (10)(c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department will deduct from the Homecare Worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

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(C) The Department will pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding

(A) The Department will withhold state and federal income taxes on all payments to Homecare Workers, as indicated in the Home Care Commission's collective bargaining agreement with the Service Employee's International Union.

(B) Homecare Workers must complete and return a current Internal Revenue Service (IRS) W-4 form to the local office. The Department will apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) Homecare Worker Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the Office of Medical Assistance Programs (OMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for OMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the Home Care Commission's bargaining agreement with the Service Employee's International Union. In order to receive Homecare Worker services, the Client-Employer must provide written authorization and consent to the Department for the provision of workers' compensation insurance for their employee.

(13) Overpayments:

(a) An overpayment is any payment made to a Homecare Worker by the Department that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment: Occurs when the Department failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment: Occurs when the Department overpays the Homecare Worker due to a misunderstanding, unintentional or intentional error.

(C) Fraud Overpayment: "Fraud" means taking actions that could result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department will determine when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit will determine when a Medicaid Fraud allegation will be pursued for prosecution.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, IRS back taxes, and educational loans.

(B) Administrative or Provider Error Overpayments will be collected at no more than five percent (5%) of the Homecare Worker's gross wages.

(C) Fraud Overpayments: The Department will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

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**Rule Caption:** Oregon Project Independence Rule Revisions.

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**Rules Amended:** 411-032-0000, 411-032-0001, 411-032-0005, 411-032-0010, 411-032-0015, 411-032-0020, 411-032-0044

**Subject:** The division has been updated to allow for Area Agencies on Aging to begin offering fee based case management services per Senate Bill 870. In addition:

(a) Reference for funding has been changed from Oregon's General Fund to the Oregon Project Independence Fund.

(b) All definitions have been updated to conform to the definitions in OAR chapter 411, divisions 015 and 031.

(c) Provision for all OPI clients to contribute to their cost of service plan has been added.

(d) Language has been changed from 'client' to 'eligible individual', and from 'care' plan to 'service' plan.

(e) Removed requirement for client to be receiving another service excluding case management in order to qualify for Home Delivered Meals

(f) Removed income cap on fees for services.

**Rules Coordinator:** Lisa Richards—(503) 945-6398

## 411-032-0000

### Definitions

For purposes of these rules:

(1) "Activities of Daily Living" (ADL) means those personal functional activities required by an individual for continued well being, health and safety. For the purposes of these rules, ADLs consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (bowel and bladder management) and cognition/behavior.

(2) "Adjusted Income" means the income for all household members after deductions for household medical expenses as defined in OAR 411-032-0020(5).

(3) "Administrative Costs" means those expenses associated with the overall operation of the Oregon Project Independence (OPI) Program that are not directly attributed to a service. These costs can include, but are not limited to, costs associated with accounting services, indirect program costs, facility expenses, etc.

(4) "Adult Day Service" means a structured comprehensive program designed to meet the needs of functionally and/or adults with cognitive impairments. Adult day service provides individually planned service, supervision, social and related support services, and health monitoring in a protective setting during any part of a day, but less than 24-hour care.

(5) "Advisory Council" means an advisory council of the authorized Agencies on Aging.

(6) "Alzheimer's Disease and Other Related Disorders" means a progressive and degenerative neurological disease that is characterized by dementia including the insidious onset of symptoms of short-term memory loss, confusion, behavior changes and personality changes. It includes dementia caused from any one of the following disorders:

(a) Multi-Infarct Dementia (MID);

(b) Normal Pressure Hydrocephalus (NPH);

(c) Inoperable Tumors of the Brain;

(d) Parkinson's Disease;

(e) Creutzfeldt-Jakob Disease;

(f) Huntington's Disease;

(g) Multiple Sclerosis;

(h) Uncommon Dementia such as Pick's Disease, Wilson's Disease, and Progressive Supranuclear Palsy; or

(i) All other related disorders recognized by the National Alzheimer's Association.

(7) "Area Agency" means the agency designated by the Department as an Area Agency on Aging that is charged with the responsibility to provide a comprehensive and coordinated system of services to seniors and those individuals with disabilities in a planning and service area. For purposes of these rules, the term "Area Agency" (AAA) is inclusive of both Type A and B Area Agencies on Aging as defined in ORS 410.040 to 410.350.

(8) "Area Plan" means the approved plan for providing authorized services under Oregon Project Independence.

(9) "Assisted Transportation" means escort services that provide assistance to a person who has difficulties (physical or cognitive) using regular vehicular transportation.

(10) "Authorized Service" means any service designated by the Department and these rules to be eligible for Oregon Project Independence funding.

(11) "Case Management" means a service designed to individualize and integrate social and health care options for or with a person being served. Its goal is to provide access to an array of service options to assure

## ADMINISTRATIVE RULES

appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring.

(12) "Case Management Costs" means those expenses associated with individualizing and integrating social and health care options for or with a person receiving a service. Cost elements should include time spent with the individual, travel to and from an individual's home, mandated training time, case recording, reporting, time spent arranging for and coordinating services for the individual, supervision and staffing time related to an individual, and time spent in the initial assessment of a person who does not become an OPI individual.

(13) "Case Manager" means an SPD/AAA employee who assesses the service needs on an applicant or eligible individual, determines eligibility and offers service choices to eligible individuals. The Case Manager authorizes and implements the service plan and monitors the services delivered.

(14) "Chore Service" means assistance with heavy housework, yard work or sidewalk maintenance for persons who need assistance with these activities to assure safety.

(15) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the eligible individual and provides hourly services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR chapter 411, division 031.

(16) "Community Support Resources", "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates and the community. Services provided by natural supports are resources not paid for by the Department or AAA.

(17) "Contracted In-Home Service" means a service provided through a contractor that consists of assistance with activities of daily living and self-management tasks.

(18) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home service to individuals of the Department or Area Agency on Aging.

(19) "Department of Administrative Services" means the Department of Administrative Services for the State of Oregon.

(20) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, unless otherwise specifically defined.

(21) "Department of Revenue" means the Oregon Department of Revenue.

(22) "Diagnosed" means, for purposes of these rules, that the individual's physician has reason to believe and indicates that the individual has Alzheimer's Disease or a Related Disorder.

(23) "Direct Service Costs" means those expenses for direct labor that are attributable to an eligible individual-related service. For example, the direct service cost of home care is the cost of time actually spent providing home care services in the home. Other direct service costs are those that are directly attributable to an individual-related function.

(24) "Eligibility Determination" means the process of deciding if a prospective individual meets the requirements necessary to receive authorized services under Oregon Project Independence.

(25) "Exception or Variances" means that an agency or individual contractor or subcontractor is not required to meet one or more specific requirements of these rules.

(26) "Fee-based case management" means a service for which a fee is assessed for case management for an individual who would otherwise be ineligible for OPI services. Fee-based case management services include service planning and coordination, service plan implementation, service plan monitoring and reassessment.

(27) "Fiscal Records and Data" means all information pertaining to the financial operation of an agency or program.

(28) "Gross Income" means household income from salaries, interest and dividends, pensions, Social Security, railroad retirement benefits, and any other income prior to any deductions.

(29) "Health Services" means the Department of Human Services, Health Services.

(30) "Home Care or Homemaker Services" means all those ADL or IADL in-home services necessary to help individuals achieve the greatest degree of independent functioning.

(31) "Homecare Worker" means a provider, as described in OAR 411-030-0020 and 411-031-0040, who is directly employed by the eligible indi-

vidual via the Client Employed Provider Program, and who provides hourly services to eligible individuals. Homecare Workers also include providers in the Spousal Pay Program.

(32) "Home Delivered Meal" means a meal paid from OPI funds and delivered to an eligible individual who is receiving at least case management services.

(33) "Home Health Agency" means a licensed (in accordance with OAR 333-027-0000 through 0170), public or private agency providing coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services in at least one of the following therapeutic services: Physical therapy; Occupational therapy; Speech Therapy; or Home health aide services.

(34) "Home Health Service" means items and services furnished to an individual by a home health agency, or by others under arrangement with such agency, on a visiting basis in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(35) "Household" means the individual, spouse and any dependents as defined by the Internal Revenue Service.

(36) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times. None of these hours are exempt from federal or state minimum wage or overtime laws.

(37) "Information and Assistance" means a service that provides current information on opportunities and services available within their communities; assesses the problems and capacities of the individuals; links individuals to the opportunities and services and, to the maximum extent feasible, ensures the individual receives the services needed and is aware of the opportunities available by establishing adequate follow-up procedures.

(38) "In-Direct Cost" means:

(a) Incurred for a common or joint purpose benefiting more than one cost objective, and

(b) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect cost," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses, to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

(39) "In-Home Services" means those services that assist an individual to stay in his or her own home.

(40) "Institution" means any state, community or private hospital and any nursing facility.

(41) "Instrumental Activities of Daily Living (IADL)" or "Self Management Tasks" consist of housekeeping, including laundry, shopping, transportation, medication management and meal preparation as described in OAR 411-015-0007.

(42) "Personal Care Service" means in-home services provided to maintain, strengthen, or restore an individual's functioning in their own home when an individual is dependent in one or more ADLs, or when an individual requires assistance for ADL needs. Assistance can be provided either by a contracted agency or by a Homecare worker paid in accordance with the collectively bargained rate.

(43) "Program Records and Data" means any information of a non-fiscal nature.

(44) "Program Support Costs" means those expenses associated with managing the services provided either through contract or directly by the Area Agency on Aging, that are attributable to a specific service.

(45) "Provider" means the individual who actually renders the service.

(46) "Registered Nurse Services" mean services provided by a registered nurse on a short-term or intermittent basis that include but are not limited to: interviewing the individual and, when appropriate, other relevant parties; assessing the individual's ability to perform tasks; preparing a service plan that includes treatment needed by the individual; monitoring medication; training and educating providers around the provisions of the service plan.

(47) "Respite" means paid temporary services to provide relief for families or other caregivers who are unpaid. In-home and out-of-home respite may be provided on an hourly or daily basis, including 24-hour respite service for several consecutive days. Range of tasks to be provided may include: supervision, companionship and personal services usually provided by the primary caregiver.

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(48) "Seniors and People with Disabilities" means Seniors and People with Disabilities of the Department of Human Services.

(49) "Service Provider" means any agency or program that provides one or more authorized services under Oregon Project Independence.

(50) "Service Determination" means the process of determining the proper authorized service for each eligible individual.

(51) "Service Need" means those functions or activities for which the individual requires the support of the Department or Area Agency on Aging.

(52) "Service Priority" means the order in which the Department determines individuals to be eligible for the Oregon Project Independence program.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.410

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDDS 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0001

### Goals

The goals of Oregon Project Independence are to:

(1) Promote quality of life and independent living among seniors and people with physical disabilities;

(2) Provide preventive and long-term care services to eligible individuals to reduce the risk for institutionalization and promote self-determination;

(3) Provide services to frail and vulnerable adults who are lacking or have limited access to other long-term care services; and

(4) Optimize eligible individuals' personal and community support resources.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.420

Hist.: SSD 12-1988, f. & cert. ef. 12-2-89; SDDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0005

### Administration

(1) Advisory Council: Each area agency will show evidence that the advisory council of the area agency, and the community were involved in the identification of need, selection of services to be offered, and the development of the Area Plan.

(2) Area Plan:

(a) Each area agency will submit an Area Plan by a date specified and on forms provided by the Department.

(b) The Area Plan must, at a minimum, contain:

(A) The types and amounts of authorized services to be offered;

(B) The costs of these services;

(C) How the agency will ensure timely response to inquiries for services;

(D) How individuals will receive initial and ongoing periodic screening for other community services, including Medicaid;

(E) How eligibility will be determined;

(F) How the services will be provided;

(G) The agency policy for prioritizing OPI service delivery;

(H) The agency policy for denial, reduction or termination of services;

(I) The agency policy for informing individuals of their right to grieve adverse eligibility, service determination decisions, and consumer complaints;

(J) How fees for services will be developed, billed, collected and utilized;

(K) The agency policy for addressing individual non-payment of fees, including when exceptions will be made for repayment and when fees will be waived;

(L) How service providers will be monitored and evaluated; and

(M) Conflict of interest policy for any direct provision of services for which a fee is set.

(3) Contracts:

(a) Contracts between the Department and Area Agencies on Aging for Oregon Project Independence will be effective each year on July 1, unless otherwise agreed to by the Department. These contracts will be based on the Area Plan and must, at a minimum, contain:

(A) A budget showing the amounts of Oregon Project Independence funds;

(B) The types of authorized services to be offered;

(C) The stipulation that contracted authorized services will be in accordance with the standards and requirements provided in these rules, and in accordance with the In-Home Services Rules (OAR chapter 411, divisions 030 and 031 and the Service Priority Rules OAR 411 division 015), and, if applicable, in accordance with the Home Health Agencies Rules (OAR chapter 333, division 027);

(D) The stipulation that required data will be gathered, reported and monitored in accordance with these rules and the Department;

(E) A section pertaining to general provisions as required by the Department of Administrative Services;

(F) A provision that area agencies will submit service provider contracts and amendments to the department upon request from the Department; and

(G) Fee for service schedules developed in accordance with these rules, including fee-based case management when this service is offered

(b) Contracts between Area Agencies on Aging and service providers will be signed and kept on file by the area agencies for not less than three years for all services funded through Oregon Project Independence. The contracts must, at a minimum, contain:

(A) A budget or a maximum amount of Oregon Project Independence funds, as well as all other resources devoted to Oregon Project Independence under the contract;

(B) The types and amounts of authorized services to be offered and the rate per unit for each authorized service;

(C) The stipulation that authorized services will be offered in accordance with the standards and requirements provided in these rules, and in accordance with the In-Home Services Rules, OAR chapter 411, divisions-030 and 31 and the Service Priority Rules, OAR chapter 411 division 015, and, if applicable, in accordance with the Home Health Agencies Rules, OAR chapter 333, division 027;

(D) The stipulation that required data will be gathered and reported in accordance with these rules and the Department; and

(E) A section pertaining to general provisions as required by the Department of Administrative Services.

(c) All contracts as described in this rule can be amended with the consent of both parties.

(d) All contracts as described in this rule will contain provisions for cancellation of the contract for non-performance and violation of the terms of the contract.

(4) Personnel Practices and Procedures:

(a) Each area agency and service provider will maintain written personnel policies.

(b) The personnel policies will contain all items required by state and federal laws and regulations, including such items as:

(A) An affirmative action plan; and

(B) Evidence that the area agency and service provider are equal opportunity employers.

(C) Each area agency and service provider will maintain a personnel record on each employee.

(5) Non-Compliance:

(a) Non-compliance to these rules, except in those cases where an exception or variance has been granted by the Department may result in a reduction or termination of Oregon Project Independence funding;

(b) The determination of the amount of reduced funding will be made by the administrator of the Department;

(c) Any funds that are either reduced or terminated from a funding grant will be reserved by the Department for redistribution at its discretion. At the end of the biennium, unexpended funds will be returned to the OPI Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420, 410.450 & 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDDS 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0010

### Authorized Services and Allowable Costs

(1) Authorized Services:

(a) Oregon Project Independence funds will only be expended for administration and direct service for the following authorized services:

(A) Homemaker (Home Care);

(B) Chore Service;

(C) Assisted Transportation (Escort);

(D) Home Health;

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- (E) Personal Services;
- (F) Adult Day Services;
- (G) Respite;
- (H) Information and Assistance;
- (I) Registered Nurses;
- (J) Home Delivered Meals;
- (K) Other services authorized by the administrator of the Department or his or her designee;

- (L) Planning for long term care services; and
- (M) Public education on long term care planning and resources.

(b) Home health services will meet the standards and requirements of the Home Health Agencies Rules (OAR chapter 333, division 027) and can only be offered through a home health agency licensed by the Department of Human Services, Health Services.

(c) Services provided by an In-Home care agency will meet the standards and requirements of In-Home Care Agencies under ORS 443.305 to 443.350 and OAR chapter 333 division 536, and can only be offered through a home care agency licensed by the Department of Human Services, Health Services.

(d) Services provided by a Homecare Worker will meet the standards and requirements of the Home Care Commission under ORS 410.600 to 410.614 and OAR chapter 411, division 031.

(e) Services provided using the Client Employed Provider Program should meet the standards and requirements of chapter 411, division 030.

(2) Authorized Administrative Functions — If the state agency or Area Agency on Aging is already providing case management services (as of the date of submission of the plan) under a state program, the plan may specify that such agency be allowed to continue to provide the following case management services:

- (a) Intake;
- (b) Eligibility;
- (c) Assessment;
- (d) Service Planning/Service Coordination;
- (e) Implementation of plan services;
- (f) Monitoring the service plan; and
- (g) Reassessment.

(3) Computation of Allowable Costs — Allowable costs by area agencies are those associated with the direct provision of services to individuals and such administrative costs as may be required to assure adequate services and to provide information to the Department.

(4) Administrative Costs — Administrative costs will not exceed ten percent of Oregon Project Independence funds.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420 & 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 9-2002(Temp), f. & cert. ef. SPD 11-2003, f. & cert. ef. 5-2-0311-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0013

### Fee-Based Services

(1) When service limitations have been established at the local level and an individual would otherwise be eligible to receive OPI services under this rule, fee-based case management may be authorized for administration and direct service provided for the following:

- (a) Service planning and coordination;
- (b) Service plan implementation;
- (c) Service plan monitoring; and
- (d) Reassessment.

(2) A separate fee schedule will be established by each area agency and will be applied to those individuals receiving fee-based case management services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.435

Hist.: SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0015

### Data Collection, Records, and Reporting

(1) Data Collection:

(a) The collection of required program and fiscal data associated with Oregon Project Independence will be on forms and data systems as approved by the Department.

(b) Each area agency and service provider will collect data as required by the Department on eligible individuals receiving authorized service.

(c) All authorized service data collected on eligible individuals, supported by Oregon Project Independence, will contain the individual's Social Security Number and date of birth.

(d) For individuals under the age of 60, documentation will be placed in the individual's file that the person has been diagnosed as having Alzheimer's Disease or other related disorder. Documentation must come verbally or in writing from the individual's physician. The type of "other related disorder" will also be specified in this documentation.

(2) Records:

(a) Each area agency and service provider will maintain all books, records, documents and accounting procedures that reflect all administrative costs, program support costs, direct service costs, and case management costs expended on Oregon Project Independence. These records will be retained for not less than three years.

(b) These records will be made available upon request to representatives from the Department, or to those duly authorized by them.

(3) Fiscal and Program Reporting:

(a) Fiscal and program reports will be completed on forms provided by the Department.

(b) Fiscal and program reports will be submitted to the Department by the specified due dates.

(c) Fiscal/Program reports must, at a minimum, include:

- (A) Current cumulative expenditures;
- (B) Cost per unit of authorized service;
- (C) Administrative costs;
- (D) Program support costs;
- (E) Case management costs;
- (F) Direct service costs;
- (G) The amount of fee for service assessed, billed, expended and collected and other funds received;
- (H) Number of unduplicated clients year to date served for each authorized service year to date, and unduplicated case count year to date;
- (I) Number of units of service for each authorized service; and
- (J) Demographic, social, medical, physical, functional, and financial data, including a breakdown of the income levels of OPI eligible individuals, as required by the Department on the SPD Client Assessment/Planning System (CA/PS) and in Oregon ACCESS database.

(4) Confidentiality The use or disclosure by any party of any information concerning a recipient of authorized services described in these rules, for any purpose not directly connected with the administration of the responsibilities of the Department, Area Agency or service provider is prohibited except with written consent of the recipient, or their legal representative. Disclosure of recipient information will meet Department requirements.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.470 & 410.480

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0020

### Eligibility and Determination of Services

(1) Eligibility:

(a) In order to qualify for services from an area agency or service provider, each eligible individual must:

(A) Be 60 years old or older; or be under 60 years of age and be diagnosed as having Alzheimer's Disease or a related disorder;

(B) Not be receiving financial assistance or Medicaid, except Food Stamps, Qualified Medicare Beneficiary or Supplemental Low Income Medicare Beneficiary Programs; and

(C) Meet the requirements of the Long-Term Care Services Priority Rule, OAR 411, division 015.

(b) Eligibility determination will be required before any individual may receive services from an area agency or service provider. The documentation required by OAR 411-032-0015(1)(d) must be obtained before an individual under the age of 60 may be determined to be eligible.

(c) Eligibility determination will be the responsibility of the area agency. In those instances when eligibility determination is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the eligibility determination process, including an independent review by the area agency of a representative sample of cases.

(d) Any person residing in a nursing facility, assisted living facility, residential care facility, or adult foster care setting will not be eligible for authorized services. This will not restrict the ability to move an eligible individual from such institutions to their home to receive services, when

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judged more appropriate, based on medical, financial, physical, functional, and social considerations.

(e) Any person residing in a living setting that offers any services authorized under OAR 411-032-0010 will be limited to receiving OPI services that are not available in that setting.

(f) The Department will determine the factors that constitute an individual being at risk of institutionalization. These factors are currently defined in the Long-Term Care Services Priority Rules, OAR chapter 411, division 015. These factors will be utilized by each area agency and service provider.

(g) Applicants will receive written notification of eligibility determination.

(2) Determination of Services:

(a) Determination of services will rest with the area agency. In those instances when determination of services is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the determination of service process, including an independent review by the area agency of a representative sample of cases.

(b) The determination of services will be based on each individual's financial, physical, functional, medical, and social need for such services and in accordance with OAR chapter 411 division 015.

(c) Determination of services provided under Oregon Project Independence will be limited to the authorized services allowed by these rules.

(d) The determination of services will be made:

(A) After eligibility determination; and

(B) At regular intervals but not less than once every twelve months.

(e) Individuals will receive written notification of determination of services:

(A) Notice will include the maximum monthly hours of service authorized, the hourly and maximum monthly fee, the service rate, and provider contact information.

(B) Written service notification will be provided to the individual upon initial determination of services, at annual reassessment and when there are changes to the determination of services.

(3) Priority of Services:

(a) Area Agencies on Aging may establish local priorities for service authorization but will not conflict with this rule. In event of a grievance, this rule will take precedence over local priorities.

(b) Priority for authorized services will be:

(A) Maintaining eligible individuals already receiving authorized service as long as their condition indicates the service is needed.

(B) Individuals who will immediately be placed in an institution if needed authorized services are not provided and meet the Long-Term Care Services Priority Rules, OAR chapter 411, division 015.

(C) Individuals who are probably to be placed in an institution if needed authorized services are not provided.

(4) Appeals: Persons for whom services are denied, disallowed, or reduced through eligibility determination or service determination will be entitled to request review of the decision through the Area Agency on Aging grievance review procedure, set forth in agency policy.

(a) Individuals will continue to receive services until the disposition of the local agency grievance review.

(b) The Area Agency will provide the applicant with written notification of the grievance review determination decision.

(c) Applicants that disagree with the results of the Area Agency grievance review have a right to an Administrative Review with the Department of Human Services, Seniors and People with Disabilities, pursuant to ORS Chapter 183. This information will be provided to the applicant in a written notification at the time of the grievance review decision.

(d) Applicants requesting an Administrative Review from the Department will not be eligible for continued services through Oregon Project Independence.

(e) All persons, including those who may have previously been terminated from Oregon Project Independence, have the right to apply for OPI services at any time.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.430 & 410.450

Hist.: SSD 11-1984, f. 11-30-84, f. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

## 411-032-0044

### Fees for Service and Fees for Service Schedule

(1) Fee for Services:

(a) A \$5 annual minimum fee will be applied to all individuals receiving OPI services who have adjusted income levels at or below federal poverty level. The fee is due at the time eligibility for OPI service has been determined and for each 12 month subsequent reassessment. This fee does not apply to home-delivered meals.

(b) Fees for service will be charged based on a sliding fee schedule to all eligible individuals whose annual income exceeds the minimum, as established by the Department. No fees for service will be charged for Home Delivered Meals or case management services. For purposes of these rules, an individual's gross annual income will include:

(A) Salaries from the household;

(B) Interest and dividends from the household;

(C) Pensions, annuities, Social Security and railroad retirement benefits from the household; and

(D) Any other income from the household.

(i) All medical costs, including prescription drugs that are the responsibility of the household, may be deducted from the individual's gross annual income.

(ii) All child support paid by a non-custodial parent may be deducted from the individual's gross annual income.

(c) A recommended donation will be established for OPI-funded Home Delivered Meals and implemented in the same manner as for the Older Americans Act meal programs.

(d) Individuals will receive written notification of the hourly and maximum monthly fee for service upon initial service determination and whenever there is a change.

(e) Area agencies will develop procedures for assessing, billing, collecting, and expending fees.

(A) The Area Agency will establish a written policy addressing individual non-payment of fees to be reviewed and approved in the agency area plan.

(B) Individuals will be given a copy of the agency policy pertaining to individual non-payment of fees upon initial eligibility determination.

(C) The decision to terminate Oregon Project Independence services for non-payment of assessed fees for service will be the responsibility of the local area agency.

(f) A record of surcharges and all fees for service will be kept by each area agency and reported monthly to the Department.

(A) Annual minimum fees and fee for service determination forms will be a part of each individual's case record. Fee for service determination forms will meet minimum requirements for documentation, as established by the Department.

(B) The maximum monthly authorized fee for services will be recorded on each individual's Oregon ACCESS record upon initial service determination and at least annually thereafter, at time of reassessment.

(g) Nothing in these rules will prevent Oregon Project Independence individuals, or his or her family, from making a donation or contribution. Such donations will also be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(h) The minimum annual fee and all fees for service will be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(i) Area agencies and providers will not be required to make a second attempt to collect Oregon Project Independence fees of \$5.00 or less.

(2) Fee for Service Schedule.

(a) The Department, after consultation with the Area Agencies, will develop and publish a fee schedule for services based on the federal poverty level and distribute the schedule to the area agencies annually.

(b) The fee for service schedule will be applied to the local rate specific to the service and the type of provider for the individual.

(c) Fees for OPI services start at the federal poverty level net monthly income and increase by approximately \$25 income increments up to 200% of the federal poverty level. Families with net monthly incomes over 200% of the federal poverty level will pay the full hourly rate of services provided.

Stat. Auth.: ORS 410.470

Stats. Implemented: ORS 410.470

Hist.: SSD 15-1985, f. 12-31-85, ef. 1-1-86; SSD 9-1988, f. & cert. ef. 8-1-88; SSD 13-1989, f. & cert. ef. 9-1-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1990(Temp), f. & cert. ef. 4-27-90; SSD 17-1990, f. & cert. ef. 8-20-90; SSD 11-1991, f. & cert. ef. 6-14-91; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDS 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06

# ADMINISTRATIVE RULES

## Department of Transportation, Highway Division Chapter 734

**Rule Caption:** Amendment of rules regarding warning flag size and weight table definitions.

**Adm. Order No.:** HWD 5-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 1-1-07

**Notice Publication Date:** 9-1-06

**Rules Amended:** 734-075-0045, 734-076-0135, 734-078-0030, 734-082-0005, 734-082-0037

**Subject:** ORS 815.275 requires warning flags for loads extending beyond the rear of the vehicle to be at least 12 inches square. Federal regulations (49 CFR 393.87) require warning flags for projecting loads to be at least 18 inches square. It is confusing for motor carriers to comply with differing regulations. Since federal and most other states require at least 18 inch square warning flags, Oregon is amending its rules to coincide.

Weight tables describe maximum allowable weight for an axle or group of axles. Weight tables 3, 4 & 5 are established by a "wheelbase formula" and are used to ensure weight does not exceed allowable limits, maintaining legal weight limits enhances protection of Oregon's highways and bridges. The changes to Weight Table 4 and Weight Table 5 are necessary to facilitate a motor carriers ability to calculate axle weights and to obtain an overweight variance permit via Trucking Online, MCTD's internet based business application. The revised Weight Table 3 only includes formatting changes. The amendments do not create any new wheelbase formulas; rather they rearrange existing formulas to reflect current variance permitting practice.

Other non-substantive changes are made for housekeeping purposes and clarification.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 734-075-0045

#### Warning Signs and Flags Required

(1) Over-width loads or vehicles transporting over-width loads are required to display to the front and rear standard signs bearing the words "OVERSIZE LOAD":

(a) Signs must be seven feet wide by 18 inches high with black letters 10 inches high with 1-5/8 inch brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between one half hour after sunset and one half hour before sunrise;

(c) Signs must be kept clean, legible and mounted horizontally with adequate support to provide full visibility at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates; and

(f) All such signs must be removed or retracted when not required.

(2) All four lower corners of any over-width load must be marked during daylight hours with red flags that are a minimum 18 inches square. Flags must be kept clean and must be clearly visible to the front and rear. The attachment device must not extend beyond the widest extremity by more than three inches on either side.

Stat. Auth.: ORS 184.616, 814.619 & 818.200

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 3-1999, f. & cert. ef. 10-13-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07

### 734-076-0135

#### Warning Signs and Flags Required for Oversize Units

(1) Warning signs are required for dimensions exceeding:

(a) Eight feet, six inches in width;

(b) An overall length of 105 feet (inclusive of towing vehicle); or

(c) For a combination of vehicles being towed exceeding 80 feet in length (inclusive of load).

(2) Warning signs must bear the legend "OVERSIZE LOAD" except:

(a) When the width exceeds eight feet, six inches and the combination of vehicles being towed does not exceed 80 feet in length (inclusive of load) or the overall combination length does not exceed 105 feet (inclusive of towing vehicle), the sign may bear the legend "WIDE LOAD"; or

(b) When the width does not exceed eight feet, six inches and when the combination of vehicles being towed exceeds 80 feet in length (inclusive of load) or the overall combination length exceeds 105 feet (inclusive of towing vehicle), the sign may bear the legend "LONG LOAD."

(3) Warning signs must be displayed to the front and rear of the vehicle or combination and must meet the following requirements:

(a) Signs must be seven feet wide by 18 inches high with black letters 10 inches high with 1-5/8 inch brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between one half hour after sunset and one half hour before sunrise;

(c) Signs must be kept clean, legible and mounted horizontally with adequate support to provide full visibility and readability at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates; and

(f) All such signs must be removed or retracted when not required.

(4) The outermost extremities of any overwidth load must be marked during daylight hours with red flags not less than 18 inches square. Flags must be kept clean and must be clearly visible to the front and rear. The attachment device must not extend beyond the widest extremity by more than three inches on either side.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.170

Hist.: HWY 8-1997, f. & cert. ef. 8-26-97; TO 1-1999, f. & cert. ef. 2-19-99; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07

### 734-078-0030

#### Warning Signs and Flags Required

(1) When the combinations of vehicles and load exceed 80 feet in overall length a "Long Load" or "Oversize Load" sign is required to be attached to the rearmost position practical, either on the load or the last vehicle:

(a) The sign must be seven feet wide by 18 inches high with black letters 10 inches high and having a 1-5/8 inch wide brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between sunset and sunrise;

(c) Signs must be kept clean, legible, and mounted with adequate support to provide full visibility at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates;

(f) Signs must be constructed of a material impervious to water; and

(g) All signs must be removed or retracted when not required.

(2) When a load extends beyond the rear body of the vehicle four feet or more, the outermost extremity of the load must be visibly marked with a red flag not less than 18 inches square. The attachment device must not extend beyond the rear of the load by more than three inches.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.220

Hist.: 2HD 4-1983, f. & ef. 1-20-83; HWY 8-1997, f. & cert. ef. 8-26-97; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07

### 734-082-0005

#### Definitions

As used in OAR chapter 734, division 82:

(1) "Auxiliary axle(s)" is an axle that qualifies as a booster axle, flip axle, or lift axle.

(2) "Boom dolly" means a separate vehicle designed to carry part of the weight of a boom.

(3) "Booster axle(s)" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning.

(4) "Business day" is any day Monday through Friday, except holidays as defined in section (13) of this rule.

# ADMINISTRATIVE RULES

(5) "Chief Engineer" means the Chief Engineer of the Oregon Department of Transportation or a person designated to act for the Chief Engineer.

(6) "Daylight hours" means one-half hour before sunrise until one-half hour after sunset.

(7) "Dolly" means those devices attached to a frame, deck or load converting the frame to a trailer or semitrailer and is included in the measurement of the trailer. The dolly must bear weight when the permitted vehicle is laden.

(8) "Dromedary truck-tractor" means a motor vehicle designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer.

(9) "Equivalent Single-Axle Load" (ESAL) means the relationship between actual or requested weight and an 18,000 pound single-axle load as determined by the American Association of State Highway and Transportation Officials Road Tests reported at the Proceedings Conference of 1962.

(10) "Fire apparatus" means a vehicle or combination of vehicles designed and used exclusively for fire suppression or rescue operations. These emergency vehicles and associated loads or equipment are necessary to protect the public safety and are considered non-divisible loads.

(11) "Flip axle(s)" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length or hauling capacity of the trailer.

(12) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298.

(13) "Holiday" for the purposes of these rules means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and includes any other days on which the state officially observes the aforementioned holidays by the closure of State offices.

(14) "Jeep axle(s)" means a separate vehicle connected to a motor vehicle by kingpin to fifth wheel connection. A jeep axle(s) must bear all or part of the weight of the load of another vehicle and must be connected to that other vehicle either by kingpin to fifth wheel connection or a pintle hook.

(15) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground.

(16) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(17) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers.

(18) "Non-divisible load" means any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(a) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(c) Require more than eight workhours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(19) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use.

(20) "Permit Weight Table 1" is the table of legal weight found in ORS 818.010.

(21) "Permit Weight Table 2" is the Extended Weight Table used for oversize loads that cannot be reduced in size, except as specified in OAR 734-082-0051 and 734-082-0053, and having authorized divisible load weights. Permit Weight Table 2 is available from MCTD as Form 735-8111 (February 2000).

(22) "Permit Weight Table 3" is a table based on two wheelbase weight formulas. The first formula is 1,000 times (the wheelbase in feet plus 40) for groups of axles or combinations of vehicles having 18 feet or less wheelbase. The second formula is 1,200 times (the wheelbase in feet plus 40) for groups of axles, vehicles or combinations of vehicles having more than 18 feet of wheelbase. Permit Weight Table 3 is available from MCTD as Form 735-8112 (July 2006).

(23) "Permit Weight Table 4" is a table based on three wheelbase weight formulas. The first formula is 1,200 times (the wheelbase in feet plus 40) for groups of axles or combinations of vehicles having nine feet five inches or less wheelbase. The second formula is 2,200 times (the wheelbase in feet plus 20) when wheelbase is more than nine feet five inches but is not more than 30 feet. The third formula is 1,600 times (the wheelbase in feet plus 40) when wheelbase is more than 30 feet. This table limits its maximum weights to no more than 21,500 pounds per axle and 43,000

pounds per tandem axle. Permit Weight Table 4 is available from MCTD as Form 735-8113 (July 2006).

(24) "Permit Weight Table 5" is a table based on the same three formulas as Permit Weight Table 4, but describes maximum weights up to 24,000 pounds per axle and 48,000 pounds per tandem axle when the combination consists of a steering axle and four or more consecutive tandem axles. Permit Weight Table 5 is available from MCTD as Form 735-8114 (July 2006).

(25) "Primary haul" means the non-divisible load transported under OAR 734-082-0053.

(26) "Road use assessment fee" means a fee for each ESAL mile of travel as established by ORS 818.225.

(27) "Secondary haul" means the divisible load transported under OAR 734-082-0053.

(28) "Self propelled fixed load vehicle" means a vehicle with motive power designed and used primarily to support and move a permanent load in the form of equipment or appliances constructed as part of, or permanently attached to, the body of the vehicle.

(29) "Stinger steered" is as defined in ORS 801.507.

(30) "Transport" means to tow, haul, drive, or otherwise move a vehicle or load on the State highway system.

(31) "Truck-tractor" means a motor vehicle designed and used primarily for drawing other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as being drawn.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07

## 734-082-0037

### Warning Signs and Flags Required

(1) Vehicles transporting over-length or over-width loads are required to display to the front and rear standard signs bearing the words "OVER-SIZE LOAD":

(a) Signs must be seven feet wide by 18 inches high with black letters 10 inches high with 1-5/8 inch brush stroke in accordance with Federal Highway Administration series C on highway yellow background;

(b) The highway yellow background of the sign must be made of reflectorized material when operating between one half hour after sunset and one half hour before sunrise;

(c) Signs must be kept clean, legible and mounted horizontally with adequate support to provide full visibility at all times when in use;

(d) Signs may have a border with not more than 1-5/8 inch brush stroke around the edge of the sign;

(e) Signs must not cover or interfere with the visibility of the vehicle's registration plates. To meet this requirement, plates may be mounted to cover a portion of the sign's background, as long as the sign's legend remains readable; and

(f) All such signs must be removed or retracted when not required.

(2) Warning signs for vehicles transporting loads which are overwidth and under 80 feet in overall length may bear the words "WIDE LOAD" provided the sign meets the standards described in section (1) of this rule.

(3) Warning signs for vehicles transporting loads which are not over eight feet six inches wide may bear the words "LONG LOAD" when the vehicle and overhang are over 80 feet in overall length provided the sign meets the standards described in section (1) of this rule.

(4) The outermost extremities of any overwidth load must be marked during daylight hours with red flags not less than 18 inches square. Flags must be kept clean and must be clearly visible to the front and rear. The attachment device must not extend beyond the widest extremity by more than three inches on either side.

(5) When a load extends beyond the rear of the load carrying part of the vehicle four feet or more, the outermost extremity of the load must be visibly marked as described in ORS 815.275. When a red flag or cloth is used, it must be not less than 18 inches square, kept clean and must be clearly visible. The attachment device must not extend beyond the rear of the load more than three inches.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 815.275, 816.290, 818.220 & 818.225

Hist.: HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07

# ADMINISTRATIVE RULES

**Rule Caption:** Amends days and hours hauling restrictions apply for over-width loads; affects holiday travel.

**Adm. Order No.:** HWD 6-2006

**Filed with Sec. of State:** 11-15-2006

**Certified to be Effective:** 11-15-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 734-075-0055, 734-082-0021

**Subject:** These rules govern the days and times vehicles and loads that exceed maximum allowed width are allowed to travel. Movement of over-width loads before, during and after a holiday is currently restricted statewide. Average daily traffic counts indicate that there are certain highways where the current restrictions to over-width movement are not necessary. With data now available, the Department can identify holiday days and times that movement of an over-width load would not pose an additional safety hazard to the traveling public. Under the current rule restrictions, holiday movement of over-width loads typically results in an increased number of over-width loads moving as soon as the restriction is over, potentially adding to congestion and safety concerns. Amendments provide for a more uniform traffic flow of over-width loads during holiday periods. Amendments to these rules effectively remove restrictions from the rule language and provide for a permit attachment (Permit Attachment H) to govern various identified exceptions to the existing statewide restrictions.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 734-075-0055

### Days of Travel and Peak Traffic Hour Restrictions

(1) Movement of an oversize vehicle or load is subject to the time of travel restrictions described on **Attachment H** (rev. 9/2006), which is included with a division 75 permit.

(2) The Chief Engineer may impose or alter time of travel restrictions. These may be necessary to prevent conflict with highway construction or repair projects or to cope with local or seasonal traffic conditions.

[ED. NOTE: Attachment referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 814.619 & 818.200

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HC 1287, f. 3-14-73; 1 OTC 19a, f. & ef. 1-24-74; 1 OTC 9-1978(Temp), f. & ef. 7-19-78; 1 OTC 11-1979(Temp), f. & ef. 6-20-79; 1 OTC 12-1979(Temp), f. & ef. 6-20-79; 1 OTC 13-1979(Temp), f. & ef. 6-20-79; 1 OTC 24-1979, f. & ef. 10-24-79; 2HD 15-1983, f. & ef. 8-18-83; HWY 6-1990, f. & cert. ef. 3-13-90; HWY 5-1992, f. & cert. ef. 3-25-92; TO 2-1998, f. 3-10-98, cert. ef. 4-1-98; TO 3-1999, f. & cert. ef. 10-13-99; HWD 6-2006, f. & cert. ef. 11-15-06

## 734-082-0021

### Days of Travel and Peak Traffic Hour Restrictions

(1) Movement of an oversize vehicle or load is subject to the time of travel restrictions described on **Attachment H** (rev. 9/2006), which is included with a division 82 permit.

(2) The Chief Engineer may impose or alter time of travel restrictions. These may be necessary to prevent conflict with highway construction or repair projects or to cope with local or seasonal traffic conditions.

[ED. NOTE: Attachment referenced are available from the agency.]

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 3-2006, f. & cert. ef. 5-24-06; HWD 6-2006, f. & cert. ef. 11-15-06

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## Department of Transportation, Transportation Safety Division Chapter 737

**Rule Caption:** Application Process for the Safe Routes to School Grant Program.

**Adm. Order No.:** TSD 1-2006

**Filed with Sec. of State:** 11-15-2006

**Certified to be Effective:** 11-15-06

**Notice Publication Date:** 10-1-6

**Rules Adopted:** 737-025-0000, 737-025-0010, 737-025-0020, 737-025-0030, 737-025-0040, 737-025-0050, 737-025-0060, 737-025-0070, 737-025-0080

**Subject:** ORS 184.741 requires ODOT to adopt rules establishing the criteria used in awarding grants from the Safe Routes to School

Fund. These rules establish the application procedure, eligibility criteria and the selection criteria for Safe Routes to School grants.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 737-025-0000

### Purpose of the Rules

ORS 184.740 establishes the Safe Routes to School Fund to assist communities in identifying and reducing barriers and hazards to children walking or bicycling to and from school. The purpose of the rules in division 25 is to establish the criteria used in awarding grants from the Safe Routes to School Fund.

Stat. Auth.: ORS 184.616, 184.619, 184.740 & 184.741

Stat. Implemented: ORS 184.741

Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0010

### Definitions and Acronyms

For the purposes of Division 25 rules, the following definitions apply:

(1) "Action Plan" means the plan developed to fulfill the requirements of ORS 195.115 and OAR 737-025-0050(3) and that meets the requirements of OAR 737-025-0060.

(2) "Applicant" means an entity that qualifies under OAR 737-025-0030.

(3) "Application" means the form, prescribed by the Transportation Safety Division (TSD), and all supplemental attachments, exhibits or other supporting papers required by OAR 737-025-0050 when applying for a Safe Routes to School Fund grant.

(4) "Education" means public-awareness and encouragement campaigns, outreach to press and community leaders, bicycle and pedestrian safety programs and activities, traffic education, training, and the evaluation of such activities.

(5) "Endorsement" means support and approval as required in OAR 737-025-0030.

(6) "Enforcement" means law enforcement operations and equipment relating to school zones, crosswalks, speed; crossing guard activities and supplies; and evaluation of such activities.

(7) "Engineering" means planning, design, construction, and evaluation of infrastructure-related projects.

(8) "Letter of commitment" means a letter from the governing body (or bodies) or the school or school district, stating their willingness to participate in the project, as well as their endorsement of the project.

(9) "Letter of Interest" means the preliminary letter, in a format prescribed by TSD as referenced in OAR 737-025-0050.

(10) "Non-Profit" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code; or is organized not for profit, pursuant to ORS chapter 65, or any predecessor of ORS chapter 65; or is otherwise organized and operated under section 501(c) of the Internal Revenue Code.

(11) "OTSC" means the Oregon Transportation Safety Committee, the Governor-appointed committee that advises ODOT as defined in ORS 802.300.

(12) "Qualifying School" means a public, private, parochial, charter or alternative educational program offering instruction at levels kindergarten through eighth grade, or any part thereof

(13) "School district" means:

(a) A school district as defined in ORS 330.003.

(b) The Oregon State School for the Blind.

(c) The Oregon State School for the Deaf.

(d) An educational program under the Youth Corrections Education Program.

(e) A public charter school as defined in ORS 338.005.

(f) An education service district.

(14) "SRTS" means Safe Routes to School.

(15) "SRTS Fund" means the Safe Routes to School Fund established under ORS 184.740.

(16) "Safe Routes to School Advisory Committee" means the nine-member volunteer advisory group that gives advice and direction to the Safe Routes to School Program.

(17) "TSD" means the Transportation Safety Division, a division of the Oregon Department of Transportation.

(18) "Traffic safety committee" means a local government advisory body charged with traffic safety. Alternately, a local non-profit, such as a coalition or neighborhood association, which specifically includes traffic safety in their charter or charge from one or more government bodies can fulfill this role in the absence of a committee.

# ADMINISTRATIVE RULES

(19) "Walking or bicycling" means use of human-powered forms of transportation, including, but not limited to, walking, or use of bicycles, bike trailers, skateboards, scooters, rollerblades, skates and wheelchairs.

Stat. Auth.: ORS 184.616, 184.619, 184.740 & 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0020

### Application Procedure

(1) TSD will announce periods for submitting applications for grants from the Safe Routes to School Fund. Applications will not be accepted at times outside an announced application period.

(2) Applicants for projects that are not funded during an application period may reapply during a subsequent application period announced by TSD.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0030

### Who May Apply

Eligible applicants for SRTS Fund grants include:

(1) A school district, or a qualifying school not represented by a school district, in cooperation with the governing body (or bodies) with jurisdiction over the affected roadways or properties. The school district, or qualifying school not represented by a school district, must submit letters of commitment from such governing bodies stating their participation and endorsement as applicable to the project;

(2) A city, county, state, regional government body, transit district or other unit of local government as defined by ORS 190.003, in cooperation with a school district or a qualifying school. The governing body must submit a letter of commitment from the qualifying school or affected school district stating its participation or endorsement as applicable to the project;

(3) A non-profit organization in partnership with a school district, qualifying school, or one of the governmental bodies identified in section (1) or (2) of this rule. The application must include appropriate letters of commitment from the affected governing bodies. Additionally, if the organization is not a school, the application must include a letter of commitment from the affected school district, if applicable, stating its participation or endorsement. The school district, if applicable, or one of the governing bodies with jurisdiction over the affected roadways or properties, must confirm their willingness to take legal and financial responsibility for the infrastructure portion of the project.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0040

### Eligible Projects and Activities

(1) Grants awarded through the Safe Routes to School Program may be used for projects or activities in:

- (a) Education
- (b) Engineering;
- (c) Enforcement; or
- (d) Any combination of the above.

(2) All projects and activities must directly benefit a qualifying school.

(3) All projects and activities must meet the eligibility criteria applicable to the specific funds being dispensed through the SRTS Fund.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0050

### Grant Application Requirements

An applicant applying for a grant from the SRTS Fund must submit the following documents to TSD:

(1) A Letter of Interest, if the application announcement indicates it is required for that specific funding cycle.

(2) A completed application in a format prescribed by TSD and containing or accompanied by such information as TSD may require.

(3) An Action Plan which meets TSD requirements, or a commitment to independently complete an Action Plan within a specified time, or a request for assistance to complete an Action Plan (as allowed by ORS 184.741).

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0060

### Action Plan

Action Plans submitted to fulfill the requirements of OAR 737-025-0050 for each school identified for a SRTS project or activity must:

(1) Outline existing conditions and attitudes that have been identified as barriers and hazards to children walking or bicycling to and from school, as required by ORS 195.115.

(2) List the most critical actions needed to reach the Action Plan's stated goals in the areas of education, engineering, and enforcement.

(3) Be a product of a coalition of local interested parties that must include representation of the following groups (a single person may fulfill multiple representations):

(a) School Principal or designated school staff representative endorsed by the school district, if one exists;

(b) A parent who is a representative of or has the endorsement of a recognized school/parent organization, if one exists;

(c) City or county staff or representative endorsed by the local road authority;

(d) Local traffic safety committee, if one exists.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0070

### Project Selection Criteria

The following criteria will be used to select projects to receive SRTS Fund grants:

(1) Technical Merit:

(a) Conformance to the local transportation plan, state land use laws and appropriate federal, state and local planning and programming requirements.

(b) Adherence to appropriate design standards or methodology.

(c) Appropriate scope of work in relation to identified needs.

(d) Emphasis on best practices learned from successful SRTS programs.

(e) Efficient and cost-effective use of funds.

(2) Benefit:

(a) Potential to improve the ability of students to walk and bicycle to school.

(b) Potential to reduce or avoid child injuries and fatalities.

(c) Potential to create a more livable community by reducing the barriers and hazards to children walking or bicycling to school.

(d) Potential to create a safer walking and bicycling built environment within approximately two miles of a school. Highest priority will be given for projects within one-half mile of a qualifying school.

(3) Support and readiness:

(a) Support of the school district, if applicable, and governing body for the project as demonstrated by a letter of commitment and endorsement.

(b) Readiness to proceed with the project as demonstrated by a proposed start date, identification of other available funding, or other indicators as provided by the applicant.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

## 737-025-0080

### Project Selection and Awarding Grants

(1) TSD will review the applications to determine if:

(a) The Applicant and the project are eligible for a SRTS Fund grant; and

(b) The project proposal complies with the appropriate standards or practices for the work described.

(2) The Safe Routes to School Advisory Committee will evaluate eligible applications and submit funding recommendations to the TSD Administrator.

(3) The TSD Administrator will select projects and award grants based on the criteria established in OAR 737-025-0070.

Stat. Auth.: ORS 184.616; 184.619; 184.740; 184.741  
Stat. Implemented: ORS 184.741  
Hist.: TSD 1-2006, f. & cert. ef. 11-15-06

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## Economic and Community Development Department Chapter 123

**Rule Caption:** Restores language erroneously deleted from prior version rule change and corrects typographical errors.

**Adm. Order No.:** EDD 5-2006

**Filed with Sec. of State:** 10-30-2006

# ADMINISTRATIVE RULES

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 123-025-0025, 123-025-0030

**Subject:** In 2004, rule language providing guidance for the administration of the Port Planning and Marketing Fund program was erroneously deleted. This amendment restores that language and corrects minor typographical errors.

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-025-0025

### Project Administration

(1) The Department and the Port must execute a grant contract prior to disbursement of grant funds.

(2) Documentation of Project costs incurred by a Port must be submitted to the Department prior to disbursement of funds.

(3) Disbursement of grant funds to a Port will not exceed one disbursement per month. Ten percent of the grant funds will be withheld until the Peer Review Committee approves the appropriate deliverables of the project.

(4) Upon request the Port must provide the Department with a copy of documents, studies, reports, and materials developed during the Project, including written report on activities or results of the Project, or any other information that may reasonably be requested by the Department.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The Committee will evaluate and make recommendations to the Department on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the Department.

Stat. Auth.: ORS 285A

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-025-0030

### Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. Sanctions will not be imposed by the department until the Port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the Project activities have begun within six months after award; or

(b) Any private party agreements relating to the project are not legally binding within six months of the award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the contract; or

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds, and those corrective actions are not, or will not be, made within a reasonable time.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Bar a Port from applying for future assistance;

(b) Revoke an existing award;

(c) Withhold unexpended funds;

(d) Require the return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies that may be incorporated into grant contracts.

(3) The remedies set forth in this rule are cumulative, not exclusive, and in addition to any other rights and remedies provided by law or under contract.

(4) Appeals of local government decisions regarding a project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. An application that would have been funded but for technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable. The Director's decision is final.

(6) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06

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**Rule Caption:** Implements updates from Senate Bill 1098 and corrects minor typographical errors.

**Adm. Order No.:** EDD 6-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 123-030-0004, 123-030-0020, 123-030-0030, 123-030-0040, 123-030-0050

**Subject:** Extends maximum term of loan as changed by statute (SB 1098) and corrects minor typographical errors currently in the Oregon Port Revolving Fund rules.

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-030-0004

### Definitions

For the purposes of these rules the following terms have the following definitions unless the context clearly indicates otherwise:

(1) "Commission" means the Economic and Community Development Commission.

(2) "Department" means the State of Oregon Economic and Community Development Department.

(3) "Director" means the Director of the Department.

(4) "Finance Committee" means the Finance Committee appointed by the Oregon Economic and Community Development Commission.

(5) "Flexible manufacturing space project" means a project for the acquisition, construction, improvement or rehabilitation, in whole or in part, of any building suitable for the conduct of manufacturing processes and, by design, able to be readily modified when necessary to accommodate the operations of the tenants of the building. The term includes any pre-project planning activities for a flexible manufacturing space project.

(6) "Fund" means the Oregon Port Revolving Fund.

(7) "Port" means a municipal corporation organized under ORS chapter 777 or 778, that may be known as a "port authority" or "port district."

(8) "Project" means any activity that is eligible for assistance from the Port Revolving Fund.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-030-0020

### Application Requirements

An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(1) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

(2) A fee of \$100 will be charged for each loan application submitted to the Department. All application fees will be made by check or money order and made payable to the Oregon Port Revolving Fund.

(3) All applications for loans from the Oregon Port Revolving Fund must indicate the proposed collateral to secure the loan and must include the following information:

(a) If the port's taxing authority is proposed to be pledged as collateral, a statement certified by the county assessor's office that sets forth the current mileage rate, the projected new mileage rate, if required to pay off the loan, the port's maximum current limitation, and a statement indicating whether the proposed pledge is within the port's current maximum mileage limitation;

(b) If any of the port's personal or real property is proposed to be pledged as collateral, the Department may require a formal appraisal, certified by an appropriate licensed authority, attesting to the value of all collateral proposed to be held as security.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

# ADMINISTRATIVE RULES

## 123-030-0030

### Application Review and Approval

(1) To approve an application for assistance from the fund, the Finance Committee must make the determinations as follows:

(a) The project is consistent with the requirements governing assistance from the Fund. If the Department determines that the applicant and/or the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant;

(b) The requisite need for the project has been demonstrated in the application or the local planning process;

(c) The port has certified to the Department that there will be adequate funds available to repay any loans made;

(d) The loan security includes the pledge of revenues and/or other funds are sufficient, when considered with other security, to assure repayment;

(e) The applicant is willing and able to enter into a contract with the Department for repayment of the loan;

(f) The applicant has applied for all necessary permits required by federal, state and local agencies;

(g) The project activities constitute an eligible project;

(h) Moneys in the fund are or will be available for the project;

(i) The requirements under ORS 285A.055 for approval have been satisfied;

(j) The applicant will not owe more than \$3 million to the Port Revolving Fund if the loan is approved.

(2) The Finance Committee may provide preliminary approval of a loan application at any time and identify all necessary requirements for final approval.

(3) If the application is denied, the matter will be set aside unless the applicant requests further action under ORS Chapter 183.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-030-0040

### Loan Contract Terms and Conditions

(1) Interest rates will be set by the Department at market rates, but not less than Treasury Notes of a similar term minus 1 percent.

(2) The term of the loan will not exceed the useful life of the contracted project or 25 years from the year of project completion, whichever is less.

(3) For a flexible manufacturing space project, the loan contract may provide that no interest accrue until the building is 25 percent occupied, or until three years after the date of the loan contract, whichever is earlier.

(4) The loan contract will:

(a) Be in a form as provided by the Department, and

(b) Provide that the Finance Committee may institute appropriate action to prevent use of project facilities financed by the fund if the port is delinquent in its repayments.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-030-0050

### Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. The Department will not impose sanctions until the Recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) State statutory requirements have not been met; or

(b) There is a deviation from the contract.

(2) One or more of the following sanctions may be imposed by the Department:

(a) bar a Recipient from applying for future assistance;

(b) revoke an existing award;

(c) Withhold undisbursed funds;

(d) Require return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies that may be incorporated into Grant contracts.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

(4) Appeals of local government decisions regarding a Project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable and eligible under these rules. The Director's decision is final.

(6) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

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**Rule Caption:** Technical update to the statutory citation for laws already applicable to the Oregon Community Development Block Grant program (OCDBG).

**Adm. Order No.:** EDD 7-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 123-080-0030

**Subject:** Technical update to the statutory citations for laws already applicable to the OCDBG program.

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-080-0030

### Program Information

(1) The Department shall prepare an Application Package each year. The Application Package shall contain the method of distribution, application forms, and other supplementary information that may help eligible applicants prepare grant applications.

(2) The method of distribution shall include a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria, if the relative importance has been developed, a description of how all Community Development Block Grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. The method of distribution shall be adopted each year after public review and comment of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development.

(3) The adopted method of distribution section of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development on file with the Department is incorporated as part of these rules by reference.

(4) The Department shall prepare and provide to Community Development Block Grant recipients a Grant Management Handbook which specifies requirements for local grant management, reporting, and record keeping, and the Department's monitoring and grant closeout procedures.

(5) The Department shall administer Community Development Block Grants in compliance with the requirements of the Act, as amended, applicable rules, the method of distribution, and the Grant Management Handbook.

(6) Land Use Coordination: Any project activity paid for with Community Development Block Grant funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8.

(7) Procurement by Recipients: When procuring property or services to be paid for in whole or in part with Community Development Block Grant funds, the recipient shall comply with Chapters 244 and 279 of the Oregon Revised Statutes, as applicable.

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

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0010; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 8-1992, f. & cert. ef. 4-24-92; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 8-1993, f. & cert. ef. 9-21-93; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1994, f. & cert. ef. 9-8-94; EDD 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 4-1996, f. & cert. ef. 5-28-96; EDD 3-1997, f. & cert. ef. 3-17-97; EDD 13-1998, f. & cert. ef. 8-14-98; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 3-2002, f. & cert. ef. 2-22-02; EDD 7-2006, f. 10-30-06, cert. ef. 10-31-06

# ADMINISTRATIVE RULES

**Rule Caption:** Implements updates from HB 2176(2005), ORS 285A185, and ORS 285A.188 to program rules for consistency and provides miscellaneous housekeeping corrections.

**Adm. Order No.:** EDD 8-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 123-135-0040, 123-135-0070

**Subject:** Amendments to the Brownfields Redevelopment Fund rules delete the reference to Brownfields Redevelopment Coordinator and replace it with the department. It also adds two additional circumstances under which the department may use a portion of the fund, to pay for administrative costs of environmental actions; and to satisfy contracts entered into as a requirement to ensure that environmental reviews are conducted in a manner consistent with existing cleanup laws and rules.

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-135-0040

### Project Eligibility

(1) Projects may contain non-residential underground storage tanks. Superfund sites on the National Priorities List are not eligible. Reimbursable project activities include:

- (a) Site investigation;
- (b) Site sampling;
- (c) Site characterization;
- (d) The compilation of study data into a report;
- (e) Feasibility study;
- (f) Plan for remedial action or removal;
- (g) Conduct a remedial action or removal at a site;
- (h) Regulatory oversight fees;
- (i) Any other activity described in the Fund's Program Guidelines.

(2) Projects on sites that contain or are proposed to contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s) are not eligible unless the following applies: If only a portion of the site contains or will contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s), the portion of the site that contains the eligible project(s) can receive sums from the Fund.

(3) The potential benefit to ineligible sites or project(s) must be minimal. The Department shall determine if any potential benefit to ineligible projects is minimal.

(4) Projects on sites that contain or are proposed to contain mixed use development such as a structure or structures that contain combined commercial and residential uses are eligible if:

- (a) A written endorsement for the project from the local jurisdiction is included with the application;
- (b) The project will provide a substantial public benefit; or
- (c) The project is part of a downtown or mixed use center redevelopment.

(5) The Department's Brownfields Redevelopment Coordinator will determine if a project will have substantial public benefit.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-135-0070

### Application Approval

(1) When evaluating an application, the Department shall consider the following:

(a) The extent to which real or perceived contamination prevents the property from being fully utilized;

(b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;

(c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;

(d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;

(e) Compliance with the land use plan of the local government with jurisdiction over the property;

(f) Endorsement from the local government with jurisdiction over the property; and

(g) Other criteria described in the Fund's Program Guidelines.

(2) Applications are received on a first come, first served basis. In the event of a shortage of funds, priority will be given to projects that meet one or more of the following:

(a) The site is located in a distressed area as defined by OAR chapter 123, division 24;

(b) The site is located within a state or federal empowerment or enterprise zone or community or otherwise designated under those programs;

(c) The site is enrolled in the Department of Environmental Quality's Voluntary Cleanup Program, Prospective Purchaser Program, Independent Cleanup Pathway, Site Response Section, or any other program that demonstrates active involvement or oversight by that agency;

(d) The site is located in or is participating in any Environmental Protection Agency brownfields initiative including, but not limited to: Brownfield Assessment Grants, Supplemental Pilots, Targeted Brownfield Assessments, Cleanup Grants, or Brownfields Cleanup Revolving Loan Fund;

(e) The project will likely create above average income jobs in the manufacturing or traded sectors;

(f) The project will assist in the resolution of environmental justice concerns of the local community;

(g) The project has significant community involvement and participation;

(h) The project will result in a substantial public benefit;

(i) The project includes or is relatively certain to leverage other public or private funding; or

(j) Other criteria described in the Fund's Program Guidelines.

(3) The Department may conditionally approve funding of an application. Possible conditions include, but are not limited to:

(a) Requiring collateral or other security;

(b) Requiring a co-signer or guarantor;

(c) Enrolling in a Department of Environmental Quality oversight program or obtaining scope of work review from that agency;

(d) Obtaining an environmental insurance policy;

(e) Requiring some event to occur such as, but not limited to, a transfer of ownership of the site or approval of other funding; or

(f) Other conditions described in the Fund's Program Guidelines.

(4) If application approval is conditioned, the conditions will become part of the award contract. If appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(5) Complete applications will be reviewed by the Department for credit worthiness according to prudent lending practices.

(6) When making a grant to a municipality, the Department shall give priority to municipalities that provide matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(7) When making a grant to an entity that is not a municipality, the department shall require that:

(a) The recipient is not liable for the subject property under ORS 465.255, is a qualified non-profit organization, or has a valid Prospective Purchaser Agreement under ORS 465.327;

(b) The environmental action provides a substantial public benefit; and

(c) The recipient provides matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(8) The Department may request additional information from the applicant to facilitate a funding decision.

(9) The Department shall make a funding decision on a complete application in a timely manner.

(10) No more than forty percent (40%) of the total amount of the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.200. The forty percent (40%) limitation will be calculated at the beginning of each biennium following, if applicable, the funding allocation to the Fund by the Commission. The limitation will be forty percent (40%) of the total, non-obligated, funds available after the Commission allocation. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the forty percent (40%) calculation.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 285A.75(5) & 285A.110  
Stats. Implemented: ORS 285A.185 & 285A.188  
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06

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**Rule Caption:** Adopt rules for the Oregon Coalition Brownfields Cleanup Fund Program created by 2005 HB 2176.

**Adm. Order No.:** EDD 9-2006

**Filed with Sec. of State:** 10-30-2006

**Certified to be Effective:** 10-31-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 123-140-0010, 123-140-0020, 123-140-0030, 123-140-0040, 123-140-0050

**Subject:** Adopt rules necessary to carryout the provisions of the Oregon Coalition Brownfields Cleanup Fund Program created by 2005 HB 2176.

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-140-0010

### Purpose, Scope, and Incorporated Documents

(1) As provided in Oregon Revised Statutes (ORS) 285A.190, the Oregon Economic and Community Development Department shall administer the federally funded revolving fund to provide cleanup financing to eligible publicly and privately owned brownfields as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (P.L. 107-118).

(2) Oregon Coalition Brownfields Cleanup Fund Program is funded through a cooperative agreement (BF-97080301) between the U.S. Environmental Protection Agency and Department and includes any program income generated as a result of Department loans to Recipients as provided for in ORS 285A.192. The primary objectives of the Program are to:

(a) Remove or abate environmental health risks at sites not yet addressed by the private market;

(b) Provide resource assistance to rural, distressed, or affected communities allowing them to build quality, livable communities and neighborhoods; and

(c) Employ a problem-solving philosophy of coordination through state and local partnerships.

(3) The "Oregon Coalition Brownfields Cleanup Fund Program: Program Guidelines and Applicant Handbook," is:

(a) The principle source of information on this program;

(b) Available by contacting Department staff;

(c) Incorporated into and adopted as part of this division of administrative rule, by reference; and

(d) Subject to the same definitions as used in this division of administrative rule.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-140-0020

### Definitions

As used in this division of administrative rule:

(1) "Applicant" means any public or private entity that is eligible under OAR 123, division 140 to receive an OBCF loan or grant and that has control over or access to a brownfields site, except those entities that may potentially be liable under CERCLA, or are currently suspended or debarred from receiving federal funding, or are otherwise declared ineligible.

(2) "Brownfields" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(3) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code 9601) as amended by the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118), and any subsequent amendments.

(4) "Department" means the Oregon Economic and Community Development Department.

(5) "Fund" means the Oregon Coalition Brownfields Cleanup Fund.

(6) "Non-profit Organization" means as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999 except those non-profit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

(7) "Program" means the Oregon Coalition Brownfields Cleanup Fund Program

(8) "Program Guidelines and Applicant Handbook" means the Department's Oregon Coalition Brownfields Cleanup Fund: Program Guidelines and Applicant Handbook.

(9) "Project" means under this division those remedial and/or removal action activities identified in the Contract for which the Recipient may expend, obligate or commit funds to address cleanup of a brownfields.

(10) "Recipient" means an Applicant that has been awarded an OBCF grant or loan for a Project.

(11) "Remedial and/or Removal Actions" means those eligible cost activities listed in the Program Guidelines and Application Handbook.

(12) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(13) "USEPA" means the Environmental Protection Agency of the United States federal government.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-140-0030

### Eligible Applicants and Activities

(1) Eligible loan applicants are public, private, or Non-Profit organization with control over or access to a brownfields site, except those entities which are potentially liable under CERCLA, or which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(2) Eligible grant applicants are any public or Non-Profit organization that owns a brownfields at the time the grant is awarded, except those entities which are potentially liable under CERCLA, which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(3) Eligible and ineligible activities are defined in CERCLA and in USEPA's Revolving Loan Fund Administrative Manual (October 2004), as well as subsequent revisions or editions of such guidelines.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-140-0040

### Program Information

(1) The Department shall prepare program guidelines, application forms and other supplemental program information to help eligible Applicants seek financing and prepare loan and/or grant applications for the Fund.

(2) Program guidelines as prepared under section (1) of this rule shall include, but not be limited to, an explanation of project eligibility, applicant eligibility, types of financial assistance, loan rates and terms, borrowing guidelines, public notification process, procurement requirements, contract administration, federal crosscutting requirements and environmental review process.

(3) In addition to this division of administrative rules, the Department shall administer the Fund in compliance with the requirements of CERCLA, as amended, and CERCLA's applicable rules, guidelines and requirements from USEPA.

(4) For purposes of land use coordination, any Project activity paid for with Program funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8 and OAR chapter 660.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-140-0050

### Program Rights and Remedies

(1) The Department may exercise certain rights and remedies in the event the Recipient fails to comply with Contract provisions and, if allowed under the Contract, the Recipient fails to correct the deficiency within a reasonable time after the Recipient is notified of the deficiency. The circumstances that may warrant the Department's exercise of rights or remedies include, but are not limited to the following:

(a) None of the Project activities have begun within nine months after an OBCF award;

(b) Any third party agreement relating to the Project is not legally binding within six months of the OBCF award;

(c) Federal or State statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the Contract;

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(e) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds and those corrective actions are not, or will not, be made within a reasonable time; or

(f) A Recipient defaults on loan payments, which may otherwise be made from any source of revenue at the Recipient's disposal, including but not limited to General Fund revenues if the Recipient is a public entity borrower.

(2) The Department may exercise one or more of the following rights and remedies if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiency within a reasonable time after Recipient is notified of the deficiency:

(a) Bar a Recipient from applying for or receiving future Department assistance;

(b) Revoke an existing Department award;

(c) Withhold unexpended Department funds;

(d) Require immediate return of unexpended Department funds;

(e) Require repayment of expended Department funds;

(f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or,

(g) Other remedies that may be incorporated into the Contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the Contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as a result of a breach of such Contract.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

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**Rule Caption:** Updating the rules to reflect statutory changes from SB1098 and revisions in department's procedures.

**Adm. Order No.:** EDD 10-2006

**Filed with Sec. of State:** 11-1-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 10-1-06

**Rules Adopted:** 123-042-0026, 123-042-0036, 123-042-0045, 123-042-0055, 123-042-0065, 123-042-0076, 123-042-0122, 123-042-0132, 123-042-0155, 123-042-0165, 123-042-0175

**Rules Amended:** 123-042-0020, 123-042-0180, 123-042-0190

**Rules Repealed:** 123-042-0030, 123-042-0040, 123-042-0070, 123-042-0080, 123-042-0150, 123-042-0160

**Subject:** This rules implement the Special Public Works Fund. The rules add application requirements, contracting requirements, and clarifies the definition and criteria of an eligible project as well as the costs eligible for reimbursement from the fund. The revised rules implement the changes to the program that took effect with passage of SB1098. The revised rules also change the terms under which loans and grants may be awarded and refer to additional qualifying criteria contained in the program policy "Grant and Loan Funding for the Special Public Works Fund".

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-042-0020

### Definitions

As used in this division of administrative rules, all capitalized terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Award" means the department's determination that the project is eligible for funding and that the department has identified the specified funding type and amount for the activities described in the staff recommendation.

(2) "Award Date" means the date of the final department management signature approving the award.

(3) "Brownfield" has the meaning given in ORS 285A.185.

(4) "Department" means the Oregon Economic and Community Development Department.

(5) "Designated Disaster Area" means any county, city or special district in the state identified with emergency or major disaster affected areas that has been determined eligible for federal assistance.

(6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally

owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including planning project activities that are necessary or useful as determined by the Economic and Community Development Department.

(7) "Direct Project Management Costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. "Direct Project Management Costs" does not include routine or ongoing expenses of the municipality.

(8) "Distressed Area" has the meaning given that term by ORS 285A.010(5).

(9) "Eligible Commercial Jobs" means jobs that are created or retained by businesses selling goods or services in markets for which national or international competition exists.

(10) "Eligible Commercial Jobs Project" means a project that creates or retains eligible commercial jobs.

(11) "Eligible Commercial Uses" means non-industrial activities by businesses selling goods or services in markets for which national or international competition exist or the promotion of downtown revitalization through improvements to municipally owned property that clearly serve to render a downtown area or main street more competitive or improve its economic vitality.

(12) "Emergency Project" means a development project resulting from an emergency as defined in ORS 401.025 to which federal disaster relief has been committed.

(13) "Essential Community Facilities" means only the following: city halls; city and county courts; county courthouses; community centers, including senior centers, youth centers, boys and girls club facilities, head start facilities and day care centers; domestic violence centers; emergency services buildings, including 911 facilities, ambulance facilities and fire stations; emergency shelters, including homeless shelters and shelters for people with disabilities; facilities for abused children; facilities for migrant farm workers; food banks; police stations; jails; juvenile justice centers; libraries; medical facilities, including public health clinics, drug and alcohol treatment facilities, mental health treatment facilities, and transitional housing for mentally ill persons.

(14) "Facility" means something that is built or installed to perform some particular function.

(15) "Firm Business Commitment" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project shall support industrial development and be consistent with local comprehensive plans and implementing ordinances.

(16) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(17) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(18) "Industrial Land" means a site of suitable size, type, location, and service level for a variety of industrial uses consistent with local comprehensive planning and zoning.

(19) "Industrial Land Development" means an activity undertaken for properly zoned parcels of land to prepare the sites for development or to make the land ready for use.

(20) "Industrial Site Certification" means an activity necessary or useful, as determined by the department, to the process of establishing and documenting the status of a site's readiness for industrial development.

(21) "Loan" means debt financing offered to a municipality.

(22) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(23) "Planning Project" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the department determines to be necessary or useful in planning for a potential development project.

(24) "Project" means a development, planning or emergency project as defined by this section. When there is otherwise no specific reference to

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development, planning or emergency project, the reference shall include all project types.

(25) "Renewable Energy Feasibility Study" means an activity necessary or useful, as determined by the department, to determine the viability of a new development project that uses a renewable energy resource as defined in ORS 469.185 (9)(a) for the purpose of generating electricity, heat or manufacturing a fuel.

(26) "Rural Area" has the meaning given that term in ORS 285A.010.

(27) "State Revenue Bonds" means revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

(28) "State Revenue Bond Loan" means a loan funded in whole or part through the sale of state revenue bonds.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0026

### Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants shall be given only when loans are not feasible due to the financial need of the municipality or special circumstances of the project. The department is authorized to determine the level of loan or grant funding, if any, on a case-by case-basis. The department makes awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund; it shall determine the amount, type, interest rate, terms and conditions of an award; it may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project. Not more than 100 percent of the total cost of any project, including capitalized interest, shall be financed from the fund.

(2) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(3) The department may not expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0036

### Development Project Eligibility, Criteria and Funding

(1) A development project, as defined in ORS 285B.410(2), can include the acquisition, improvement, construction, demolition or redevelopment of any of the following municipally owned and operated facilities:

(a) Transportation system projects, including roads, marine facilities, railroads, and airports;

(b) Utility system projects, including solid waste disposal sites; water, sewage, storm water drainage, energy, or telecommunications systems; or

(c) Buildings, land or other facility projects that assist the economic and community development of the municipality and can include planning project activities and financing costs associated with the development project.

(2) The department will apply the following priorities and criteria when determining development project eligibility:

(a) The department will give priority to projects that it determines will help create or retain permanent jobs.

(b) The municipality must document the economic and community development benefits of the project and the department must determine, that at a minimum, the project has a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development;

(c) The municipality must document substantial local commitment to the project's success; and

(d) The municipality must document how the benefits of the project will be preserved over the project life.

(3) In addition to the requirements in OAR 123-042-0036(2), the following specific types of development projects have additional criteria. If the project consists:

(a) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use, and a loan for such a project must be repaid if the land that is

acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(d) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the energy system project will be located within the recognized service territory of the municipality.

(e) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.

(4) A development project may receive loan funding as follows:

(a) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) The interest rate on a loan is based on market conditions for similar debt, and is set at the time of the award.

(c) The interest rate on a state revenue bond loan is equal to the coupon rates on the bonds. Until bonds are sold, the municipality will pay interest on loan funds drawn down at the rate established by the department.

(5) Maximum loan amount for a project will be determined on the basis of the department's financial analysis of the municipality's borrowing capacity, the availability of moneys in the fund and prudent fund management as described in the department's adopted policy.

(6) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Specific revenues of the municipality may also be required to be pledged, including revenues of the project, special assessment revenues and other collateral.

(7) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the department shall apply the following minimum criteria for grants:

(a) The department's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(b) Jobs will be created or retained as a result of the grant being awarded; and

(c) The department has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

(8) If the department determines that the project meets the minimum criteria, the department will make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the department's adopted policy.

(9) If the grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(10) The department shall receive in accordance with OAR chapter 123 division 70 a copy of the First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

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## 123-042-0045

### Planning Project Eligibility, Criteria and Funding

(1) A planning project, as defined in ORS 285B.410(8), may be eligible for a loan. The department will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(2) Planning projects listed in OAR 123-042-0045(3) and (4) may also be eligible for grant funding.

(3) A planning project conducted for the purpose of developing industrial lands, including industrial site certification, is eligible for a grant of up to \$60,000 per project or per site, or 85% of the allowable project cost, whichever is less. This type of planning project must meet the following criteria:

- (a) The land must be zoned "industrial";
- (b) The land meets marketability standards as determined by the department using its adopted policy; and
- (c) The industrial site or sites being studied are not required to be owned by the municipality, however the municipality must own all the materials and end products of the planning project.

(4) A planning project conducted for the purpose of a renewable energy feasibility study is eligible for a grant of up to \$50,000 or 75% of allowable project cost, whichever is less. A renewable energy feasibility study award may also be in the form of a loan. The department will conduct a semi-annual competitive application process for renewable energy feasibility study grant awards. Information about the application process, the scoring criteria and process and the program requirements in general is contained in the program guideline. A new program guideline will be developed and provided for each competitive solicitation.

Stat. Auth.: ORS 285B.419, 285A.075  
Stats. Implemented: ORS 285B.410 - 285B.482  
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0055

### Emergency Project Eligibility, Criteria and Funding

(1) An emergency project, as defined in ORS 285B.410, that meets the following criteria is eligible for assistance from the fund:

(a) The project must result from an emergency as defined in ORS 401.025; and

(b) The project must have federal disaster relief assistance funds committed;

(2) The following apply to both grants and loans for emergency projects:

(a) The maximum award amount for an emergency project shall not exceed the required local match for the federal disaster relief assistance committed to the project;

(b) A grant award for an emergency project shall not exceed \$500,000 per project, or the amount of the federally required local match, whichever is less; and

(c) A loan for an emergency project shall meet the criteria set forth in OAR 123-042-0036.

(3) The department shall not expend more than \$2.5 million for emergency project grants, including grants for essential community facilities, in a biennium.

(4) Essential community facilities that are eligible under this subsection are defined in 123-042-0020(12).

(5) For the purposes of awards made under this OAR 123-042-0055, allowable project costs shall be those eligible for federal assistance, unless those costs are precluded by a restriction in state law or the Code of Federal Regulations.

(6) In the event of an emergency, the department may adopt a policy, after consultation with stakeholders and others, to guide implementation decisions regarding such matters as grant amounts and priorities.

Stat. Auth.: ORS 285B.419, 285A.075  
Stats. Implemented: ORS 285B.410 - 285B.482  
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0065

### Allowable Project Costs

For purposes of projects funded under OAR chapter 123, division 42, the allowable costs of a project include:

- (1) Financing costs, including capitalized interest;
- (2) Direct project management costs;
- (3) Costs of consultant services and expenses;
- (4) Construction costs and expenses;
- (5) Costs of property acquisition, including any easement, or right of way directly related to and necessary for the project;

(6) Costs incurred by the municipality prior to the award if such costs are allowable under the department's adopted policy for reimbursement of pre-award costs;

(7) Costs of acquiring off-site property for purposes directly related to the project, such as wetland mitigation; and

(8) Other costs that the department determines to be necessary or useful.

Stat. Auth.: ORS 285B.419, 285A.075  
Stats. Implemented: ORS 285B.410 - 285B.482  
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0076

### Ineligible Projects and Project Costs

Expenses and costs expressly allowed under OAR chapter 123, division 42 are eligible for reimbursement from the fund. All other costs are ineligible for reimbursement including but not limited to:

(1) Assistance to facilities that are or will be privately owned;

(2) Purchase of motor vehicles and similar equipment not directly related to the project;

(3) Assistance to projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; and

(4) Project operating or maintenance costs, except as allowed by statute.

Stat. Auth.: ORS 285B.419, 285A.075  
Stats. Implemented: ORS 285B.410 - 285B.482  
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0122

### Application Requirements

(1) A municipality may submit an application to the department after consulting with the department on a preliminary determination of eligibility and following the department's procedures.

(2) The application shall be in the form provided by the department and shall contain or be accompanied by such information and documentation as the department may require. The department may, to the extent possible, assist municipalities in understanding program requirements and in completing applications. The department will process only completed applications.

(3) For a telecommunications system project the municipality must provide a resolution, adopted by its governing body after a public hearing, that includes findings and states that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time at a reasonable cost.

(4) For an energy system project, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system. This OAR 123-042-0122(4) does not apply when the energy system will be located within the recognized service territory of the municipality.

(5) For a renewable energy feasibility study project, the municipality shall use the application process described in the program guideline.

(6) For a project for a system that is functionally connected to, or anticipates connecting to, another municipality's system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity in regard to the project and system is required. A certified copy of the fully executed intergovernmental agreement must be provided before the department will disburse funds.

Stat. Auth.: ORS 285B.419, 285A.075  
Stats. Implemented: ORS 285B.410 - 285B.482  
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0132

### Application Review and Approval

(1) For a construction project the department must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from any owners of specially benefited properties, and such collateral is sufficient, when considered with other collateral, to assure repayment, and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) The municipality is willing and able to enter into a contract with the department;

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(d) The project is consistent with the requirements governing assistance from the fund. If the department determines that the municipality or the proposed project does not meet the requirements of OAR chapter 123, division 42, the department may reject an application or require further documentation from the municipality;

(e) Other funds that may be needed to complete the project are available or the municipality has a binding commitment for such funds. If a portion of the other funds needed to complete the project is not available or committed at the time an award is made, the award shall be conditional on securing the other needed funds or a binding commitment for such funds; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance, it shall proceed immediately.

(2) For a planning project, the department must make the following determinations:

(a) The requirements set out in OAR 123-042-0132(1) are met, except for subsection (b) if no loan is being awarded;

(b) The planning activities must be for a project that is eligible under OAR chapter 123, division 42 and meets the criteria listed in OAR 123-042-0045; and

(c) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the planning project.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0155

### Contracts and Disbursements of Funds

(1) The department shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in form and substance as provided by the department, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the department under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) For a development project, a provision requiring that the contracted project remain in municipal ownership for the life of the loan. If this condition is not met, any grant shall convert to a loan, and at the department's determination, may become immediately due and payable in full;

(d) For a planning project, a provision requiring that the land involved in the project must remain zoned as industrial and not be converted to another use for at least 5 years after completion of the project. If this condition is not met, any grant shall convert to a loan, and at the department's determination, may become immediately due and payable in full;

(e) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the department a lien on, or a security interest in, the collateral as determined by the department to be necessary to secure repayment of the loan or bond;

(f) A provision that for a period of up to six (6) years after project completion, the department may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project; and

(g) Other provisions that the department considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0165

### Municipality Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the department, and its representatives, reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the department.

(3) The municipality shall certify that any service provider retained for their professional expertise is certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

(4) The municipality shall certify that it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(5) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 requiring public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the project:

"This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department.;" and

(b) For a construction project, post a sign, provided by the department, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(6) For a construction project, the municipality shall have a plan for ongoing operation and maintenance that will preserve the project benefits over its useful life.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0175

### Eligibility Criteria for State Revenue Bond Loans

The department shall apply the following standards for determining the eligibility of development projects for revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the department;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments and the term of the loan shall not exceed the usable life of the contracted project;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for revenue bond financing as established by department policies.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0180

### Sanctions

The department may invoke remedies for an "event of default" as described in the contract with the municipality, including the withholding of amounts otherwise due to the municipality pursuant to ORS 285B.449.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

## 123-042-0190

### Appeals and Exceptions

(1) Appeals of decisions made by a municipality regarding a project must be made in accordance with the requirements and procedures of the municipality.

(2) The director of the department will consider appeals of the department's funding decisions. Only the municipality may appeal. An appeal must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the department's review of the application will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director's decision is final.

(3) The director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.482

# ADMINISTRATIVE RULES

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

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**Rule Caption:** Updating the rules to reflect statutory changes from SB 1098 and revisions in department's procedures.

**Adm. Order No.:** EDD 11-2006

**Filed with Sec. of State:** 11-3-2006

**Certified to be Effective:** 11-3-06

**Notice Publication Date:** 10-1-06

**Rules Adopted:** 123-043-0102

**Rules Amended:** 123-043-0010, 123-043-0015, 123-043-0025, 123-043-0035, 123-043-0045, 123-043-0055, 123-043-0065, 123-043-0075, 123-043-0085, 123-043-0095, 123-043-0105, 123-043-0115

**Subject:** This rule implements the Water Wastewater Fund program. The rules add application requirements, contracting requirements and clarifies the definition and criteria of an eligible project as well as the costs eligible for reimbursement from the fund. The revised rules implement the changes to the program that took effect with passage of SB1098. The revised rules also change the terms under which loans and grants may be awarded and refer to additional qualifying criteria contained in the program policy "Grant and Loan Funding for the Water Wastewater Fund".

**Rules Coordinator:** Paulina Layton—(503) 986-0036

## 123-043-0010

### Definitions

As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "DEQ" means the State of Oregon Department of Environmental Quality.
- (2) "Department" means the State of Oregon Economic and Community Development Department.
- (3) "Director" means the director of the department.
- (4) "Facilities" means something that is built or installed to perform some particular function.
- (5) "Fund" means the water fund created by ORS 285B.563.
- (6) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.
- (7) "Loan" means debt financing provided to a municipality for a project.
- (8) "Municipality" means an entity defined in ORS 285B.560(4):
  - (a) Oregon City;
  - (b) Oregon County;
  - (c) District as defined in ORS 198.010;
  - (d) The Port of Portland created by ORS 778.010;
  - (e) County service district organized under ORS chapter 451;
  - (f) Tribal council of a federally recognized Indian Tribe in Oregon; or
  - (g) Airport district organized under ORS Chapter 838.
- (9) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(10) "Project" means an activity that is eligible for assistance from the fund as defined in ORS 285B.560(5) and (6).

(11) "State Revenue Bond" means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

(12) "Severely distressed community" means a community or area identified as severely distressed by the department under the procedures implementing OAR chapter 123, division 24.

(13) "System" means the interconnected facilities that are required or useful for performing the required function.

(14) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.572 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0015

### Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies for a project as approved by the department;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to the award if such costs are allowable under the department's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the department, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities includes the construction, improvement or expansion of the following facilities owned and operated by a municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the department;

(c) Water development projects, as defined in ORS 541.700, that are owned and operated by a municipality;

(d) Storm water systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water; and

(e) The acquisition of real property directly related to or necessary for the proposed project.

(f) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the department.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0025

### Ineligible Project Activities

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

(1) Costs incurred for facilities that are or will be privately owned.

(2) Cost of purchase of equipment, such as motor vehicles, not directly related to the project.

(3) Cost of purchase of off-site property for uses not directly related to the project.

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0035

### Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the department may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

# ADMINISTRATIVE RULES

(b) The department deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the department as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The department generally will not award funds for any wastewater treatment facility that discharges into water quality limited streams for which DEQ has not yet established Total Maximum Daily Loads. The department will consult with DEQ to determine if the project can be designed and constructed without establishment of Total Maximum Daily Loads. Water quality limited streams are designated by the Oregon Environmental Quality Commission.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The department encourages regionalization whenever feasible.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0045

### Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required or recommended by a regulatory agency, the municipality is not required to document non-compliance.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$20,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this OAR 123-043-0045 the department will not first consider a municipality's ability to repay a loan. The department may determine the need for a grant due to the "special circumstances" of the project.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0055

### Loan and Grant Information

(1) The department may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The department shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the department may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the department determines are not financially feasible will not be funded.

(2) Grants: When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage limited funding resources. In making its determination, the department shall, in addition to the criteria and procedures contained in the department's policies on grant and loan funding, apply the following criteria:

(a) The department's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) If applicable, the projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the department's policy. The department's policy incorporates the most recent U.S.

Census data on median household income and annual adjustments for inflation since the most recent census; and

(c) If applicable, a grant would not cause the total amount of grants made by the department through all its programs to exceed \$10,000 per hookup per project.

(3) The department shall determine if the project meets the minimum criteria of a grant and make a determination on the amount of the grant based on financial need and other circumstances as described in the department's policies. A project in a severely distressed community may be eligible for a grant not to exceed \$750,000.

(4) Loans:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the department on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the department on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management as described in the department's adopted policies.

(5) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the department to be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0065

### Application Requirements

(1) A municipality may submit an application to the department at any time after the department has made a preliminary determination of eligibility and shall comply with the department's procedures for submitting applications. The department may, to the extent possible, assist municipalities in understanding program requirements and in completing applications.

(2) For a project that is part of a system that is, or will be, functionally connected to, another municipality's system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity is required. The fully executed intergovernmental agreement must be provided before the financing contract will be executed by the department.

(3) The application shall be in the form provided by the department and shall contain or be accompanied by such information and documentation as the department may require. The department will process only completed applications.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0075

### Application Review and Approval

(1) For a non-technical assistance project, the department must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the department;

(e) The project is consistent with the requirements governing assistance from the fund. If the Department determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-

# ADMINISTRATIVE RULES

0075, the department may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the department must make the following determinations:

(a) Provisions of OAR 123-043-0075(1) are met;

(b) The technical assistance activities must be for a project that is eligible under OAR chapter 123, division 43 and meets the criteria listed in OAR 123-043-0045; and

(c) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0085

### Contract Administration and Disbursement of Funds

(1) The department shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the department, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the department under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the department a lien on or a security interest in the collateral as determined by the department to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the department may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections; and

(g) Other provisions that the department considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0095

### Recipient Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the department and its representatives reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the department.

(3) The municipality shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(4) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 for public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project: "This project was funded in part with a financial award from the Water Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."; and

(b) For a construction project, post a sign, provided by the department, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(5) For a construction project the municipality shall have a plan for ongoing operation and maintenance that will preserve the project's benefits over its useful life.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0102

### Eligibility Criteria for State Revenue Bond Loans

The department shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the department;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 25 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by department policies.

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented:

Hist.: EDD 11-2006, f. & cert. ef. 11-3-06

## 123-043-0105

### Sanctions

(1) The department may pursue any remedies available to it against a municipality upon the occurrence of an event of default under the department's contract with the municipality, including barring the municipality from applying for future assistance from the fund and withholding other state funds due to the municipality pursuant to ORS 285B.599.

(2) The Department may invoke sanctions against a municipality that fails to comply with the requirements governing the fund or if the department finds that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not, or will not be, made within a reasonable time. Sanctions will not be imposed by the department until the municipality has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the project activities have begun within six months after award; or

(b) Any private party agreements relating to the project are not legally binding within six months of the award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the contract, or breach of contract; or

(e) A municipality defaults on loan payments.

(3) One or more of the following sanctions may be imposed by the Department; bar a municipality from applying for future assistance; revoke an existing award; withhold unexpended funds; require return of unexpended funds or repayment of expended funds; withhold other state funds such as state-shared revenues; and, other remedies that may be incorporated into grant or loan contracts.

(4) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

# ADMINISTRATIVE RULES

## 123-043-0115

### Appeals and Exceptions

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director will consider appeals of the department's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the department's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director's decision is final.

(3) The director may waive any non-statutory requirements of OAR chapter 123, division 43 if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

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## Employment Department Chapter 471

**Rule Caption:** OAR 471-041 — Higher Appeals Procedure all rules.

**Adm. Order No.:** ED 11-2006

**Filed with Sec. of State:** 10-26-2006

**Certified to be Effective:** 10-29-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 471-041-0050, 471-041-0060, 471-041-0065, 471-041-0070, 471-041-0075, 471-041-0080, 471-041-0090, 471-041-0100, 471-041-0145

**Rules Repealed:** 471-041-0140, 471-041-0110, 471-041-0045, 471-041-0055

**Rules Ren. & Amend:** 471-041-0130 to 471-041-0095, 471-041-0120 to 471-041-0098

**Subject:** Amending all rules in OAR 471-041 to clarify the meaning of each rule. Process changes include allowing parties to submit written arguments without having to ask first and increasing the time to request reconsideration.

**Rules Coordinator:** Lynn M. Nelson—(503) 947-1724

### 471-041-0050

#### Definitions

(1) "ALJ" means Administrative Law Judge.

(2) "Applicant" means the party on whose behalf the application for review was filed.

(3) "EAB" means the Employment Appeals Board.

(4) "Mail" means United States Postal Service mail.

(5) "OAH" means the Office of Administrative Hearings.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6)

Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-0010-010; ED 1-1995, f. & cert. ef. 1-9-95; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

### 471-041-0060

#### Application for Review

(1) An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the party requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision.

(2) An application for review may be filed in person, by mail or by fax to EAB, or any office of the Employment Department, or any Employment Security Agency in any other state or jurisdiction where a party is claiming benefits.

(3) An application for review that does not conform to the requirements of this rule is subject to dismissal.

(4) Where an applicant did not appear at the hearing that led to the decision on appeal, EAB and OAH will treat the application for review as a request to reopen the hearing under OAR 471-040-0040, unless the application for review specifically states that the applicant does not wish to have the case reopened. If and when the request to reopen is denied, EAB will conduct a review of the original record based on the original application for review, except where the hearing decision dismissed the hearing request for failure to appear.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.685

Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0005; ED 1-1995, f. & cert. ef. 1-9-95; ED 6-1996, f. 10-15-96, cert. ef. 10-21-96; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 3-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 5-2004, f. 7-30-04, cert. ef. 8-1-04; ED 8-2006, f. 7-27-06, cert. ef. 7-30-06; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

### 471-041-0065

#### Filing Dates

(1) Filing dates shall be determined as follows:

(a) If delivered in person, the filing date is the date of delivery, as evidenced by the receipt date stamped or written by the public employee who received the document.

(b) If mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.

(c) If faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives the document. EAB's normal business hours are Monday through Friday, 8:00 am to 5:00 pm, Pacific Time. If EAB receives a faxed document after 5:00 pm, or on a Saturday, Sunday or legal holiday, it will be marked as received the following business day.

(2) Where the information specified in section (1) of this rule is missing or unclear, the filing date is the date that EAB determines to be the most probable date of filing.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6)

Hist.: ED 1-1995, f. & cert. ef. 1-9-95; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

### 471-041-0070

#### Late Application for Review

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) The applicant shall include with the application for review a written statement describing the circumstances that prevented a timely filing. Nothing in this rule prevents EAB from referring the matter to OAH for a hearing if in EAB's discretion, a hearing is necessary to EAB's determination under section (2).

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6)

Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0007; ED 1-1995, f. & cert. ef. 1-9-95; Administrative correction 6-2-99; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

### 471-041-0075

#### Acknowledgement of Application for Review

When EAB receives a valid and timely application for review, it shall notify all parties promptly by mail or email.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6)

Hist.: ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

### 471-041-0080

#### Presentation of Argument

(1) Parties may submit written argument within 20 days of the date that EAB mails or emails the notice required by OAR 471-041-0075.

(2) A party's written argument will not be considered unless it:

(a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX.""

(b) Is received within the time allowed.

(3) Written argument may be delivered in person, by mail, or by fax.

(4) At the discretion of EAB, the time allowed for submitting written arguments under section (1) may be extended for one or more periods, not to exceed a total of 14 days.

Stat. Auth.: ORS 183, 657.610 & 657.685

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 657.685(6) & 657.690  
Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0010; ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

## 471-041-0090

### Additional Evidence

Information not received into evidence at the hearing will not be considered on review, except, subject to notice and an opportunity to be heard:

(1) Exhibits offered, but not received into evidence, may be received into evidence as necessary to complete the record;

(2) New information may be considered when the party offering the information establishes that:

(a) The new information is relevant and material to EAB's determination; and

(b) Factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing; and

(3) Notice may be taken of information contained in Employment Department records, generally cognizable facts, and general, technical or scientific facts within EAB's specialized knowledge.

Stat. Auth.: ORS 183, 657.610 & 657.685  
Stats. Implemented: ORS 657.275 & 657.685(6)  
Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0015; ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

## 471-041-0095

### Case Consolidation and Voting

Cases involving multiple parties, similar facts or similar issues may be consolidated. Cases are considered in panels of two or three EAB members. A member shall disqualify himself or herself from participation in any case in which the member has a private interest in the outcome, or a bias likely to impair his or her impartial review.

Stat. Auth.: ORS 183, 657.610 & 657.685  
Stats. Implemented: ORS 657.685(3), 657.685(6)  
Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0035; ED 1-1995, f. & cert. ef. 1-9-1995; Renumbered from 471-041-0130, ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

## 471-041-0098

### Request to Withdraw Application for Review

An applicant's written request to withdraw an application for review will be allowed unless the request is received after notice of EAB's decision has been issued.

Stat. Auth.: ORS 183, 657.610 & 657.685  
Stats. Implemented: ORS 657.685(6)  
Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0030; ED 1-1995, f. & cert. ef. 1-9-1995; Renumbered from 471-041-0120, ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

## 471-041-0100

### Notice of Decision

Notice of EAB's decision shall be by mail or email to each party or its representative at the address of record with EAB and shall include.

- (1) A caption identifying the parties and their representatives,
- (2) Findings of fact,
- (3) Conclusions and reasons,
- (4) A statement of appeal rights, and
- (5) The date that the notice was issued.

Stat. Auth.: ORS 183, 657.610 & 657.685  
Stats. Implemented: ORS 657.275 & 657.685(6)  
Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0020; ED 1-1995, f. & cert. ef. 1-9-95; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

## 471-041-0145

### Reconsideration

(1) Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

(2) The request is subject to dismissal unless it:

(a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXXX."

(b) Is filed on or before the 20th day after the decision sought to be reconsidered is mailed.

Stat. Auth.: ORS 183, 657.610 & 657.685  
Stats. Implemented: ORS 657.685(6)  
Hist.: ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

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## Land Conservation and Development Department Chapter 660

**Rule Caption:** New rules interpreting Goal 14 regarding the adoption or amendment of urban growth boundaries (UGBs).

**Adm. Order No.:** LCDD 8-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 4-5-07

**Notice Publication Date:** 6-1-06

**Rules Adopted:** 660-024-0000, 660-024-0010, 660-024-0020, 660-024-0030, 660-024-0040, 660-024-0050, 660-024-0060, 660-024-0070

**Subject:** The new rules interpret Statwide Planning Goal 14 regarding the adoption or amendment of urban growth boundaries (UGBs). The rules clarify requirements set forth in the goal, and reflect long-standing practice by local governments and case law established by the courts. The rules are new OAR chapter 660, division 24, organized parallel with the goal, and in an order similar to that most often followed by local governments considering an amendment to a UGB. The new rules provide "safe harbors" describing specific methods to meet certain requirements that local governments may choose to follow, at their option. The new rules also provide for exchanges of land currently inside a UGB for land outside a UGB.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext 222

## 660-024-0000

### Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding local government adoption or amendment of an urban growth boundary (UGB).

(2) The rules in this division interpret Goal 14 as amended by Land Conservation and Development Commission (LCDC) on or after April 28, 2005, and are not applicable to plan amendments or land use decisions governed by previous versions of Goal 14 still in effect.

(3) The rules in this division are effective April 5, 2007, except as follows:

(a) A local government may choose to apply this division prior to April 5, 2007;

(b) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a UGB, regardless of the date of that amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007;

(c) For purposes of this rule, "initiated" means that the local government either:

(A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB; or

(B) Received LCDC approval of a periodic review work program that includes a work task to evaluate the UGB land supply or amend the UGB;

(d) A local government choice whether to apply this division must include the entire division and may not differ with respect to individual rules in the division.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14  
Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0010

### Definitions

In this division, the definitions in the statewide goals and the following definitions apply:

(1) "Local government" means a city or county, or a metropolitan service district described in ORS 197.015(14).

(2) "Safe harbor" means an optional course of action that a local government may use to satisfy a requirement of Goal 14. Use of a safe harbor prescribed in this division will satisfy the requirement for which it is prescribed. A safe harbor is not the only way or necessarily the preferred way to comply with a requirement and it is not intended to interpret the requirement for any purpose other than applying a safe harbor within this division.

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(3) "UGB" means "urban growth boundary."

(4) "Urban area" means the land within a UGB.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14

Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0020

### Adoption or Amendment of a UGB

(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

(a) The exceptions process in Goal 2 and OAR 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);

(b) Goals 3 and 4 are not applicable;

(c) Goal 5 and related rules under OAR 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;

(g) Goal 19 is not applicable to a UGB amendment.

(2) The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14

Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0030

### Population Forecasts

(1) Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

(2) The forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics, and must be based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA). The forecast must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. The population forecast is an estimate which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision.

(3) As a safe harbor, if a coordinated population forecast was adopted by a county within the previous 10 years but does not provide a 20-year forecast for an urban area at the time a city initiates an evaluation or amendment of the UGB, a city and county may adopt an updated forecast for the urban area consistent with this section. The updated forecast is deemed to comply with applicable goals and laws regarding population forecasts for purposes of the current UGB evaluation or amendment provided the forecast:

(a) Is adopted by the city and county in accordance with the notice, procedures and requirements described in section (1) of this rule; and

(b) Extends the current urban area forecast to a 20-year period commencing on the date determined under OAR 660-024-0040(2) by using the same growth trend for the urban area assumed in the county's current adopted forecast.

(4) As a safe harbor, a city and county may adopt a 20-year forecast for an urban area consistent with this section. The forecast is deemed to comply with applicable goals and laws regarding population forecasts for purposes of the current UGB evaluation or amendment provided the forecast:

(a) Is adopted by the city and county in accordance with the notice, procedures and requirements described in section (1) of this rule;

(b) Is based on OEA's population forecast for the county for a 20-year period commencing on the date determined under OAR 660-024-0040(2); and

(c) Is developed by assuming that the urban area's share of the forecasted county population determined in subsection (b) of this rule will be the same as the urban area's current share of county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the U.S. Census Bureau.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14

Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0040

### Land Need

(1) The UGB must be based on the adopted 20-year population forecast for the urban area described in OAR 660-024-0030, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.

(2) If the UGB analysis or amendment is conducted as part of a periodic review work program, the 20-year planning period must commence on the date initially scheduled for completion of the appropriate work task. If the UGB analysis or amendment is conducted as a post-acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-year planning period must commence either:

(a) On the date initially scheduled for final adoption of the amendment specified by the local government in the initial notice of the amendment required by OAR 660-018-0020; or

(b) If more recent than the date determined in subsection (a), at the beginning of the 20-year period specified in the coordinated population forecast for the urban area adopted by the city and county pursuant to OAR 660-024-0030, unless ORS 197.296 requires a different date for local governments subject to that statute.

(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

(4) The determination of 20-year residential land needs for an urban area must be consistent with the adopted 20-year coordinated population forecast for the urban area, and with the requirements for determining housing needs in Goal 10, OAR 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

(5) Except for a metropolitan service district described in ORS 197.015(14), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with OAR 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

(6) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable requirements of Goals 11 and 12, rules in OAR 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with ORS 195.110 and 197.296 for local governments specified in those statutes.

(7) The following safe harbors may be applied in determining housing needs:

(a) Local governments may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.

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(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.

(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.

(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

(8) The following safe harbors may be applied in determining employment needs:

(a) The local government may estimate that the current number of jobs in the urban area will grow during the 20-year planning period at a rate equal to either:

(A) The county or regional job growth rate provided in the most recent forecast published by the Oregon Employment Department; or

(B) The population growth rate for the urban area in the adopted 20-year coordinated population forecast specified in OAR 660-024-0030.

(b) A local government with a population of 10,000 or less may assume that retail and service commercial land needs will grow in direct proportion to the forecasted urban area population growth over the 20-year planning period. This safe harbor may not be used to determine employment land needs for sectors other than retail and service commercial.

(9) As a safe harbor during periodic review or other legislative review of the UGB, a local government may estimate that the 20-year land needs for streets and roads, parks and school facilities will together require an additional amount of land equal to 25 percent of the net buildable acres determined for residential land needs under section (4) of this rule. For purposes of this rule, a "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14  
Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0050

### Land Inventory and Response to Deficiency

(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015(3).

(2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(14), may use the following assumptions in inventorying buildable lands to accommodate housing needs:

(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;

(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.

(3) As safe harbors when inventorying land to accommodate industrial and other employment needs, a local government may assume that a lot or parcel is vacant if it is:

(a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent building; or

(b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied by a permanent building.

(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already

inside the UGB. Changes to the UGB must be determined by evaluating alternative boundary locations consistent with OAR 660-024-0060.

(5) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14  
Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0060

### Boundary Location Alternatives Analysis

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(5) If a local government has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service

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providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14  
Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

## 660-024-0070

### UGB Adjustments

(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. The requirements of section (2) of this rule apply when removing land from the UGB. The requirements of Goal 14, this division, and ORS 197.298 apply when land is added to the UGB, including land added in exchange for land removed. The requirements of ORS 197.296 may also apply when land is added to a UGB, as specified in that statute. If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB before the local government applies ORS 197.298 and other UGB location requirements necessary for adding land to the UGB.

(2) A local government may remove land from a UGB following the procedures and requirements of ORS 197.764. Alternatively, a local government may remove land from the UGB following the procedures and requirements of ORS 197.610 to 197.650, provided it determines:

(a) The removal of land would not violate applicable statewide planning goals;

(b) The UGB would provide a 20-year supply of land for estimated needs after the land is removed, taking into consideration land added to the UGB at the same time;

(c) Public facilities agreements adopted under ORS 195.020 do not provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB;

(d) Removal of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB; and

(e) The land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.

(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on its acknowledged population forecast and land needs analysis, rather than adopt a new forecast and need analysis, provided the land added to the UGB is planned for the same uses and at the same housing or employment density as the land removed from the UGB, and provided:

(a) For residential land, the amount of buildable land added to the UGB is substantially equivalent to the amount of buildable land removed; or

(b) For industrial or other employment land, the amount of suitable land added to the UGB is substantially equivalent to the amount of suitable land removed.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14  
Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764  
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07

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**Rule Caption:** Amendments address coordination between metropolitan planning organizations requirements under federal law/local government under state law.

**Adm. Order No.:** LCDD 9-2006

**Filed with Sec. of State:** 11-15-2006

**Certified to be Effective:** 11-15-16

**Notice Publication Date:** 11-1-05

**Rules Amended:** 660-004-0022

**Subject:** The amendments to the Interpretation of Goal 2 Exception Process Rule consolidate rule requirements for goal exceptions for transportation facilities and improvements on rural lands in the TPR.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

## 660-004-0022

### Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

(4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10), appropriate reasons and facts include but are not limited to the following:

(a) A demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

(A) The use requires a location near a resource located on rural land; or

(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

(i) For industrial use, it would have a significant comparative advantage due to its location (i.e., near a rural energy facility, or near products available from other activities only in the surrounding area; or it is reliant on an existing work force in an existing unincorporated community);

(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or UGB, and is most appropriate at the particular proposed location. The

# ADMINISTRATIVE RULES

reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.

(b) Need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and UGBs in the area. Area encompasses those communities, exception areas, and UGBs which may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors;

(c) Expansion requires demonstrated ability to serve both the expanded area and any remaining infill development potential in the community at time of development with the level of facilities determined to be appropriate for the existing unincorporated community.

(5) Expansion of Urban Unincorporated Communities: Expansion of an urban unincorporated community defined under OAR 660-022-0010(9) shall comply with OAR 660-022-0040.

(6) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses which are neither water-dependent nor water-related within the setback line required by Section C.3.k of the Goal may be approved where reasons demonstrate the following:

(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;

(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;

(c) The use will provide a significant public benefit; and

(d) The use is consistent with the Legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by LCDC under ORS 390.322.

(7) Goal 16 X Water Dependent Development: To allow water dependent industrial, commercial, or recreational uses in development and conservation estuaries which require an exception, an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period considering the following:

(a) Factors of Goal 9 or for recreational uses the factors of Goal 8;

(b) The generally predicted level of market demand for the proposed use;

(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements; and

(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use;

(e) The economic analysis must be based on Goal 9 element of the County Comprehensive Plan and consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.

(8) Goal 16 — Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS Chapter 541, in any of the following circumstances:

(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material including adjacent upland soils or stockpiling of material from approved dredging projects can not reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;

(b) Dredging to maintain adequate depth to permit continuation of present level of navigation in the area to be dredged;

(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;

(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;

(e) Dredge or fill or other alteration for expansion of an existing public non-water-dependent use or a nonsubstantial fill for a private nonwater-dependent use (as provided for in ORS 541.625) where:

(A) A Countywide Economic Analysis based on the factors in Goal 9 demonstrates that additional land is required to accommodate the proposed use; and

(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and

(C) That the size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.

(f) In each of the situations set forth in subsections (7)(a) to (e) of this rule, the exception must demonstrate that proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner which minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(9) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas:

(a) These Coastal Shoreland Areas include:

(A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites;

(B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to non-resource use and in unincorporated communities pursuant to OAR chapter 660, division 022 (Unincorporated Communities) that are suitable for water dependent uses;

(C) Designated dredged material disposal sites;

(D) Designated mitigation sites.

(b) To allow a use which is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (9)(a) of this rule the exception must demonstrate:

(A) A need, based on the factors in Goal 9, for additional land to accommodate the proposed use;

(B) Why the proposed use or activity needs to be located on the protected site considering the unique characteristics of the use or the site which require use of the protected site; and

(C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and where applicable consistent with protection of natural values.

(c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area;

(d) Uses which would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible, be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.

(e) Exceptions to designate and protect for water-dependent uses an amount of shorelands less than is required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate compliance with the following:

(A) Based on the factors of Goals 8 and 9, there is no need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-dependent use needs of all local government jurisdictions along the estuary, including the port authority if any, and be consistent with the Goal 8 and Goal 9 elements of the comprehensive plans of those jurisdictions.

(B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on one or more of the requirements of Goals 3 to 18.

(10) Goal 18 — Foredune Breaching: A foredune may be breached when the exception demonstrates an existing dwelling located on the foredune is experiencing sand inundation and the grading or removal of sand is:

(a) Only to the grade of the dwelling;

(b) Limited to the immediate area in which the dwelling is located;

(c) Sand is retained in the dune system by placement on the beach in front of the dwelling; and

(d) The provisions of Goal 18 Implementation Requirement 1 are met.

(11) Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 “Beaches and Dunes”, implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:

(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or is of minimal value; and

(b) The use is designed to minimize adverse environmental effects;

(c) The provisions of OAR 660-004-0020 shall also be met.

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.012, 197.040, 197.712, 197.717, and 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 7-

# ADMINISTRATIVE RULES

1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 9-2006, f. & cert. ef. 11-15-06

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

**Rule Caption:** Specifies rules for public education providers of online learning when using the Oregon Virtual School District resources.

**Adm. Order No.:** ODE 14-2006

**Filed with Sec. of State:** 10-23-2006

**Certified to be Effective:** 10-24-06

**Notice Publication Date:** 9-1-06

**Rules Adopted:** 581-020-0500, 581-020-0505, 581-020-0510, 581-020-0515, 581-020-0520

**Subject:** Chapter 834 Oregon Laws 2005, required that rules be established for the Oregon Virtual School District in the following areas:

(a) The procedure and criteria to be used for the selection of online courses to be offered through the Oregon Virtual School District.

(b) The qualifications of students who may access online courses through the Oregon Virtual School District.

(c) The number of credits for which students may access online courses through the Oregon Virtual School District.

(d) The student-to-teacher ratio for online courses offered through the Oregon Virtual School.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

**581-020-0500**

**OVSD Definition**

(1) The Oregon Virtual School District shall undertake efforts for a sustainable framework for K-12 virtual learning that enhances student achievement by providing resources with guidelines for delivery. Resources may include, but are not limited to, digital instructional content, complete courses, materials for teacher implementation, online communication systems for instruction and teacher professional development and training.

(2) The OVSD Framework is based on the legislative direction of an equitable opportunity for all students' access to online resources, without regard to social and economic status. Resources are intended to be available for all School Districts and students for the purpose of enriching student Education. A sustainable framework includes the components of creating standards while developing online instructional resources. OVSD resources are available to support public education providers to implement online instruction to enhance distance learning and supplement classroom instruction. Participation in the OVSD program is voluntary for Oregon Educational Service Districts, School Districts and Schools.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

**581-020-0505**

**Online School Definition**

Public school, public instructional program, or ESD, providing learning opportunities for publicly enrolled students via the Internet or other electronic network. Instruction should satisfy Oregon content, teaching standards and accreditation rules. Online programs and schools are governed by their school district guidelines for operations and education delivery.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

**581-020-0510**

**Oregon Teacher**

Teaching CORE classes in Oregon requires State licensure as well as teaching in the content area of approval as outlined by NCLB. This applies to all public schools and is defined in OAR 584-005-0005 # 74, 584-005-0005 # 21 and ORS 342.120 for Charter School instruction. All instructors must be licensed by the Teachers Standards and Practices Commission and highly qualified as defined by TSPC.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

**581-020-0515**

**Oregon Classroom Content**

(1) Content should be aligned with Oregon's Common Curriculum Goals, Content Standards, and Essential Learning Skills. Adoption of content for instruction is governed by school Districts subject to Oregon Revised Statutes and Oregon Administrative Rules.

(2) OVSD will offer content aligned with state standards. The use of OVSD resources requires districts to conform to OAR division 22 Standards for public elementary and secondary schools.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

**581-020-0520**

**Required School District Guidelines for Digital Instruction**

Public Providers of online learning using OVSD resources must adopt guidelines in the following areas.

(1) Student/Teacher Ratio. Online learning providers are required to have guidelines in place for reasonable student to instructor ratios that allow for regular, individualized interaction with instructors.

(2) Student Teacher Interaction. Online learning providers are required to have guidelines in place for reasonable student to instructor communication that allow for, individualized interaction with instructors as needed. Communication includes, but is not limited to, electronic mail, online discussion groups, telephone interaction and face to face discussions between teacher and student.

(3) Timeframe for Teacher Response to Student Questions. Online learning providers are required to have guidelines in place for the time and process that teachers will provide prompt response to student inquiries and requests for assistance.

(4) Student Standards. Online learning providers are required to have guidelines in place for student conduct and acceptable use of public school resources in the delivery of online instruction. The administrative implementation is governed by individual school district guidelines.

(5) Type of Courses. Courses offered are governed by individual school district guidelines, including, but not limited to, courses meeting requirements for high school diploma, electives as well as supplementary instruction. An example of supplementary instruction could be Advanced Placement preparation instruction.

(6) Amount of Credit Allowed. The amount of online instruction, and the corresponding credit, provided to a student is under the jurisdiction of the resident school district. Districts must accept transfer grades by accredited institutions.

(7) Student Eligibility for Courses. When applying towards credit the student's resident school district sets the eligibility requirements for district purchased online teaching services. Individual private purchase of courses by an Oregon resident is at the discretion of the parent or guardian and subject to resident school district guidelines for credit towards graduation. Use of Digital Courses and Content are subject to School District guidelines.

(8) Teacher Professional Development. Online Learning Providers are required to have policies for Teacher professional development. Teachers need to have appropriate training for the delivery of online instruction. Providers receiving public support must maintain Oregon teaching licensure for all teachers consistent with TSPC professional development requirements.

Stat. Auth.: ORS 319.840, 326.051

Stats. Implemented: ORS 319.840

Hist: ODE 14-2006, f. 10-23-06, cert. ef. 10-24-06

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**Oregon Housing and Community Services**  
**Chapter 813**

**Rule Caption:** Authorizes the Department to make funds available to provide housing or related facilities for farmworkers.

**Adm. Order No.:** OHCS 19-2006

**Filed with Sec. of State:** 11-15-2006

**Certified to be Effective:** 11-15-06

**Notice Publication Date:** 10-1-06

**Rules Adopted:** 813-015-0001, 813-015-0006, 813-015-0011, 813-015-0016, 813-015-0021, 813-015-0026, 813-015-0031, 813-015-0035, 813-015-0040, 813-015-0045, 813-015-0050

# ADMINISTRATIVE RULES

**Subject:** 813-015-0001 Establishes the purpose for the rules.

813-015-0006 Clarifies the common definitions and terms found within the rules.

813-015-0011 Defines the eligible borrowers and eligible projects that may apply for available program funding. The rule also defines the program criteria and loan terms and limits.

813-015-0016 Clarifies the source of the funds within the program. Stipulates the Department may provide funds subject to the availability of funds through a process including but not limited to a first come-first reviewed process or a competitive review process.

813-015-0021 States that the Department will notify an eligible borrower of the terms and conditions of the funding through a formal commitment letter before funds are advanced or contractual agreements are signed. Defines the terms and conditions that may be included in the formal commitment letter.

813-015-0026 Sets out the loan security requirements for receiving funding through the program.

813-015-0031 Includes the application process and the project information that must be included as part of the application process.

813-015-0035 Defines the Department process and criteria for evaluating each project and processing the loan application.

813-015-0040 States that an eligible borrower who has received a loan cannot transfer or otherwise encumber a property that serves as collateral for the loan without prior written consent from the Department. Defines the terminology for transfer of ownership. Sets out the charges applicable to the transferring of ownership.

813-015-0045 Includes equal opportunity language for all eligible borrowers.

813-015-0050 Includes waiver language that is allowed for within statute.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-015-0001

### General Purpose

OAR chapter 813, division 15, is promulgated to accomplish the general purpose of ORS 456.515 to 456.725 and 566.310 to 566.360, specifically 566.340, which authorizes the Department to make funds available to provide housing or related facilities for Farmworkers. The objective of the Oregon Rural Rehabilitation (ORR) Program is to provide financial assistance in the form of ORR Loans to Eligible Borrowers for the construction, acquisition and/or rehabilitation of housing for Farmworkers and their families, thereby expanding the supply of affordable, decent and safe housing for Farmworkers and their families in Oregon.

Stat Auth: ORS 456.515 – 456.725

Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360

Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0006

### Definitions

All words and terms used in OAR chapter 813, division 015, are defined in ORS 456.515 to 456.725, 566.310 to 566.360 and as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) “Eligible Project” means the acquisition, construction and/or rehabilitation of housing or related facilities which shall be primarily occupied by Farmworkers who, in the last 12 calendar months have, at a minimum, earned fifty percent (50%) of their income or worked fifty percent (50%) of their time in agriculture or aquaculture.

(2) “Farmworker” means any person working in connection with cultivating soil, raising or harvesting any agricultural or aquacultural commodity as further described in OAR 813-039-0010(6).

(3) “Fund” means the Oregon Rural Rehabilitation (ORR) Fund.

(4) “Nonprofit Housing Corporation” means an organization formed under ORS chapter 65 that has been organized exclusively to provide housing facilities as further described in ORS 456.615(14).

(5) “ORR Loan” means a loan by the Department to finance a Farmworker housing project as part of the Oregon Rural Rehabilitation Loan Program.

Stat Auth: ORS 456.515 – 456.725

Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360

Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0011

### Eligibility for Funding

Subject to the availability of Funds and limitations otherwise prescribed by law, the Department may provide funding in the form of ORR Loans to Eligible Borrowers for Eligible Projects.

(1) The Department may make ORR Loans to Eligible Borrowers under the terms and conditions as set forth in the Program rules and Program loan application.

(2) Program criteria includes but is not limited to:

(a) The Eligible Borrower shall provide a complete Program loan application, as determined by the Department.

(b) The Eligible Project may be new construction, acquisition and/or rehabilitation, multiple homeownership or multi-family rental housing with a minimum of two (2) units.

(c) The ORR Loan may be in a first or junior lien position provided there is one-hundred percent (100%) or greater security of the ORR Loan for the full term, as determined by the Department.

(d) The ORR Loan shall not exceed 35 percent (35%) of the Eligible Project costs or \$100,000; whichever is less, except upon a finding by the Department that special circumstances justify a greater amount at the discretion of the Director.

(e) Eligible Borrowers include Nonprofit Housing Corporations, for profit or governmental entities that are developers of affordable Farmworker housing.

(f) The Eligible Project must be used primarily as Farmworker housing with related support services, as further defined in Division 813-015-0006.

Stat Auth: ORS 456.515 – 456.725

Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360

Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0016

### Availability and Source of Funds

(1) The Department may provide funding, subject to the availability of Funds through a process which may include, but is not limited to, a first come-first reviewed process or a competitive review process.

(2) The Oregon Rural Rehabilitation (ORR) Program is funded by monies realized from an agreement between the State of Oregon and the Secretary of Agriculture of the United States. The ORR fund was originally established following the Depression as part of New Deal efforts to stabilize the agricultural economy and strengthen rural communities. For many years the funds were administered by the federal government and the Oregon Rural Rehabilitation Corporation. The State Land Board became the successor to the Oregon Rural Rehabilitation Corporation in 1953. In 1975 an agreement was signed between the Division of State Lands and the U.S. Department of Agriculture, Farmers Home Administration, for administration of the ORR fund. In 1994 the Oregon Legislative Assembly transferred the ORR Program from the Division of State Lands to Oregon Housing and Community Services (OHCS). Since 1994, OHCS has operated the ORR fund as a revolving loan account.

Stat Auth: ORS 456.515 – 456.725

Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360

Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0021

### Program Loan Terms

(1) The term of an ORR Loan may be up to, but shall at no time exceed, ten (10) years without prior written approval by the Department.

(2) Interest shall accrue at a per annum rate not exceeding one percent (1%) made to an Eligible Borrower who is a Nonprofit Housing Organization, and at a per annum rate not exceeding three percent (3%) made to any other Eligible Borrower.

(3) The Department will notify the Eligible Borrower of the type of funding, if any, to be provided and the terms and conditions of the ORR Loan in the form of a Commitment letter. The Commitment letter shall be executed by the Eligible Borrower prior to any advance of funds or contractual agreements are signed.

(4) The terms and conditions that may be contained in the Commitment letter may include, but are not limited to:

(a) The approved amount of the ORR Loan;

(b) The charges and premiums that are due and payable;

(c) The interest rate;

(d) The repayment terms;

(e) The Loan Documents to be executed by the Eligible Borrower;

(f) Performance criteria; and,

(g) Reporting criteria.

# ADMINISTRATIVE RULES

(3) If during the term of the ORR Loan, the Eligible Borrower does not comply with the terms and conditions of the Commitment letter and Loan Documents, the Department may, upon written notice to the Eligible Borrower, immediately revoke approval of the use of the Funds, terminate any Commitment to provide funding and/or demand repayment of all or a portion of the Funds advanced, if any.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0026

### Loan Security

Notwithstanding any other provision contained in the Program rules, the Department will not disburse funds for an ORR Loan until:

(1) The Eligible Borrower has provided adequate verification, satisfactory to the Department, which determines the value of the security.

(2) The ORR Loan is secured by a fully executed trust deed note and other appropriate Loan Documents as determined by the Department.

(3) The trust deed is recorded and is in an acceptable lien position, as determined by the Department.

(4) The Eligible Borrower has satisfied all conditions contained in the Commitment letter.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0031

### Application Requirements

An Eligible Borrower shall submit, in form and in accordance with a process prescribed by the Department, information which includes but is not limited to:

(1) Completion of the prescribed Program loan application accompanied by the application charge as determined by the Department.

(2) The prescribed Program loan application may include, but is not limited to:

(a) A written description of the Eligible Project, including the number of units, proposed rents, site location, the proposed program of services for residents and the availability of those services in the future, Eligible Project amenities, and any other information pertinent to the Eligible Project;

(b) A proforma of the Eligible Project's operating budget, sources of funding, and development budget;

(c) The amount of Funds requested;

(d) A description of the experience of the Eligible Borrower, consultant, property manager, general contractor, and other members of the development team as requested by the Department;

(e) Adequate verification of value for the collateral offered as security for the ORR Loan;

(f) A financially viable repayment plan that meets the Program loan terms; and

(g) Such other information and documentation as prescribed in the Program loan application and as the Department may require.

(3) The Department may require a non-refundable application charge from any Eligible Borrower requesting an ORR Loan.

(4) The Department may require a non-refundable loan commitment charge payable at the time of loan closing or after acceptance of the Commitment Letter, as determined by the Department.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0035

### Application Review and Processing Procedures

(1) The Department will review Program loan applications upon their appropriate delivery subject to, but not limited to:

(a) Applications being complete and consistent with Department and Program requirements, guidelines and policy standards.

(2) ORR Loans not exceeding \$100,000 may be approved by the Department. Any ORR Loan exceeding \$100,000 must be approved by the State Housing Council.

(3) After consideration of the proposal, the Department will approve or disapprove the ORR Loan request or take other appropriate action.

(4) The Eligible Borrower will be notified in writing of the Department's decision.

(5) If a ORR Loan request is approved, the Department will issue a Commitment letter containing the terms and conditions on which the Department will close the ORR Loan.

(6) In approving or disapproving any ORR Loan application, the Department may consider, but is not limited to, the following criteria:

(a) Availability of Program Funds;

(b) Ability to leverage public or private funds;

(c) Geographic area affected;

(d) Number and type of housing units to be provided or the number of Farmworkers to be housed;

(e) Financial strength and viability of the proposed Eligible Project;

(f) Experience of the development team;

(g) The development team's readiness to proceed with development;

(h) The proposed repayment plan;

(i) The value of the security offered as collateral; and

(j) Administrative costs and/or responsibilities imposed on the Department in connection with the proposed Funding.

(7) ORR Loan funds will be disbursed upon the Eligible Borrower executing the Commitment letter, satisfying all pre-closing conditions contained in the Commitment letter, and execution of the Loan Documents.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0040

### Transfer of Ownership

(1) An Eligible Borrower who has received an ORR Loan shall not transfer ownership, lease, or otherwise encumber any property which serves as security for a ORR Loan without prior written consent from the Department. Consent will not be unreasonably withheld.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

(a) Any interest of a general partner;

(b) Any interest in a joint venture;

(c) More than twenty-five percent (25%) of the limited partner's interest;

(d) More than ten percent (10%) of a corporate owner's interest; or

(e) Any individual interest when the ownership is not a limited partnership, joint venture or corporation.

(3) The Department may collect from the Eligible Borrower a transfer processing charge of 1% of the current ORR Loan balance with a minimum of \$100 and a maximum of \$1,000, plus any incurred Department of Justice charges or other legal costs incurred.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0045

### Equal Opportunity

No person receiving Program Funding under OAR chapter 813, division 15, shall make any distinction or restriction or discriminate against any purchaser, occupant or lessee, or prospective purchaser, occupant or lessee, relating to the sale, rental, lease or occupancy of real property, because of race, color, creed, sex, marital status or national origin.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## 813-015-0050

### Waiver

The Department may waive or modify any requirements of OAR 813, division 015, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat Auth: ORS 456.515 - 456.725  
Stats Implemented: ORS 456.515 - 456.725, 566.310 - 566.360  
Hist.: OHCS 19-2006, f. & cert. ef. 11-15-06

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amend rule regulating restrictions on liquor licenses and service permits to clarify statutory authority.

**Adm. Order No.:** OLCC 13-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 12-12-06

**Notice Publication Date:** 7-1-06

**Rules Amended:** 845-005-0355

**Subject:** This rule regulates how and when the Commission places restrictions on liquor licenses and service permits. The rule allows the Commission to place restrictions when there is a basis to cancel, suspend or deny the license or service permit, when a restriction may prevent recurrence of problems, or when the Commission determines

# ADMINISTRATIVE RULES

that a restriction is in the public interest or convenience. Proposed amendments will clarify that restriction violations will be enforced as Category I violations based on the Commission's general statutory authority.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-005-0355

### Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:  
(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;  
(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s); or  
(c) The Commission determines that a restriction is in the public interest or convenience.

(2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:

(a) The character or environment of the neighborhood in which the licensed premises operate;

(b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public; or

(c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

(a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

(b) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;

(c) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

(4) When the Commission restricts a license or service permit, it notifies the licensee or permittee. If the licensee or permittee disagrees with the restriction, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(5) A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a Category I violation.

(6) A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(7) As used in subsections (2)(c) and (3)(a) of this rule, "street drinkers" means people who drink unlawfully in streets, alleys, parks and other similar public places.

(8) As used in subsection (2)(b) of this rule, "conditions" means conditions in the immediate vicinity of the premises that are related to the exercise of the license privileges and conditions in the premises or in the areas around the premises that the applicant/licensee controls.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.405(1) & 183

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 7-2006(Temp), f. & cert. ef. 6-15-06; OLCC 13-2006, f. 10-19-06, cert. ef. 12-12-06

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**Rule Caption:** Amend rule regulating lewd activities, restrictions on entertainers, unlawful activities.

**Adm. Order No.:** OLCC 14-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 8-1-06

## Rules Amended: 845-006-0347

**Subject:** This rule describes various activities which licensees may not permit at their licensed premises, including disorderly activity, noisy activity, and drinking alcohol outside the premises. The rule currently contains language regulating lewd activities and restrictions on entertainers. Based on decisions in two recent court cases, the Commission intends to amend the rule to remove all language referring to lewd activities and restrictions on entertainers to prevent lewd activity, and to add language describing how the agency will regulate unlawful activities on licensed premises.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-006-0347

### Noisy, Lewd, Disorderly or Unlawful Activity, Restrictions on Entertainers and Drinking Alcohol Outside the Premises

(1) Definitions. As used in this rule:

(a) "Disorderly activities" are those that harass, threaten or physically harm another person;

(b) "Noisy activities" are those that a reasonable person would conclude interfere with normal living or business activities. The Commission may consider a violation of Department of Environmental Quality or local noise pollution standards as prima facie evidence of noisy activities.

(2) Noisy or Disorderly Activity:

(a) No licensee or permittee will permit noisy or disorderly activities on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises;

(b) Violation of this section is a Category III violation.

(3) Unlawful Activity:

(a) No licensee or permittee will permit any unlawful activity on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises. Unlawful activity includes any activity that violates a criminal statute. Examples include, but are not limited to, crimes related to prostitution, public indecency, controlled substances and gambling. The Commission does not require a conviction to establish a violation of this section except as ORS 471.315 and ORS 471.700 requires.

(b) Violation of this section is a Category III violation.

(4) Eviction of Patrons:

(a) A licensee or permittee who knows that a patron has engaged in noisy, disorderly or unlawful activities must evict that patron from the premises for at least a 24-hour period. The 24-hour period begins at the time the licensee evicts the patron.

(b) Failure to evict the patron is a Category IV violation.

(5) Drinking Alcohol Outside the Premises:

(a) No licensee or permittee will permit anyone to drink alcohol in any parking lot that the licensee controls that is associated with the licensed business unless the Commission has approved the sale or service of alcoholic beverages in the area.

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.030, 471.425(2) & 471.730(1)

Hist.: OLCC 1-1990, f. 1-4-90, cert. ef. 4-1-90; OLCC 14-1990(Temp), f. & cert. ef. 6-5-90; OLCC 12-1991, f. 9-9-91, cert. ef. 10-1-91; Sections (1)(a) & (c), (2) & (3) Renumbered from 845-006-0045(2) & (3); OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0047; OLCC 10-2002, f. 6-12-02, cert. ef. 8-1-02; OLCC 7-2004, f. & cert. ef. 5-19-04; OLCC 14-2006, f. 10-19-06, cert. ef. 11-1-06

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**Rule Caption:** Amend rule to allow mail-in rebate coupons for beer, wine and cider.

**Adm. Order No.:** OLCC 15-2006

**Filed with Sec. of State:** 10-19-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 7-1-06

**Rules Amended:** 845-007-0015

**Subject:** This rule describes the sorts of advertising the Commission permits for beer, wine and cider, and regulates the types of media (including coupons) through which alcohol may be advertised. The Commission has initiated rulemaking at the request of two petitioners to consider amending the rule to allow manufacturers of beer, wine and cider to offer mail-in, cents-off rebate coupons for beer, wine and cider. These sorts of coupons are specifically prohibited by current rule language.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

# ADMINISTRATIVE RULES

## 845-007-0015

### Advertising Media, Coupons

- (1) The Commission prohibits advertising through:
  - (a) Handbills that are posted or passed out in public areas such as parking lots and publicly owned property; and
  - (b) Point of sale items on premises where the advertised product is not sold.
- (2) The Commission may prohibit advertising through additional media consistent with the objectives in OAR 845-007-0005.
- (3) The Commission allows manufacturers to give consumer rebates on malt beverages, wine and cider. All advertising associated with rebate coupons must comply with applicable state and federal law and regulations. The manufacturer must furnish rebate coupons to all licensees carrying the product for off-premises consumption. The manufacturer is responsible for the redemption of rebate coupons. No retail licensee may receive any money or similar benefit from the redemption of any coupons. All rebate coupons offered in the State of Oregon must meet the following requirements:
  - (a) Coupons must be redeemable only by mail;
  - (b) Coupons must bear an expiration date;
  - (c) Manufacturers must require proof of purchase;
  - (d) Coupons must be valid only for adults of legal drinking age.
- (4) The Commission may require withdrawal of the rebate coupon if the manufacturer does not comply with the conditions of the rebate coupon or Commission rules.
- (5) The Commission allows the use of instantly redeemable and mail-in coupons for food, non-alcoholic beverages and non-food items. Coupons are prohibited for generic products (for example: "beef," "soda," "flowers," etc.) Use of coupons must conform with the principles of OAR 845-013-0001. Coupons are prohibited for items prepared or manufactured by the retailer, such as: deli trays, in-house bakery products, "ready to eat" foods, and private label products. A licensee who violates this section commits a Category IV violation under the Commission's sanction schedule (OAR 845-006-0500).
- (6) The Commission allows customer loyalty programs such as "club cards" if the promotion (club card) is offered without discrimination to all customers of the retail licensee. The retail licensee must pay for all discounts on alcoholic beverages provided to holders of the club card.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)  
Stats. Implemented: ORS 471.730(7)  
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; LCC 7-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0091; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 6-1998, f. 5-21-98, cert. ef. 6-1-98; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 2-2004, f. 2-17-04, cert. ef. 6-1-04; OLCC 15-2006, f. 10-19-06, cert. ef. 11-1-06

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## Oregon Patient Safety Commission Chapter 325

**Rule Caption:** Establishes hospital reporting program.

**Adm. Order No.:** PSC 3-2006(Temp)

**Filed with Sec. of State:** 10-25-2006

**Certified to be Effective:** 10-25-06 thru 4-22-07

**Notice Publication Date:**

**Rules Adopted:** 325-010-0000, 325-010-0001, 325-010-0005, 325-010-0010, 325-010-0015, 325-010-0020, 325-010-0025, 325-010-0030, 325-010-0035, 325-010-0040, 325-010-0045, 325-010-0050, 325-010-0055, 325-010-0060

**Subject:** Retroactively adopts rules that were previously submitted to the Secretary of State's office. Those rules, submitted on February 2, 2006, established the Oregon Patient Safety Reporting Program for Oregon hospitals. They also established a hospital fee structure to partially fund the work of the Patient Safety Commission.

These temporary rules are needed to correct a filing error; with the exception of the effective date, they are identical to those filed on February 2, 2006.

**Rules Coordinator:** James C. Dameron—(503) 224-9226

### 325-010-0000

#### Applicability of rules

OAR 325-010-0001 to 0060 are made retroactive to February 2, 2006.  
Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

### 325-010-0001

#### Definitions

As used in OAR 325-010-0001 to 325-010-0060:

- (1) "Commission" means the Oregon Patient Safety Commission.
- (2) "Event Report" means the form designated by the Commission to be used by Hospital Participants for the reporting of Reportable Hospital Serious Adverse Events.
- (3) "Hospital Participant" means a hospital that has volunteered to participate in the Oregon Patient Safety Reporting Program. A hospital pharmacy is considered to be part of the hospital.
- (4) "Oregon Patient Safety Reporting Program" means the Patient Safety Reporting Program, as defined in Oregon Laws 2003, Chapter 686, Section 4, and operated by the Commission.
- (5) "Participant" means an entity that reports Patient Safety Data to a Patient Safety Reporting Program, and any agent, employee, consultant, representative, volunteer or medical staff member of the entity.
- (6) "Patient Safety Activities" include but are not limited to:
  - (a) The collection and analysis of Patient Safety Data by a Participant;
  - (b) The collection and analysis of Patient Safety Data by the Oregon Patient Safety Commission established in Oregon Laws 2003, chapter 686 and ORS 442.820;
  - (c) The utilization of Patient Safety Data by Participants;
  - (d) The utilization of Patient Safety Data by the Oregon Patient Safety Commission to improve the quality of care with respect to patient safety and to provide assistance to health care providers to minimize patient risk; and
  - (e) Oral and written communication regarding Patient Safety Data among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program.
- (7) "Patient Safety Data" means oral communication or written reports, data, records, memoranda, analyses, deliberative work, statements, root cause analyses or action plans that are collected or developed to improve patient safety or health care quality that:
  - (a) Are prepared by a Participant for the purpose of reporting Patient Safety Data voluntarily to a Patient Safety Reporting Program, or that are communicated among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program; or
  - (b) Are created by or at the direction of the Patient Safety Reporting Program, including communication, reports, notes or records created in the course of an investigation undertaken at the direction of the Oregon Patient Safety Commission.
- (8) "Reportable Serious Adverse Event" for the purposes of OAR 325-010-0001 to 325-010-0060 means any unanticipated, usually preventable consequence of patient care that results in patient death or serious physical injury, including the events described in Appendix A. Appendix A is incorporated by reference.

[ED. NOTE: Appendix referenced are available from the agency.]

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

### 325-010-0005

#### Enrollment in the Oregon Patient Safety Reporting Program

- (1) Participation in the Oregon Patient Safety Reporting Program is voluntary. Hospital Participants are entitled to the benefits and subject to the obligations set forth in these administrative rules.
- (2) Interested hospitals may apply for participation in the Oregon Patient Safety Reporting Program by completing the Commission's registration form and submitting the applicable annual fee. The registration form must include the name of a designated contact person.
- (3) In agreeing to participate a hospital must affirm that it is willing to fully share requested Patient Safety Data with the Commission. This statement must be co-signed by the hospital's Chief Executive Officer, Chairperson of the Board of Directors, and the Director of Quality Management, or their equivalents.
- (4) Upon enrolling in the Oregon Patient Safety Reporting Program, a Hospital Participant must have adopted policies and procedures describing patient safety activities, including how it triages adverse events; how it investigates adverse events, including root cause analysis protocols; and how it provides notice of adverse events to a patient and/or family member. The Hospital Participant must provide copies to the Commission upon request.
- (5) Within 30 calendar days of receipt and acceptance of the registration form and fee the Commission will issue a certificate establishing a Hospital Participant's enrollment in the Oregon Patient Safety Reporting Program. The Hospital Participant should conspicuously post the certificate in an area where patients are admitted.

# ADMINISTRATIVE RULES

(6) The Commission will issue a press release on a regular basis which will provide a list of Hospital Participants to the public.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0010

### Annual Hospital Participant Fee

(1) A Hospital Participant must pay an annual fee, as follows:

- (a) \$1,000 for a hospital with 3,000 or fewer patient discharges per year.
- (b) \$3,500 for a hospital with 3,001 to 10,000 patient discharges per year.
- (c) \$8,500 for a hospital with more than 10,000 patient discharges per year.

(2) Initial fees will be assessed at the time of enrollment in the Oregon Patient Safety Reporting Program and will expire on December 31 following the date of issue. Annual Hospital Participant fees will be due by December 31 for the next year's enrollment. A delinquent renewal fee of up to 25% of the renewal fee may be assessed against a Hospital Participant submitting fees postmarked after December 31st.

(3) No participation fees will be refunded due to withdrawal or termination from the Oregon Patient Safety Reporting Program.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0015

### Termination of Participation

(1) The Commission's reporting program relies on voluntary reporting. However, the Commission is responsible for ensuring that those who choose to participate also comply with the standards established by the Commission.

(2) Participation requirements include the reporting of all Reportable Serious Adverse Events; fully completing Event Reports; creating and implementing acceptable action plans; and providing written disclosure to patients or families following a Reportable Serious Adverse Event.

(3) If the Commission believes a Hospital Participant is not meeting its participation requirements, the Commission must provide the Hospital Participant with a written notice explaining why. The Hospital Participant will have 30 calendar days to respond and come into compliance.

(4) The Commission may deny, suspend or revoke a Hospital Participant's status when the Commission finds that there has been a substantial failure to comply with the provisions of participation.

(5) Upon written notification by the Commission of revocation, suspension, or denial of a Hospital Participant enrollment in the Oregon Patient Safety Reporting Program, a Hospital Participant may request a hearing. Hearings will be held in accordance with ORS 183.310 to 183.470.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0020

### Re-Issue of Suspended or Revoked Participation Certificate

The Commission may re-issue a participation certificate that has been suspended or revoked if the Commission determines that the Hospital applying for re-enrollment meets the provisions of participation.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0025

### Reporting Serious Adverse Events

(1) The Commission will provide an Event Report form to be used by Hospital Participants for reporting Reportable Serious Adverse Events. The Event Report will include: a summary description of the event; an overview of the Hospital Participant's complete, thorough and credible root cause analysis for that event; information about plans to implement improvements to reduce risk. The meaning of terms "complete," "thorough," and "credible" are explained in OAR 325-010-0035.

(2) Hospital Participants must use the Event Report form when reporting Serious Adverse Events to the Commission.

(3) Hospital Participants must submit a completed Event Report to the Commission within 45 calendar days of discovery of a Reportable Serious Adverse Event.

(4) If a Hospital Participant believes the Commission should immediately issue an alert to all Oregon hospitals based on a specific Reportable Serious Adverse Event, the Hospital Participant should provide an initial report to the Commission within 3 business days of discovery of the event, or sooner. The Hospital Participant and Commission will work together to identify information to include in the alert.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0030

### Hospital Reporting of Less Serious Adverse Events or Close Calls

(1) In addition to Reportable Serious Adverse Events, Participating Hospitals are also encouraged to report less serious adverse events or close calls. Participating Hospitals should do so when they believe other organizations will benefit from the information.

(2) To report such events, Hospital Participants should use the appropriate sections of the Event Report form. Hospital Participants will not be required to complete detailed root cause analysis for these less serious events or close calls.

(3) Hospital Participants are not required by the Commission to provide written disclosure of less serious adverse events or close calls to patients or their personal representatives.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0035

### Commission Review of Reports

(1) When the Commission receives an Event Report from a Hospital Participant, the Commission will determine whether that Event Report is complete, thorough, credible and acceptable. The definitions for the terms *thorough*, *credible* and *acceptable* can be found in the Joint Commission on Accreditation of Health Care Organization's Sentinel Event Policy and Procedures, June 2005, and are adopted by reference. In general:

(a) A report is *complete* if it contains all the information requested in the Event Report, or explains, to the Commission's satisfaction, why that information is not available or not necessary to provide;

(b) A report is *thorough* if the root cause analysis includes an analysis of all relevant systems issues and shows evidence of an inquiry into all appropriate areas;

(c) A report is *credible* if it shows evidence that the investigation of the Reportable Hospital Serious Adverse Event included participation by leadership within the organization and was internally consistent; and

(d) A report is *acceptable* if all the above standards are met and the action plans clearly describe meaningful improvement strategies designed to minimize risk.

(2) If the Commission believes that an Event Report received from a Hospital Participant is incomplete or unacceptable in some manner, it will inform the Hospital Participant's contact person within 10 business days of receipt of the Event Report.

(3) On an annual basis, the Commission will query Hospital Participants regarding the status of action plans identified in their Event Reports.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0040

### Public Health Officer Certification

(1) At least annually, the Commission will request that the Public Health Officer certify the completeness, credibility, and thoroughness of each Hospital Participant's reporting during the applicable period.

(2) The Commission will request that the Public Health Officer develop independent and objective standards to evaluate the overall integrity of the Patient Safety Reporting Program. On an annual basis the Commission will request that the Public Health Officer use those standards to certify the Oregon Patient Safety Reporting Program.

(3) The Commission will provide information to the Public Health Officer to assist the Public Health Officer in completing the certification processes listed in (1) and (2) of this rule, consistent with OAR 325-010-0055.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

# ADMINISTRATIVE RULES

## 325-010-0045

### Patient Notification Of Reportable Serious Adverse Events

(1) After a Reportable Serious Adverse Event occurs, a Hospital Participant must provide written notification to each affected patient, or, if necessary, to the patient's personal representative. Notification must be timely and should be consistent with the Hospital Participant's internal communication and disclosure policies.

(2) As provided in Oregon Laws 2003, Chapter 686, Section 4(4), notice provided under this subsection may not be construed as an admission of liability in a civil action.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0050

### Extensions And Waivers

(1) The Commission may grant an extension of any time requirement stipulated in these rules if the Hospital Participant provides justification that the delay is due to factors beyond its control or that the delay will not adversely affect the purposes of the Commission. A Hospital Participant requesting a waiver must submit a written request to the Commission prior to the deadline for the required action. Facsimile requests are acceptable.

(2) The Commission may grant a waiver of any other provision of these rules if the Hospital Participant provides justification that granting the waiver will not adversely affect the purposes of the Commission.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0055

### Protection Of Patient Safety Data

(1) The Commission is subject to all the confidentiality provisions set forth in Oregon Laws 2003, Chapter 686, Sections 1, 4 to 6, 8 to 10, 12, and in ORS 442.820 to 442.835.

(2) The Commission will maintain the confidentiality of all Patient Safety Data that identifies or could be reasonably used to identify a Hospital Participant or an individual who is receiving or has received health care from the Hospital Participant.

(3) Before it takes receipt of any confidential Patient Safety Data, the Commission will have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of such data.

(4) Pursuant to ORS 442.820(4), meetings or portions of meetings where the Oregon Patient Safety Commission Board of Directors, or subcommittees or advisory committees consider information that identifies a participant or patient are not subject to the Oregon Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## 325-010-0060

### Commission's Use Of Patient Safety Data

(1) The Commission will create a standing committee on best practices in patient safety. This committee will advise the Commission on effective methods for making use of and sharing information gathered from the Commission's review of Event Reports.

(2) At least quarterly, the Commission will provide Hospital Participants with patient safety quality improvement information derived from Patient Safety Data.

(3) During the second quarter of each year, the Commission will publish a report to the public summarizing Patient Safety Data for the preceding calendar year. This report will use aggregate, de-identified data from the program and will describe statewide adverse event patterns and best practices to avoid the occurrence or minimize the effects of adverse events.

(4) The Commission will maintain an easily accessible and well-publicized website to share patient safety information directly with consumers.

(5) The Commission, within its resource limitations, will provide technical assistance to Hospital Participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(6) The Commission will work with representatives of organizations participating in the Oregon Patient Safety Reporting Program and with other interested parties to develop recommendations for continued improvements in the collection and utilization of Patient Safety Data.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07

## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Clarify requirements for retirement as Police and Fire for members of the OPSRP Pension Program.

**Adm. Order No.:** PERS 15-2006

**Filed with Sec. of State:** 10-25-2006

**Certified to be Effective:** 10-25-06

**Notice Publication Date:** 7-1-06

**Rules Adopted:** 459-075-0200

**Subject:** Under the OPSRP Pension Program a Police and Fire (P & F) member is eligible for retirement if they are holding a position as a police officer or firefighter continuously for a period of five years "immediately before/preceding (both terms are used in different sections) the effective date of retirement." The new rule is necessary to clarify the statutory standard for retirement eligibility of a P & F member.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

### 459-075-0200

#### Retirement Eligibility for Police Officer and Firefighter Members

(1) "Police officer" and "firefighter" have the same meaning given them in ORS 238A.005.

(2) For the purpose of establishing eligibility for normal retirement under ORS 238A.160(2) and early retirement under 238A.165(2), an OPSRP Pension Program member will be considered to have held a position as a police officer or firefighter continuously for a period of not less than five years immediately preceding the effective date of retirement if:

(a) The member was employed in a qualifying position as a police officer or firefighter for five years prior to the date of the member's separation from that employment; and

(b) The member did not return to a qualifying position after separation from that employment.

Stat. Auth.: ORS 238A.450

Stats. Implemented: 238A.160 & 238A.165

Hist.: PERS 15-2006, f. & cert. ef. 10-25-06

## Oregon State Treasury Chapter 170

**Rule Caption:** Allocation of Private Activity Bond Limit.

**Adm. Order No.:** OST 4-2006

**Filed with Sec. of State:** 10-25-2006

**Certified to be Effective:** 10-25-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 170-071-0005

**Subject:** The rule clarifies the Private Activity Bond Committee's policy of allowing both state agencies and local agencies to apply for private activity bond cap allocations.

**Rules Coordinator:** Sally Furze—(503) 378-4990

### 170-071-0005

#### Allocation of Private Activity Bond Limit

(1) Definitions:

(a) "Committee" means the Private Activity Bond Committee established pursuant to ORS 286.615.

(b) "Issuer" has that meaning given to it by ORS 286.605.

(c) "Private Activity Bonds" has the meaning given in Section 141 of the Internal Revenue Code of 1986.

(2) Meetings of the Committee. Committee meetings will be held as necessary, and on dates determined by the Committee to be consistent with the efficient allocation of the state's private activity bond volume limit (CAP), with public notice given as required by law. Committee meetings are open to the general public and may be held in any location permitted under the public meetings law, ORS 192.610 to 192.690, where the Committee deems appropriate. The Committee reserves the right to change its meeting schedule as allowed by the Oregon Public Meetings Law.

(3) Allocation Requests. Applications for current year CAP must be submitted in the year for which the allocation is requested. Requests must be received no later than seven business days before the scheduled meeting of the Committee at which the request is to be considered. Private activity

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bond issuers not specifically granted CAP by the legislature must submit requests for CAP to the Committee. Issuer's who have been granted a CAP allocation by the legislature may also apply to the Committee for additional CAP. An CAP request may be made for a specific project or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. CAP requests and all communications must be sent to the Committee's address (Office of the State Treasurer, Debt Management Division, 350 Winter Street NE, Suite 100, Salem, Oregon 97301-3896; email "DMD@ost.state.or.us") and include:

(a) The name of the governmental bond issuer;  
(b) The title of the obligation to be issued;  
(c) The principal amount of the obligation;  
(d) The amount of the allocation request;  
(e) The date of any purchase commitment if such commitment has been made;  
(f) The name and address of the original purchaser(s) of the obligation if such purchase has been made;

(g) The name, address and phone number of the principal user(s) of the proceeds from the issue;  
(h) The anticipated sale date of the issue;  
(i) The anticipated closing date of the issue;  
(j) The name, address and phone number of bond counsel;  
(k) The section and paragraph of the Internal Revenue Code, as identified by bond counsel, under which the bonds are deemed private activity bonds;

(l) How the project or activity for which an allocation is requested meets statutory standards;

(m) The expected number of family wage jobs created or saved as a result of the allocation;

(n) The expected number of housing units to be constructed or renovated as a result of the allocation, (describe how the affordability requirements of the Internal Revenue Code and your local requirements, if applicable, are to be met); and

(o) Any additional material, as required by the Committee, in support of the requested allocation.

(4) Allocation Standards. The purpose of private activity bonding in this state is to maximize the economic benefits of such bonding to the citizens of this state. To this end, the Committee shall make allocations that are expected to further economic development, housing, education, redevelopment, public works, energy, waste management, transportation and other activities that the Committee determines will benefit the citizens of the state. The Committee, in determining whether an allocation is made to a project or class of projects or activities, will consider criteria including but not limited to the following:

(a) Support projects that increase the number of family wage jobs in Oregon;

(b) Promote economic recovery in small cities heavily dependent on a single industry;

(c) Emphasize development in underdeveloped rural areas of this state;

(d) Utilize educational resources available at institutions of higher education;

(e) Support development of the state's small businesses, especially businesses owned by women and members of minority groups;

(f) Encourage use of Oregon's human and natural resources in endeavors which harness Oregon's economic comparative advantages; and

(g) limit assistance to projects that assist businesses selling goods and services in markets for which national or international competition exists.

(5) Decision Factors. The Committee shall consider the following factors in reaching its allocation decision:

(a) The amount of CAP remaining within the Committee's allocation discretion and the total amount of unused CAP remaining at the time the request is received;

(b) The amount of allocation requested;

(c) Whether the project(s) or activities promote one of the standards listed in section (4) of this rule; and

(d) The type of bond issuer making the request.

(6) Allocation Methods.

(a) The Committee may grant more or less than the originally requested amount of CAP. Issuers must submit requests in the form and manner described in section (3) of this rule.

(b) At the Committee's discretion, a portion of their CAP may be reserved for the last six months of the calendar year.

(7) Committee Decision Final. Issuers have the right to submit additional information, germane to their request, to the Committee at its meet-

ing described in section (6) of this rule. Action of the Committee is final, however, if an CAP request is denied, a new application may be re-submitted through the procedures outlined in this rule.

(8) Post-Allocation Report. Issuers to whom CAP allocations have been made under this rule must submit to the Committee, within 150 days after receiving such allocation or by December 15 of the current calendar year, whichever is earliest, a confirmation of bond closing. In the event an issuer fails to file written confirmation of bond closing as required by this section, the CAP allocation shall automatically lapse. Bond closing confirmations must be delivered to the Committee address and include:

(a) The name of the governmental bond issuer;

(b) The title of the obligation issued;

(c) The principal amount of the obligation issued and allocation used;

(d) The date of closing;

(e) The date of the bond allocation;

(f) The name and address of the individual submitting the bond closing confirmation; and

(g) Any additional material which may be required by the Committee in support of the closing confirmation.

(9) Lapse or Extension of Allocation. Lapse of an allocation does not preclude the issuer from applying for a subsequent allocation for the same project. Issuers may, under compelling circumstances, request an extension of time to their initial 150-day period. Such requests must be filed with the Committee for approval or denial of the extension. All CAP allocations automatically lapse on December 15 of the calendar year for which the allocation is made, unless the issuer who has received the allocation files with the Committee a binding commitment to purchase and close the bond issue on or before December 31.

(10) Carry Forward Allocations.

(a) The Committee, on behalf of the state's agencies, commissions, and governmental units, may elect to carry forward all unused CAP. To receive a carry forward CAP allocation, an issuer must file a carry forward request with the Committee not later than December 15 nor earlier than September 30 of the current calendar year. The Committee will require information necessary for it to determine whether such carry forward request qualifies under the Internal Revenue Code and associated regulations. The Committee, not later than January 31 of the following year, shall make carry forward allocations to eligible issuers for specified purposes. Carry forward requests must include the information required in section (3) of this rule.

(b) An issuer receiving a carry forward allocation must forward to the Internal Revenue Service a document indicating the carry forward election made to that issuer by the Committee, in such manner and format prescribed by the Internal Revenue Service and any relevant state or federal regulations.

(c) It is the responsibility of the issuers to whom carry forward CAP is granted to file Form 8328 "Carry Forward Election of Unused Private Activity Bond Volume Cap" with the Internal Revenue Service Center, Ogden, UT 84201 on or before February 15 of the year in which the carry forward is granted, in order to validate the carry forward with the federal government. A signed copy of the issuer's filing with the Internal Revenue Service must also be sent to the Committee on or before February 15 of the year in which the carry forward CAP is granted.

(d) Use Report. Issuers to whom carry forward CAP is granted must submit to the Committee, within 30 days of closing, a confirmation of CAP use and bond closing information including:

(A) The name of the governmental bond issuer;

(B) The title of the obligation issued;

(C) The principal amount of the obligation issued and allocation used;

(D) The date of closing;

(F) The date of the bond allocation;

(G) The name and address of the individual submitting the bond closing confirmation; and

(H) Any additional material which may be required by the Committee in support of the closing confirmation.

(11) Annual Needs Survey. The Committee during the final quarter of each calendar year, will inquire of the private activity bond issuers of the state as to their anticipated private activity bond issuance and the need for private activity bond allocation in the ensuing year. To be taken into consideration by the Committee for future allocation issuers should provide their information to the Committees address on or before December 15 of the calendar year prior to the year for which private activity bond projections are made.

(12) The Committee may allocate amounts, subject to the standards set forth in subsection (4) of this rule, among issuers without a request for

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allocation from the issuer in the event additional bond limit becomes available, because of changes in federal law or otherwise, that has not been specifically allocated to an issuer by the Legislative Assembly.

(13) Exceptions. The Committee, at its discretion, may waive any or all provisions of this rule.

Stat. Auth.: ORS 286.615

Stats. Implemented: ORS 286.615

Hist.: TD 3-1986, f. & ef. 9-18-86; TD 3-1988(Temp), f. & cert. ef. 6-14-88; TD 4-1988, f. & cert. ef. 12-30-88; TD 2-1994, f. & cert. ef. 9-9-94; TD 2-1995, f. & cert. ef. 12-26-95; TD 1-1997, f. & cert. ef. 7-23-97; OST 1-2001, f. 7-23-01, cert. ef. 8-1-01; OST 4-2006, f. & cert. ef. 10-25-06

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**Rule Caption:** Fees Charged by the Debt Management Division.

**Adm. Order No.:** OST 5-2006

**Filed with Sec. of State:** 10-25-2006

**Certified to be Effective:** 10-25-06

**Notice Publication Date:** 10-1-06

**Rules Amended:** 170-061-0015

**Subject:** The Office of the State Treasurer (OST), as staff to the Municipal Debt Advisory Commission (MDAC), is authorized to be reimbursed for expenses incurred in providing services to local government units and assisting state agencies and authorities in the issuance of bonds, notes or certificates of participation. Amendments to Administrative Rule 170-061-0015 reduce fees charged to state agencies and state authorities for issues whose par amount is \$5 million or less.

**Rules Coordinator:** Sally Furze—(503) 378-4990

## 170-061-0015

### Fees

(1) ORS 287.020(3) and 287.036 authorizes the Office of the State Treasurer (OST), as staff to the Municipal Debt Advisory Commission (MDAC), to be reimbursed for expenses incurred in providing services to local government units. ORS 288.620(3) and 293.292 authorize the OST to charge for reviewing refunding and defeasance plans and assisting state agencies and authorities in the issuance of bonds, notes or certificates of participation. Proceeds from such service charges shall be deposited in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer.

(2) MDAC fees:

(a) Overlapping debt report. Report length, complexity and the time required to produce an overlapping debt report is determined by the number of districts which overlap the district for which the report is generated and the number of such districts which have issued debt. A base fee of \$75 shall be charged for all overlapping debt reports regardless of the number of such overlapping districts. An additional \$5 shall be charged for each overlapping indebted district up to ten districts; then an additional \$2.50 for each overlapping indebted district up to thirty districts; then an additional \$1 for each overlapping indebted district over thirty districts. See **Table 1**. [Table not included. See ED. NOTE.]

(b) Other fees and charges. \$35 will be charged for the "Oregon Bond Manual." Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$100 per hour.

(3) OST fees. Expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. An application fee for submission of an advance-refunding plan for a public body is \$200. The fee for review and approval of an advance refunding plan is \$3,000 per issue for issue amounts of \$2 million or less, and \$5,000 per issue for issue amounts exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged;

(b) Cash defeasance plan review. The fee for review and approval of a cash defeasance plan for a public body is \$3,000 per issue. If the plan is not approved or the defeasance not completed the fee will not be charged.

(4) State sales. The following fees shall be charged by OST for state sales of bonds, notes or certificates of participation. In addition to any other fee, \$7,000 will be charged for the review and approval of an executed interest rate exchange agreement. These charges do not include costs such as rating agency charges and printing costs which are payable by the agency or authority for whom the cost is incurred:

(a) Agency or Authority issues of \$5 million or less — \$3,000 per issue;

(b) Agency or Authority issues of more than \$5 million:

(A) Single Agency or Authority — \$7,000 per issue or \$3,000 per series, whichever is greater;

(B) Multiple Agency — \$5,000 per issue per Agency or \$3,000 per series, whichever is greater.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 287.020(3), 287.036, 288.620(3), 289.205(3) & 293.292

Stats. Implemented: ORS 287.020(3), 287.036, 288.620(3), 289.205(3) & 293.292

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06

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## Oregon Student Assistance Commission

### Chapter 575

**Rule Caption:** Criminal Records Checks.

**Adm. Order No.:** OSAC 4-2006

**Filed with Sec. of State:** 11-1-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 2-1-06

**Rules Adopted:** 575-007-0200, 575-007-0210, 575-007-0220, 575-007-0230, 575-007-0240, 575-007-0250, 575-007-0260, 575-007-0270, 575-007-0275, 575-007-0280, 575-007-0290, 575-007-0300, 575-007-0310, 575-007-0320, 575-007-0330, 575-007-0340, 575-007-0350, 575-007-0380

**Subject:** HB 2157, enacted by the 2005 Legislative Assembly, established authority for specified state agencies, including the Oregon Student Assistance Commission, to adopt rules that provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to work or to volunteer for the agency. The Commission proposes a set of rules for this purpose. Implementation of these rules will enhance the Commission's efforts to implement information security and privacy measures.

**Rules Coordinator:** Peggy Cooksey—(541) 687-7370

### 575-007-0200

#### Statement of Purpose and Statutory Authority

(1) Purpose. The purpose of these rules is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they are not fit to work or volunteer in positions covered by OAR 575-007-0220(2)(a)-(g).

(2) Authority. These rules are authorized under ORS 348, Chapter 730 (2005 Laws), H.B. 2157 (2005 Laws)

(3) When Rules Apply. These rules are to be applied when obtaining the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee employment or placement.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

### 575-007-0210

#### Definitions

As used in OAR 575-007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a criminal records check and any required fitness determination has been completed on a subject individual and the subject individual is eligible to be an employee, volunteer, or contractor in positions covered by these rules.

(2) "Authorized Designee" means a person who is authorized by the Commission to receive and process criminal records check request forms signed by subject individuals and other criminal records information. The authorized designee conducts fitness determinations under the authority of the Commission.

(3) "Contact Person" means a person who is authorized by the Commission to receive and process criminal records check request forms signed by subject individuals, but who is not authorized to receive other criminal records information. The contact person is not allowed to make fitness determinations.

(4) "Conviction" means that the subject individual was convicted in a court of law. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges. An expunged juvenile or adult record is not considered a conviction under these rules.

(5) "Criminal Records Check Rules" or "These Rules" means OAR chapter 575, division 007.

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(6) "Criminal Records Check" or "CRC" means the Oregon Criminal Records Check and when required, a National Criminal Records Check and/or a State-Specific Criminal Records Check, and the processes and procedures required by these rules.

(7) "Denied" means that a criminal records check and subsequent fitness determination, including a weighing test, has been completed on a subject individual and the subject individual has been found to be not eligible to be an employee or volunteer in positions covered by these rules.

(8) "The Commission" means the Oregon Student Assistance Commission.

(9) "Hiring on a Preliminary Basis" means a subject individual is hired on a preliminary basis and allowed by the authorized designee to participate in the training for, orientation to, and work activities of the positions covered by these rules following submission of a completed OSAC Criminal Records Request form and subject to a final fitness determination. The term "hiring on a preliminary basis" is applicable only during the time-frame prior to a final fitness determination. See OAR 575-007-0310. An employee on trial service cannot appeal a termination except through the terms of the collective bargaining agreement.

(10) "National Criminal Records Check" means obtaining and reviewing criminal records nationwide or from states or jurisdictions other than Oregon. This information may be obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards and from other criminal information resources.

(11) "Oregon Criminal Records Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal Records Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division (DMV), local or regional criminal records information systems, or other law enforcement agency or court records in Oregon.

(12) "Potentially Disqualifying Crime" means a crime listed or described in OAR 575-007-0280.

(13) "Records Information" includes criminal justice records, fingerprints, court records, sexual offender registration records, warrants, arrests, DMV information, information provided on the Commission's criminal records check forms, and any other information obtained by or provided to the Commission for the purpose of conducting a fitness determination.

(14) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(15) "State-Specific Criminal Records Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal records information resources located in a state or jurisdiction outside Oregon.

(16) "Subject Individual": see OAR 575-007-0220.

(17) "Weighing Test" means a process carried out by the authorized designee in which information is considered to determine if a subject individual is approved or denied. See OAR 575-007-0320(5)(c).

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0220

### Subject Individuals

(1) As used in OAR 575-007, "Subject Individual" means a person from whom the Commission may require fingerprints for the purpose of conducting a state or nationwide criminal records check.

(2) The Commission may require the fingerprints of a person who is employed by or applying for employment with the Commission or provides services or seeks to provide services to the Commission as a contractor or volunteer and is, or will be, working or providing services in a position in which:

(a) The person has direct access to facilities where students reside or to persons under 18 years of age, elderly persons or persons with disabilities;

(b) The person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) The person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations. Such information may include Social Security numbers, driver license

numbers, medical information, personal financial information or criminal history information;

(d) The person has payroll functions;

(e) The person has responsibility for receiving, receipting or depositing money or negotiable instruments;

(f) The person has responsibility for billing, collections or other financial transactions;

(g) The person has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0230

### Criminal Records Check Required

(1) Who Conducts Check.

(a) The Commission may request that the Department of State Police conduct a criminal records check on a subject individual. If a nationwide criminal records check of a subject individual is necessary, the Commission may request that the Department of State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(b) The Commission may conduct criminal records checks on subject individuals through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) The person becomes a subject individual on or after the effective date of these rules;

(b) The individual, subject or not, changes positions and the new position requires a criminal records check, for example, through promotion, transfer, demotion, restoration, bumping and recall;

(c) A criminal records check is required by federal or state laws or regulations, other rules adopted by the Commission, or by contract or written agreement with the Commission;

(d) The Commission has reason, such as any indication of possible criminal behavior, to believe that a check is justified;

(e) After July 1, 2006, is a subject individual who is a contractor or who provides services as a volunteer.

(3) When Check is Not Required. When the subject individual changes positions, a check is not required only under the following:

(a) The authorized designee determines that the new position requires the same or less responsibility for functions covered by OAR 575-007-0220(2)(a)-(g); or

(b) There are no known new potentially disqualifying crimes, arrests, or conditions.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0240

### Contact Person and Authorized Designee

(1) Requirements. All requirements in this section must be completed within a 90-day time period and prior to performing any duties as a contact person or authorized designee. To be approved by the Commission, all contact persons and authorized designees must:

(a) Apply to and be registered by the Commission. The application must be in writing on a form provided by the Commission.

(b) Be approved by the Commission after completing both an Oregon and a national criminal records check in accordance with these rules or Oregon State Police rules and must have:

(A) No conviction for a potentially disqualifying permanent review crime,

(B) No convictions for any other crime in the past fifteen years, and

(C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 575-007-0290.

(c) Complete a training program and successfully pass any testing as required by the Commission.

(2) Denial of Contact Person or Authorized Designee Status.

(a) A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the Commission.

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(b) Denial or termination of contact person or authorized designee status under OAR 575-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position, in which case they have the same hearing rights as other subject individuals under these rules.

(3) Responsibilities.

(a) A contact person is responsible for performing the following duties:

(A) Ensure that adequate measures are taken to protect the confidentiality of the records as required by these rules;

(B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license, passport) and confirming information written on the OSAC Records Request form with information on the photo identification;

(C) Ensure that, when a subject individual is hired on a preliminary basis, the need for active supervision pursuant to OAR 575-007-0310 is understood by each person responsible for ensuring that active supervision is provided;

(D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision;

(E) Monitor the status of criminal records check applications and investigate any delays in processing; and

(F) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(b) An authorized designee has all the responsibilities of a contact person as listed in (3)(a) of this rule, and in addition must perform the following duties:

(A) Review the OSAC Criminal Records Request form completed by the subject individual (if not already done by a contact person) and conduct a preliminary fitness determination under the authority of the Commission in accordance with OAR 575-007-0320 in order to determine eligibility to be hired on a preliminary basis;

(B) Conduct a final fitness determination under the authority of the Commission in accordance with OAR 575-007-0320; and

(C) Participate in the Commission's appeal process.

(4) Conflict of Interest. An authorized designee must not have access to LEDS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.

(a) A conflict of interest exists when one or more of the following circumstances is true:

(A) The authorized designee or contact person is related to the subject individual, or

(B) The authorized designee or contact person has a financial or close personal relationship, other than an employee-employer relationship, with the subject individual.

(5) Termination of Contact Person or Authorized Designee Status.

(a) When the authorized designee's or contact person's position with the Commission ends, the Commission's registration of a contact person or authorized designee is revoked.

(b) The Commission must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Commission or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable.

(6) Review of Appointment. The Commission will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal records check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Commission has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, any indication of criminal behavior.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0250

### Oregon Criminal Records Check Process

(1) Forms Required. The OSAC Criminal Records Request form must be filled out and signed by the applicant/employee. This form indicates what identifying and other information is required from the subject individual to begin the CRC. All information provided by the employee/applicant must be truthful, accurate and current.

(2) Processing.

(a) The Commission obtains criminal records information from the Oregon State Police Law Enforcement Data System and from other sources of criminal, judicial and motor vehicle information.

(b) Only an authorized designee, may perform the following duties:

(A) Receive and evaluate Oregon criminal records information from the Oregon State Police as allowed by applicable statutes, or

(B) Conduct fitness determinations.

(c) The Commission or the authorized designee may require that a subject individual obtain and provide additional criminal, judicial or other background information.

(d) Criminal records information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and OAR chapter 257, division 15.

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

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0260

### State-Specific Criminal Records Check Process

(1) State-Specific Check. Notwithstanding the provisions of OAR 575-007-0270, the Commission may conduct a state-specific criminal records check in lieu of a national check when the Commission has reason to believe that out-of-state history may exist and that a nationwide criminal records check is not warranted.

(2) Supplement to National Check. The Commission may conduct a state-specific check in addition to a national check in order to clarify incomplete or conflicting information.

(3) Additional Information Required. In order to conduct a state-specific check and complete a fitness determination, the Commission or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity, residential history, names used while living at each residence, or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0270

### National Criminal Records Check Process

(1) National Criminal Records Check. In addition to an Oregon check (OAR 575-007-0250), a national criminal records check will be required by the Commission under any of the following circumstances:

(a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous five (5) years.

(b) Out-of-State Residency for Postsecondary Students. During the previous five (5) years, the subject individual has lived outside Oregon for 90 or more consecutive days or for more than one academic term or semester as part of a study-abroad program, an academic exchange, extended research project, or a similar program or activity.

(c) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Commission, indicates there may be criminal history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.

(d) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Commission on the OSAC Criminal Records Request form, the subject individual has no Oregon driver's license or Oregon identification card, or the Commission has other reason to question the identity or history of the subject individual.

(e) Required by Other Laws or Regulations. A check is required by federal or state laws or regulations, other rules adopted by the Commission, or by contract or written agreement with the Commission.

(2) Additionally, a national criminal records check on a subject individual may be required by the Commission if based on the nature of the position or other relevant factors the Authorized Designee deems it necessary.

(3) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.

(4) Processing. The subject individual must complete and submit a fingerprint card when requested by the Commission.

# ADMINISTRATIVE RULES

(a) Fingerprint Cards. The subject individual must complete and return a fingerprint card (example: FBI Form FD 258) provided by the Commission.

(b) Time Frame for Return. The card must be completed and returned within 7 days of the request to the contact person to avoid closure of application pursuant to OAR 575-007-0320(5)(d).

(c) Extension. The Commission may extend the time allowed for return of the fingerprint card for good cause.

(5) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Commission or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity, residential history, names used while living at each residence, or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL  
Stats. Implemented: Ch. 730 2005 OL  
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0275

### Imminent Danger

(1) If the Commission determines there is an indication of criminal behavior that could pose a potential immediate threat to safety or security while performing the functions covered by OAR 575-007-0220(2)(a)-(g), the Commission may authorize a new criminal records check without the completion of a new OSAC Criminal Records Request form.

(2) If the Commission determines that a fitness determination based on the new criminal records check may be adverse to the subject individual, the Commission will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 575-007-0300 before completing the fitness determination.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL  
Stats. Implemented: Ch. 730 2005 OL  
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0280

### Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

- (a) ORS 162.155, Escape II;
- (b) ORS 162.165, Escape I;
- (c) ORS 162.325, Hindering prosecution;
- (d) ORS 163.005, Criminal homicide;
- (e) ORS 163.095, Aggravated murder;
- (f) ORS 163.115, Murder;
- (g) ORS 163.118, Manslaughter I;
- (h) ORS 163.125, Manslaughter II;
- (i) ORS 163.145, Criminally negligent homicide;
- (j) ORS 163.160, Assault IV;
- (k) ORS 163.165, Assault III;
- (l) ORS 163.175, Assault II;
- (m) ORS 163.185, Assault I;
- (n) ORS 163.187, Strangulation;
- (o) ORS 163.190, Menacing;
- (p) ORS 163.200, Criminal mistreatment II;
- (q) ORS 163.205, Criminal mistreatment I;
- (r) ORS 163.207, Female genital mutilation;
- (s) ORS 163.208, Assault of Public Safety Officer;
- (t) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
- (u) ORS 163.225, Kidnapping II;
- (v) ORS 163.235, Kidnapping I;
- (w) ORS 163.257, Custodial interference I;
- (x) ORS 163.275, Coercion;
- (y) ORS 163.355, Rape III;
- (z) ORS 163.365, Rape II;
- (aa) ORS 163.375, Rape I;
- (bb) ORS 163.385, Sodomy III;
- (cc) ORS 163.395, Sodomy II;
- (dd) ORS 163.405, Sodomy I;
- (ee) ORS 163.408, Unlawful Sexual penetration II;
- (ff) ORS 163.411, Unlawful Sexual penetration I;
- (gg) ORS 163.415, Sexual abuse III;

- (hh) ORS 163.425, Sexual abuse II;
- (ii) ORS 163.427, Sexual abuse I;
- (jj) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (kk) ORS 163.465, Public indecency;
- (ll) ORS 163.515, Bigamy;
- (mm) ORS 163.525, Incest;
- (nn) ORS 163.535, Abandonment of a child;
- (oo) ORS 163.537, Buying or selling a person under 18 years of age;
- (pp) ORS 163.545, Child neglect II;
- (rr) ORS 163.547, Child neglect I;
- (ss) ORS 163.555, Criminal nonsupport;
- (tt) ORS 163.575, Endangering the welfare of a minor;
- (uu) ORS 163.670, Using child in display of sexually explicit conduct;
- (vv) ORS 163.673, Dealing sexual condition of children;
- (ww) ORS 163.675, Sale sexual condition of children;
- (xx) ORS 163.680, Paying for sexual view of children;
- (yy) ORS 163.684, Encouraging child sexual abuse I;
- (zz) ORS 163.686, Encouraging child sexual abuse II;
- (aaa) ORS 163.687, Encouraging child sexual abuse III;
- (bbb) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (ccc) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (ddd) ORS 163.693, Failure to report child pornography;
- (eee) ORS 163.732, Stalking;
- (fff) ORS 164.057, Aggravated theft I;
- (ggg) ORS 164.075, Theft by extortion;
- (hhh) ORS 164.125, Theft of services;
- (iii) ORS 164.225, Burglary I;
- (jjj) ORS 164.325, Arson I;
- (kkk) ORS 164.395, Robbery III;
- (lll) ORS 164.405, Robbery II;
- (mmm) ORS 164.415, Robbery I;
- (nnn) ORS 165.581, Cellular counterfeiting I;
- (ooo) ORS 166.005, Treason;
- (ppp) ORS 166.015, Riot;
- (qqq) ORS 166.085, Abuse of corpse II;
- (rrr) ORS 166.087, Abuse of corpse I;
- (sss) ORS 166.155, Intimidation II;
- (ttt) ORS 166.165, Intimidation I;
- (uuu) ORS 166.220, Unlawful use of weapon;
- (vvv) ORS 166.270, Possession of weapons by certain felons;
- (www) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (xxx) ORS 166.275, Possession of weapons by inmates of institutions;
- (yyy) ORS 166.429, Firearms used in felony;
- (zzz) ORS 166.720, Racketeering activity unlawful;
- (aaaa) ORS 167.012, Promoting prostitution;
- (bbbb) ORS 167.017, Compelling prostitution;
- (cccc) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
- (dddd) ORS 167.065, Furnishing obscene materials to minors;
- (eeee) ORS 167.070, Sending obscene materials to minors;
- (ffff) ORS 167.075, Exhibiting an obscene performance to a minor;
- (gggg) ORS 167.080, Displaying obscene materials to minors;
- (hhhh) ORS 167.087, Disseminating obscene material;
- (iiii) ORS 167.262, Adult using minor in commission of controlled substance offense;
- (jjjj) ORS 167.315, Animal abuse II;
- (kkkk) ORS 167.320, Animal abuse I;
- (llll) ORS 167.322, Aggravated animal abuse I;
- (mmmm) ORS 167.333, Sexual assault of animal;
- (nnnn) ORS 181.599, Failure to report as sex offender;
- (oooo) ORS 475.525, Sale of drug paraphernalia prohibited;
- (pppp) ORS 475.805, Providing hypodermic device to minor prohibited;
- (qqqq) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
- (rrrr) ORS 475.973, Unlawful possession or distribution of ephedrine, pseudoephedrine or phenylpropanolamine;
- (ssss) ORS 475.975, Unlawful possession of iodine in its elemental form;
- (tttt) ORS 475.976, Unlawful possession of iodine matrix;

# ADMINISTRATIVE RULES

(uuuu) ORS 475.982, Providing drug test falsification equipment;  
(vvvv) ORS 475.984, Causing another person to ingest a controlled substance;

(wwww) ORS 475.986, Application of controlled substance to the body of another person;

(xxxx) ORS 475.992, Prohibited acts generally (regarding drug crimes);

(yyyy) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);

(zzzz) ORS 475.995, Distribution to minors;

(aaaa) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;

(bbbb) ORS 677.080, Prohibited acts (regarding the practice of medicine);

(ccccc) Any federal crime;

(dddd) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;

(eeee) Any other felony in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat to safety or security, as determined by the authorized designee.

(ffff) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155.

(ggggg) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.

(hhhhh) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(iiiiii) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the OSAC Records Request form was signed.

(a) ORS 133.076, Failure to appear on criminal citation

(b) ORS 162.015, Bribe giving;

(c) ORS 162.025, Bribe receiving;

(d) ORS 162.065, Perjury;

(e) ORS 162.075, False swearing;

(f) ORS 162.117, Public investment fraud;

(g) ORS 162.145, Escape III;

(h) ORS 162.175, Unauthorized departure;

(i) ORS 162.185, Supplying contraband;

(j) ORS 162.195, Failure to appear II;

(k) ORS 162.205, Failure to appear I;

(l) ORS 162.247, Interfering with a peace officer;

(m) ORS 162.265, Bribing a witness;

(n) ORS 162.275, Bribe receiving by a witness;

(o) ORS 162.285, Tampering with a witness;

(p) ORS 162.295, Tampering with physical evidence;

(q) ORS 162.305, Tampering with public records;

(r) ORS 162.335, Compounding;

(s) ORS 162.355, Simulating legal process;

(t) ORS 162.365, Criminal impersonation;

(u) ORS 162.367, Criminal impersonation of peace officer;

(v) ORS 162.369, Possession of false law enforcement identification card;

(w) ORS 162.375, Initiating a false report;

(x) ORS 162.385, Giving false information to police officer for a citation;

(y) ORS 162.405, Official misconduct II;

(z) ORS 162.415, Official misconduct I;

(aa) ORS 162.425, Misuse of confidential information;

(bb) ORS 163.195, Recklessly endangering another person;

(cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;

(dd) ORS 163.245, Custodial interference II;

(gg) ORS 163.445, Sexual misconduct;

(ii) ORS 163.467, Private indecency;

(jj) ORS 163.700, Invasion of personal privacy;

(kk) ORS 163.750, Violating court's stalking protective order;

(ll) ORS 164.043, Theft III;

(mm) ORS 164.045, Theft II;

(nn) ORS 164.055, Theft I;

(oo) ORS 164.085, Theft by deception;

(pp) ORS 164.095, Theft by receiving;

(qq) ORS 164.135, Unauthorized use of a vehicle;

(rr) ORS 164.140, Criminal possession of rented or leased personal property;

(ss) ORS 164.162, Mail theft or receipt of stolen mail;

(tt) ORS 164.215, Burglary II;

(uu) ORS 164.235, Possession of burglar's tools;

(vv) ORS 164.255, Criminal trespass I;

(ww) ORS 164.265, Criminal trespass while in possession of firearm;

(xx) ORS 164.272, Unlawful entry into motor vehicle;

(yy) ORS 164.315, Arson II;

(zz) ORS 164.335, Reckless burning;

(aaa) ORS 164.354, Criminal Mischief II;

(bbb) ORS 164.365, Criminal Mischief I;

(ccc) ORS 164.369, Interfering with police animal;

(ddd) ORS 164.377, Computer crime;

(eee) ORS 165.007, Forgery II;

(fff) ORS 165.013, Forgery I;

(ggg) ORS 165.017, Criminal possession of a forged instrument II;

(hhh) ORS 165.022, Criminal possession of a forged instrument I;

(iii) ORS 165.032, Criminal possession of a forgery device;

(jjj) ORS 165.037, Criminal simulation;

(kkk) ORS 165.042, Fraudulently obtaining a signature;

(lll) ORS 165.055, Fraudulent use of a credit card;

(mmm) ORS 165.065, Negotiating a bad check;

(nnn) ORS 165.070, Possessing fraudulent communications device;

(ooo) ORS 165.074, Unlawful factoring of credit card transaction;

(ppp) ORS 165.080, Falsifying business records;

(qqq) ORS 165.085, Sports bribery;

(rrr) ORS 165.090, Sports bribe receiving;

(sss) ORS 165.095, Misapplication of entrusted property;

(ttt) ORS 165.100, Issuing a false financial statement;

(uuu) ORS 165.102, Obtaining execution of documents by deception;

(vvv) ORS 165.540, Obtaining contents of communication;

(www) ORS 165.543, Interception of communications;

(xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;

(yyy) ORS 165.572, Interference with making a report;

(zzz) ORS 165.577, Cellular counterfeiting III;

(aaaa) ORS 165.579, Cellular counterfeiting II;

(bbbb) ORS 165.692, Making false claim for health care payment;

(cccc) ORS 165.800, Identity theft;

(dddd) ORS 166.025, Disorderly conduct;

(eeee) ORS 166.065, Harassment;

(ffff) ORS 166.076, Abuse of a memorial to the dead;

(gggg) ORS 166.115, Interfering with public transportation;

(hhhh) ORS 166.180, Negligently wounding another;

(iiii) ORS 166.190, Pointing firearm at another;

(jjjj) ORS 166.240, Carrying of concealed weapon;

(kkkk) ORS 166.250, Unlawful possession of firearms;

(llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;

(mmmm) ORS 166.382, Possession of destructive device prohibited;

(nnnn) ORS 166.384, Unlawful manufacture of destructive device;

(oooo) ORS 166.470, Limitations and conditions for sales of firearms;

(pppp) ORS 166.480, Sale or gift of explosives to children;

(qqqq) ORS 166.649, Throwing an object off an overpass II;

(rrrr) ORS 166.651, Throwing an object off an overpass I;

(ssss) ORS 166.660, Unlawful paramilitary activity;

(tttt) ORS 167.007, Prostitution;

(uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;

(vvvv) ORS 167.212, Tampering with drug records;

(wwww) ORS 167.222, Frequenting a place where controlled substances are used;

(xxxx) ORS 167.325, Animal neglect II;

(yyyy) ORS 167.330, Animal neglect I;

(zzzz) ORS 167.355, Involvement in animal fighting;

(aaaaa) ORS 167.365, Dogfighting;

(bbbbb) ORS 167.370, Participation in dogfighting;

# ADMINISTRATIVE RULES

(cccc) ORS 167.820, Concealing the birth of an infant;  
(dddd) ORS 411.630, Unlawfully obtaining public assistance;  
(eeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);  
(ffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;  
(gggg) ORS 417.990, Penalty for placement of children in violation of compact;  
(hhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;  
(iiii) ORS 418.140, Sharing assistance prohibited;  
(jjjj) ORS 418.250, Supervision of child-caring agencies;  
(kkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;  
(llll) ORS 433.010, Spreading disease (willfully) prohibited;  
(mmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;  
(nnnn) ORS 475.950, Failure to report precursor substance;  
(oooo) ORS 475.955, Failure to report missing precursor substances;  
(pppp) ORS 475.960, Illegally selling drug equipment;  
(qqqq) ORS 475.965, Providing false information on precursor substances report;  
(rrrr) ORS 475.981, Falsifying drug test results;  
(ssss) ORS 475.991, Unlawful delivery of imitation controlled substance;  
(tttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);  
(uuuu) ORS 475.994, Prohibited acts involving records and fraud;  
(vvvv) ORS 475.996, Commercial drug offense;  
(wwww) ORS 657A.280, Failure to certify child care facility  
(xxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration  
(yyyy) ORS 807.620, Giving false information to police officer  
(zzzz) ORS 811.140, Reckless driving  
(aaaa) ORS 811.540, Fleeing or attempting to elude police officer;  
(bbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;  
(cccc) ORS 811.705, Failure to perform duties of driver to injured persons;  
(dddd) ORS 819.300, Possession of a stolen vehicle;  
(eeee) ORS 830.475, Failure to perform the duties of an operator (boat);  
(ffff) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule;  
(gggg) Any other misdemeanor in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat to safety or security, as determined by the authorized designee;  
(hhhh) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155;  
(iiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee;  
(jjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee;  
(kkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee;  
(3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the OSAC Records Request form was signed.  
(a) ORS 162.085, Unsworn falsification;  
(b) ORS 162.235, Obstructing governmental or judicial administration;  
(c) ORS 162.315, Resisting arrest;  
(d) ORS 164.245, Criminal trespass II;  
(e) ORS 164.345, Criminal mischief III;  
(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;  
(g) ORS 166.075, Abuse of venerated objects;

(h) ORS 166.090, Telephonic harassment;  
(i) ORS 166.095, Misconduct with emergency telephone calls;  
(j) ORS 167.340, Animal abandonment;  
(k) ORS 418.630, Operating uncertified foster home;  
(l) ORS 811.182, Criminal driving while suspended or revoked;  
(m) ORS 813.010, Driving under the influence of intoxicants (DUII);  
(n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;  
(o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155;  
(p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (3)) as determined by the authorized designee;  
(q) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee;  
(r) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.

(4) Evaluation Based on Oregon Laws. Evaluations of crimes shall be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

(6) Expunged Adult Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of an adult record that has been expunged or set aside pursuant to ORS 137.225.

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## 575-007-0290

### Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) False Statement. A "false statement" by the subject individual to the authorized designee or agency, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.

(2) Sex Offender. The subject individual is a registered sex offender in Oregon or any other jurisdiction.

(3) Warrants. An outstanding warrant against the subject individual for any crime in any jurisdiction.

(4) Deferred Sentence, Diversion Program, Parole or Probation. The subject individual has a deferred sentence, conditional discharge, is participating in a diversion program, or has not completed a required diversion program or any condition of post-prison supervision, parole or probation, for any potentially disqualifying crime listed in OAR 575-007-0280.

(5) Parole or Probation Violation. A post-prison supervision, parole or probation violation during the previous five years for any potentially disqualifying crime listed in OAR 575-007-0280.

(6) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment, for a potentially disqualifying crime. (Example: An unresolved arrest for a ten-year review crime during the previous ten years).

(7) Adjudication. Adjudication in a juvenile court, finding that the subject individual was responsible for a potentially disqualifying crime. Consideration of the adjudication of a potentially disqualifying crime will follow the review periods for crimes listed in OAR 575-007-0280.

(8) Guilty Except for Insanity. A finding of "guilty except for insanity", "guilty except by reason of insanity", "not guilty by reason of insanity" or similarly worded disposition regarding a potentially disqualifying crime listed in OAR 575-007-0280. Consideration of the guilty except for insanity finding of a potentially disqualifying crime will follow the review periods for crimes listed in OAR 575-007-0280.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL  
Stats. Implemented: Ch. 730 2005 OL  
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

# ADMINISTRATIVE RULES

## 575-007-0300

### Other Information Considered

(1) Consideration of Other Information. When other information is disclosed by the subject individual, or is otherwise known by the authorized designee, the authorized designee must consider such information in addition to potentially disqualifying crimes and conditions when making the fitness determination, including but not limited to:

(a) Circumstances regarding the potentially disqualifying crimes and conditions. These may include, but are not limited to:

(A) Age of the subject individual at time of the crime;

(B) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions;

(C) Facts that support or contradict the conviction, pending indictment, the making of a false statement, or other potentially disqualifying condition; or

(D) Consideration of Oregon or federal laws, regulations, or rules covering the position, facility or employer in regard to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The authorized designee must also consider other factors when relevant information is provided by the Commission or the subject individual including, but not limited to:

(A) Other information related to criminal activity including charges, arrests, and convictions. This includes subsequent commission of another relevant crime and whether the conviction was set aside and the legal effect of setting aside the conviction;

(B) Periods of incarceration of the subject individual;

(C) Passage of time since commission of the crime;

(D) Parole or probation status;

(E) Evidence of drug or alcohol issues, including history of use, manufacturing, delivery, treatment, and rehabilitation;

(F) Evidence of other treatment or rehabilitation related to criminal activity or other factors listed in this rule;

(G) Likelihood of repetition of criminal behavior, including, but not limited to, the subject individual's acknowledgment and honesty relative to past behavior, patterns of criminal activity, and whether the subject individual appears to accept responsibility for past actions, as determined by the authorized designee;

(H) Changes in circumstances subsequent to the criminal activity or disqualifying condition;

(I) Education;

(J) Work history (employee or volunteer) or license or certificate history;

(K) Written recommendations from current or past employer(s);

(L) Indication that criminal history has or has not been truthfully and fully disclosed to employer;

(M) Indication of the subject individual's cooperation and honesty during the criminal records check process as described in these rules.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history or false statement to the paid or volunteer position, or to the environment in which the subject individual will work, must be considered.

(2) Fitness Determination with Available Information. If the authorized designee requests other information for the purpose of conducting a weighing test under OAR 575-007-0320(5)(c), and the subject individual does not respond in a stated time period, the authorized designee will make a fitness determination based on the potentially disqualifying crimes or conditions, the available information, and the subject individual's failure to timely or adequately respond to information requests.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0310

### Hiring on a Preliminary Basis

A subject individual may participate in training, orientation, and work activities prior to a final fitness determination only under the following conditions and will be considered to be hired on a preliminary basis:

(1) OSAC Records Request Form Completed. A OSAC Criminal Records Request form must have been completed by the subject individual and reviewed by the authorized designee.

(2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 575-007-0320.

(3) Active Supervision. A subject individual who is hired on a preliminary basis must be actively supervised at all times by someone who is approved pursuant to these rules.

(a) Duties. The person providing active supervision at all times must meet all of the following conditions:

(A) Know where the person hired on a preliminary basis is and what the person is doing; and

(B) Periodically observe the actions of the person hired on a preliminary basis.

(b) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules by OSAC or by another Oregon public employer or prior OSAC criminal records check rules may be hired on a preliminary basis without active supervision, provided the subject individual provides proof of having worked for a sustained period under the previous fitness determination. The Commission must maintain the documentation. The 24-month time frame is based on the length of time between the date of previous approval and the date of starting the new position. This exemption is not allowed:

(A) If the subject individual discloses criminal history that occurred within the previous 24 months;

(B) If the subject individual is currently involved in an appeal under these rules; or

(C) If, as determined by the authorized designee or the Commission, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for hire on a preliminary basis be allowed to work, volunteer, or be trained prior to a final fitness determination.

(5) Termination of Hire on a Preliminary Basis.

(a) Those subject individuals hired on a preliminary basis may be terminated by the Commission immediately for the following reasons:

(A) There is any indication of falsification of application or other false statement by the applicant/employee;

(B) The criminal records check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual;

(C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest;

(D) The subject individual failed to disclose a conviction or an arrest that did not result in a conviction;

(E) The Commission determines that hiring on a preliminary basis was not appropriate, based on the application, criminal history, position duties, or laws or rules applicable to the position.

(b) Termination of the hire on a preliminary basis is not subject to appeal under these rules.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0320

### Fitness Determinations

(1) Fitness Determination Before Work or Placement. The Commission must not allow a subject individual to participate in training, orientation, or work activities prior to a fitness determination.

(2) Termination Following Denial. When a subject individual is denied, the individual must not be allowed to work, volunteer or be trained in an environment covered by these rules and must be terminated immediately. A denial applies only to the position and application in question.

(3) Preliminary Fitness Determination. A preliminary fitness determination must be completed prior to allowing a subject individual to be hired on a preliminary basis. The preliminary fitness determination must be made by an authorized designee. A person hired on a preliminary basis must meet all the criteria in either subsection (a) or (b) as listed below:

(a) No Indication of Potentially Disqualifying Crime. If there is no indication of a potentially disqualifying crime or condition on the OSAC Criminal Records Request form and the authorized designee or contact person has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be hired on a preliminary basis.

(b) Self-Disclosed Criminal History. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime in any jurisdiction, or any other potentially disqualifying condition, the individual may be hired on a preliminary basis only after a preliminary fitness determination using a weighing test is completed by an authorized designee.

(4) Final Fitness Determination. Upon receipt of the criminal history, the authorized designee must timely complete the fitness determination.

# ADMINISTRATIVE RULES

The final fitness determination must be completed within 21 days after receiving the records information.

(a) This deadline may be extended in the discretion of the authorized designee.

(5) Potential Outcomes.

(a) Hiring on a Preliminary Basis. A subject individual may be hired on a preliminary basis following a preliminary fitness determination as described in section (3) of this rule.

(b) Automatic Approval. A subject individual is approved in a final fitness determination without a weighing test if after all required records information is received the subject individual meets all of the following conditions:

(A) No potentially disqualifying crimes, warrants, sex offender registration, probation or parole status, or other conditions;

(B) No unresolved arrests for potentially disqualifying crimes within the previous five years; and

(C) No discrepancies, and no failure to disclose conviction history or arrests.

(c) Weighing Test. Only authorized designees may conduct and participate in a weighing test. The weighing test must be used to assess fitness unless the subject individual receives automatic approval pursuant to subsection (5)(b) of this rule or the application is closed pursuant to subsection (5)(d) of this rule. In the weighing test, the authorized designee must consider the criminal history disclosed by the subject individual and other information as described in OAR 575-007-0280, 575-007-0290 and 575-007-0300 in order to assess fitness. When the weighing test is used in a final fitness determination, criminal history discovered during the criminal records check must also be considered. The authorized designee may rely on official written communications and records from law enforcement agencies and judicial systems, and on criminal history provided by the subject individual. Possible outcomes of a weighing test are as follows:

(A) Hiring on a Preliminary Basis. In a weighing test for a preliminary fitness determination, the outcome is either to allow, or to disallow, hiring on a preliminary basis. Hiring on a preliminary basis is not a possible outcome in a final fitness determination.

(B) Approval. A subject individual may be approved by one or more authorized designees after a weighing test.

(C) Denial. A subject individual who, following such consideration, is determined to pose a significant risk to safety or security while performing the functions covered by OAR 575-007-0220(2)(a)-(g) must be denied by the authorized designee.

(i) Volunteered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history disclosed by the subject individual without conducting an Oregon, state-specific, or national criminal records check.

(ii) Discovered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history discovered by the authorized designee or the Commission following an Oregon, state-specific, or national criminal records check.

(d) Closed Case.

(A) If the subject individual or Department discontinues the application or the subject individual fails to cooperate with the criminal records check process then the application is considered incomplete. Discontinuance or failure to cooperate includes, but is not limited to, the following circumstances:

(i) The subject individual refuses to be fingerprinted when required by these rules.

(ii) The subject individual does not respond within a stated period of time to a request from the authorized designee or the Commission for corrections to the application, fingerprints, any other information necessary to conduct a criminal records check under these rules, or any information described in OAR 575-007-0300.

(iii) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the authorized designee.

(iv) The subject individual is determined to not be eligible for the position or is not chosen for the position for reasons other than the criminal records check.

(B) The incomplete application is closed without a final fitness determination and there is no right to a contested case hearing.

(6) Notice to Subject Individual. Upon closure per section (5)(d) above or completion of a final fitness determination resulting in a denial, the authorized designee must provide written notice to the subject individual. The notice must be:

(a) In a format approved by the Commission, and

(b) Mailed or hand-delivered to the subject individual as soon as possible, but in no case later than fourteen days after the decision. The date of the decision must be recorded on the form. If mailed, the notice shall be mailed by regular mail to the address on the application or to an updated address provided in writing by the applicant.

(7) Documentation. Preliminary and final fitness determinations must be documented in writing.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0330

### Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position or be employed.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Commission, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Commission's appeal process described in this rule.

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

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse final fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Commission.

(a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available from the contact person for the Commission.

(b) Records. If a fingerprint-based criminal records check was conducted on the subject individual, then the hearing request form will also be deemed a request for the subject individual's own state and national criminal offender records.

(c) Deadline for Appeal. The completed and signed form must be received by the contact person no later than 10 days after the notice of the fitness determination is mailed for subject individuals who are employees, applicants for employment, volunteers, or applicants for volunteer positions with the Commission (subject individuals under OAR 575-007-0220(1) and 575-007-0220(2)).

(d) Extension of Deadline. The Commission may extend the time to appeal if the Commission determines the delay was caused by factors beyond the reasonable control of the subject individual.

(e) Hearing on timeliness. The Commission may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(f) Other Options. A subject individual may appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions. The individual's decision to do so is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process.

(4) Informal Administrative Review (Mandatory). When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Commission conducts an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, must participate in the informal administrative review.

(A) Participation may include, but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 575-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone or in-person conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Commission will review a request to

# ADMINISTRATIVE RULES

reinstate hearing rights if received in writing by the Commission within 14 days.

(b) Criminal records check.

(A) If the denial was based on disclosed criminal history, the Commission will conduct a criminal records check during the informal administrative review.

(B) The Commission may conduct additional criminal records checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Commission will use the weighing test as described in these rules during the informal administrative review.

(d) Content of Administrative Review. The Commission representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(4). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial;

(B) Ensure the subject individual understands the reason for the denial;

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law;

(D) Give the Commission and subject individual an opportunity to research or provide additional information to consider as listed in OAR 575-007-0300;

(E) Give the Commission and the subject individual the opportunity to correct any misunderstanding of the facts; or

(F) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Commission in writing of the finding within 14 days. The notice of finding will be mailed or hand-delivered. If mailed, the notice shall be mailed by regular mail to the address on the application or to an updated address provided in writing by the applicant.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Commission reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.

(b) Commission Representation. Employees of the Commission may in accordance with ORS 183.452 be authorized by the Commission's Director to represent the Commission in the contested case hearing. Authorization from the Office of Attorney General is also required. The Commission retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal records check information as follows:

(A) In the case of federal criminal history records and criminal history records from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. If a fingerprint-based criminal record check was conducted on the subject individual and if requested by the subject individual, the Commission will provide them with copies of the individual's own state and national criminal offender records. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Commission may also provide out-of-state information received from other official sources.

(B) In the case of Oregon criminal history, the Commission may provide a copy of the LEDS printout, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. Neither the informal administrative review nor the contested case hearing is open to the public.

(6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Commission or the Office of Administrative Hearings. A dismissal order will be issued by the Commission or the Office of Administrative Hearings. The subject individual may cancel the withdrawal in writing up to 14 days after the date the order is served.

(7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Commission will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Commission will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Commission within 14 days after the service of the proposed order, the proposed order becomes the final order.

(d) Exceptions. If timely written exceptions to the proposed order are received by the Commission, the Commission Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0340

### Record Keeping, Confidentiality

(1) LEDS Reports.

(A) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access.

(i) The subject individual must be allowed to inspect the LEDS report if the subject individual requests to see it. The LEDS report, and photocopies of the LEDS report, must not be given to the subject individual, with the following exception:

(ii) If a fingerprint-based criminal records check was conducted on the subject individual, then the subject individual shall not only be permitted to inspect the individual's own state and national criminal offender records, but if requested by the subject individual, be provided with a copy of those same records.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination.

(A) National criminal information provided by the FBI is confidential and may not be disseminated by the Commission, with the following exception:

(B) If a fingerprint-based criminal records check was conducted on the subject individual, then the subject individual shall not only be permitted to inspect the individual's own state and national criminal offender records, but if requested by the subject individual, be provided with a copy of those same records.

# ADMINISTRATIVE RULES

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) Fingerprint Cards:

(a) The Federal Bureau of Investigation (FBI) shall return or destroy the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. If the FBI policy authorizing return or destruction of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the FBI but shall continue to process the information through other available resources.

(b) If the FBI returns the fingerprint cards to the Department of State Police, the Commission shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(c) If only a state criminal records check is conducted, the Department of State Police shall destroy the fingerprint cards after the criminal records check is completed and the results of the criminal records check are provided to the Commission and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(4) OSAC Forms and Other Documentation.

(a) Confidentiality. All completed OSAC Records Request forms must be kept confidential and disseminated only on a need-to-know basis.

(b) Retention. OSAC forms and other records documenting the criminal records check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and implemented by Department of Administrative Services, Human Resources Division.

(5) OSAC History Database. Commission maintains a database regarding criminal records checks.

(a) Data. The authorized designee will maintain a system of information regarding criminal records checks for volunteers and contractor who have been active within the past three years.

(b) Confidentiality. Records maintained under section (4) of this rule are confidential and are only disseminated by the Commission as allowed by these rules and in accordance with the rules of the Oregon State Police (OSP).

(c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0350

### Immunity from Liability

The Commission and its authorized designee have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with Chapter 730 (2005 Laws) that a subject individual is fit or not fit to hold a position, provide services, or be employed. The Commission or its employee acting within the course and scope of employment who in good faith complies with Chapter 730 (2005 Laws) is not liable for employment-related decisions based on the fitness determination. No Department, or an employee of the state, the Commission, a business or an organization acting within the course and scope of employment, is liable for defamation, invasion of privacy, negligence or any other civil claim in connection with the lawful dissemination of information lawfully obtained under Chapter 730 (2005 Laws).

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

## 575-007-0380

### Fees

Fees may not exceed the actual cost of acquiring and furnishing criminal offender information.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

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

**Rule Caption:** Establishes a hearing process for persons using unaccredited degrees.

**Adm. Order No.:** ODA 2-2006

**Filed with Sec. of State:** 11-1-2006

**Certified to be Effective:** 11-1-06

**Notice Publication Date:** 9-1-06

**Rules Amended:** 583-050-0026

**Subject:** ODA needs to add a hearing process for people who are found to be using unaccredited degrees in violation of ORS 348.609, before the commission imposes any penalties on the user. This process will be added to OAR 583-050-0026, the enforcement section of agency rules, and will resemble processes used by other state agencies.

**Rules Coordinator:** Peggy Cooksey—(541) 687-7443

## 583-050-0026

### Invalidation of a Degree, Warning, Enforcement

(1) A person who may not have known that his or her claimed degree is invalid or nonstandard is given the benefit of the doubt as to intent, so as to reflect consideration for the possibility that the person was misled by the purported school or unaware of Oregon degree requirements.

(2) Failure to provide when requested a transcript or other information needed for validation of a degree is prima facie evidence under statute that the claim to such degree is invalid.

(3) Failure or inability to produce conclusive evidence of a valid degree results in a warning from the Office that the claimant must thereafter cease and desist from making the invalidated claim.

(4) Subsequent to such warning and in violation thereof, any renewed claim of an invalid degree exposes the violator to penalties as set forth in statute and under OAR 583-050-0026(5).

(5) Any violation of ORS 348.603 or 348.609 may result in any or all of the following sanctions:

(a) Prosecution for a Class B misdemeanor under ORS 348.992;

(b) Injunction against further use of the claimed degree;

(c) Civil suit for violation of the Unlawful Trade Practices Act, if applicable;

(d) A civil penalty not to exceed \$1,000 per violation.

(6) Prior to the imposition of any penalty listed in (5) above, a person whose degree is found invalid, or the use of whose degree may be restricted, is entitled to a hearing in accordance with ORS Ch 183. Hearings will be provided in the following way:

(a) ODA's initial communication with a degree user will be an inquiry letter that will give the user 30 days in which to address any issues regarding degree existence, validity and restriction. No hearing is provided at this stage;

(b) If a degree user contacted by ODA under (a) does not respond within 30 days, or provides information that is insufficient to allow unrestricted degree use while expressing intent to continue using the degree, ODA will issue a cease and desist letter to the user, setting forth the requirements of law and how the user's degree fails to meet those requirements. This letter will also be sent to the user's attorney, if any. The user will be given 30 days to respond, agreeing to either comply with the law or request a hearing to contest ODA's findings:

(i) If the user agrees to comply with the law within 30 days, ODA will provide the user with a standard form upon which such agreement can be stated and signed. No penalty will be imposed provided that the user carries out the agreement;

(ii) If the user does not respond within 30 days, ODA will proceed directly to the request of a penalty, if any, to be imposed by the Commission, without a hearing before a hearing officer;

(iii) If the user requests a hearing within 30 days, the hearing will be conducted by a state hearing officer in accord with standard hearing protocol.

(c) If a hearing is held, the hearing officer will recommend a resolution to the Commission, which will decide whether the degree use meets Oregon standards, and if it does not, whether to impose a penalty and what the penalty should be.

Stat. Auth.: ORS 348.609

Stats. Implemented: ORS 348.603, 348.609 & 348.992

Hist.: ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 2-2002, f. & cert. ef. 10-10-02; ODA 3-2005, f. 9-27-05, cert. ef. 9-30-05; ODA 2-2006, f. & cert. ef. 11-1-06

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

**Rule Caption:** Revise and update the student conduct code because it is outdated and does not represent best practices for responding to student conduct matters.

# ADMINISTRATIVE RULES

**Adm. Order No.:** UO 3-2006

**Filed with Sec. of State:** 10-18-2006

**Certified to be Effective:** 10-18-06

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**Rules Repealed:** 571-021-0005, 571-021-0009, 571-021-0015, 571-021-0019, 571-021-0024, 571-021-0029, 571-021-0030, 571-021-0035, 571-021-0038, 571-021-0040, 571-021-0045, 571-021-0050, 571-021-0055, 571-021-0056, 571-021-0057, 571-021-0060, 571-021-0064, 571-021-0068, 571-021-0070, 571-021-0072, 571-021-0073

**Subject:** Revises and updates the student conduct code because it is outdated and does not represent best practices for responding to student conduct matters.

**Rules Coordinator:** Connie Tapp—(541) 346-3082

## 571-021-0100

### Mission

(1) The primary mission of the Student Conduct Code is to set forth the community standards and procedures necessary to maintain and protect an environment conducive to learning and in keeping with the educational objectives of the University of Oregon. Founded upon the principle of freedom of thought and expression, an environment conducive to learning is one that preserves the freedom to learn — where academic standards are strictly upheld and where the rights, safety, dignity and worth of every individual are respected.

(2) Learning is a process defined by the exchange of ideas and the advancement of knowledge. As such, learning entails a community of scholars united by their participation in, and commitment to, intellectual exchange. The University is, first and foremost such a community. Learning also involves reflecting on decisions and improving decision-making in the future. By establishing the standards of this community, the Student Conduct Code serves not just as a disciplinary system, but also as a part of the educational system. Hence, a corollary mission of the Student Conduct Code is to teach students to live and act responsibly in a community setting, with respect for the rights of other students and members of that community, and for the property, common resources, code of conduct, and laws associated with that community, and to encourage the development of good decision-making and personal integrity.

(3) Students are simultaneously members of the University community and the broader community (e.g. city, state, nation, and world). The Student Conduct Code, and the processes of its administration and enforcement, is directed specifically toward maintaining the standards of the University community. Within its jurisdiction the University may impose disciplinary sanctions against students or student organizations when their conduct materially interferes with the educational objectives of the University or university community member.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0105

### Definitions

For purposes of the Student Conduct Code, OAR 571-021-0100 et seq.:

(1) “Academic Misconduct” means the violation of university policies involving academic integrity. Examples include, but are not limited to:

- (a) Intentional tampering with grades, resubmitting assignments for more than one class without the permission of the professor; and
- (b) Intentionally taking part in obtaining or distributing any part of a test that has not been administered;
- (c) Cheating, as defined in OAR 571-021-0105(3);
- (d) Plagiarism, as defined in OAR 571-021-0105(26);
- (e) Knowing furnishing false information to a University Official; and
- (f) Fabrication, as defined in OAR 571-021-0105(14).

(2) “Accused Student” means any student accused of violating the Student Conduct Code.

(3) “Cheating” means any act of deception by which a student misrepresents or misleadingly demonstrates that he or she has mastered infor-

mation on an academic exercise that he or she has not mastered. Examples include but are not limited to:

- (a) Giving or receiving unauthorized help in an academic exercise;
- (b) Use of sources or resources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;

(c) Acquisition, without permission, of tests or other academic material belonging to a member of the University faculty or staff; and

(d) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(4) “Community Standards Administrator” means the University official, as designated on a case-by-case basis by the Director of Student Conduct and Community Standards, authorized to impose sanctions upon any student found to have violated the Student Conduct Code.

(5) “Community Standards Committee” means the Committee established pursuant to OAR 571-021-0110, comprised of persons appointed by the President with the responsibility for formulating, approving or recommending changes related to the Student Conduct Program.

(6) “Community Standards Hearing Board” means the board established pursuant to OAR 571-021-0160, comprised of persons authorized by the Community Standards Committee to determine if a student has violated the Student Conduct Code and to recommend sanctions when a violation has occurred.

(7) “Complainant” means any person who submits a complaint alleging that a student violated the Student Conduct Code. The Complainant need not be a person who was the target or victim of the alleged violation.

(8) “Contacting” has its common meaning. It includes, but is not limited to, communicating with or remaining in the physical presence of the other person.

(9) “Contact of a Sexual Nature” for purposes of Sexual Misconduct in the Student Conduct Code means the touching of the genitalia, anus, buttocks or breasts of a person or causing such person to touch the genitalia, anus, buttocks or breasts of another.

(10) “Contempt” means disregard of, or disobedience to, the rules or orders of any tribunal under this Code or an interruption of its proceedings by disorderly behavior or insolent language in a way or place that disturbs the proceedings or ignores the authority of the tribunal.

(11) “Director of Student Conduct and Community Standards” is the person designated by the University Senate and University President or designee to be responsible for the administration of the Student Code.

(12) “Drug” means a controlled substance or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C.811 to 812 or as defined in ORS 475.005 or modified in ORS 475.035.

(13) “Explicit Consent” for purposes of Sexual Misconduct in the Student Conduct Code means voluntary, non-coerced and clear communication indicating a willingness to engage in a particular act. “Explicit consent” includes an affirmative verbal response or voluntary acts unmistakable in their meaning.

(14) “Fabrication” means the intentional use of information that the author has invented when he or she states or implies otherwise, or the falsification of research or other findings with the intent to deceive.

(15) “Faculty Member” means a person hired by the University to conduct classroom, research or teaching activities or who is otherwise considered by the University to be a member of its faculty, including officers of instruction, officers of research and officers of administration.

(16) “Gambling” means an activity in which a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. “Gambling” does not include those activities expressly excluded by ORS 167.117.

(17) “Harassment” means

- (a) Intentionally subjecting a person to offensive physical contact;
- (b) Unreasonable insults, gestures, or abusive words, in the immediate presence, and directed to, another person that may reasonably cause emotional distress or provoke a violent response (including but not limited to electronic mail, conventional mail and telephone) except to the extent such insults, gestures or abusive words are protected expression; or
- (c) Other types of prohibited discrimination, discriminatory harassment, and sexual harassment as defined by law.

(18) “Hazing” means any initiation rites, on or off campus, involving any intentional action or situation that a reasonable person would foresee as causing mental or physical discomfort, embarrassment, or ridicule. Individual acceptance of or acquiescence to any activity that occurs during

# ADMINISTRATIVE RULES

an initiation rite does not affect a determination of whether the activity constitutes hazing. Activities and situations that may occur as part of hazing include, but are not limited to:

- (a) Sleep deprivation or causing excessive fatigue;
- (b) Physical or psychological shock;
- (c) Public stunts or jokes;
- (d) Compelled ingestion of any substance;
- (e) Degrading or humiliating games or activities;
- (f) Activities that have an adverse effect on academic progress;
- (g) Forced servitude;
- (h) Activities which are not consistent with the parent organization's rules and regulations; or
- (i) Other activities which violate Federal, State, or local laws.

(19) "Institution" means the University of Oregon and all of its undergraduate, graduate and professional schools, divisions, activities and programs and may be used interchangeably with "University."

(20) "May" is used in the permissive sense.

(21) "Mental Disorder" for purposes of Sexual Misconduct in the Student Conduct Code means that a person suffers from a mental disease or disorder that renders that person incapable of appraising the nature of the conduct of another person.

(22) "Mental Incapacitation" for purposes of Sexual Misconduct in the Student Conduct Code means that a person is rendered incapable of appraising or controlling one's own conduct at the time of the alleged offense because of the influence of a controlled or intoxicating substance or because of any act committed upon the person without consent.

(23) "Member of the University Community" includes any person who is a student, faculty member, University official or any person employed by the University.

(24) "Penetration" for purposes of Sexual Misconduct in the Student Conduct Code means any degree of insertion, however slight, of the penis or any object into the vagina or anus, or the penis into the mouth.

(25) "Physical Helplessness" for purposes of Sexual Misconduct in the Student Conduct Code means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to engage in an act.

(26) "Plagiarism" means using the ideas or writings of another as one's own. It includes, but is not limited to:

(a) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; and

(b) The unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(27) "Policy" means the written regulations of the University. Examples of where written policies may be found include, but are not limited to:

- (a) The Student Conduct Code;
- (b) Residence Life Contract;
- (c) Information posted by the University on its web pages;
- (d) Computer Acceptable Use Policy;
- (e) Living Group Alcohol policy;
- (f) Greek Social Policy;
- (g) Graduate/Undergraduate Catalog;
- (h) Student Handbook; and
- (i) University and Oregon University System Oregon Administrative Rules.

(28) "President" means the University President.

(29) "Shall" and "will" are used in the imperative sense.

(30) "Sexual Misconduct" means:

(a) Unwanted Penetration is Penetration of another person, or causing the Penetration of another person, when one:

(A) Does not first obtain Explicit Consent from that person; or

(B) Knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(b) Nonconsensual personal contact occurs when a student subjects another person to contact of a sexual nature when a reasonable person would know that such contact would cause emotional distress:

(A) Without having first obtained Explicit Consent; or

(B) When he or she knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(c) Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that interferes with work or academic

performance because it has created an intimidating, hostile, or degrading environment and would have such an effect on a reasonable person of the alleged complainant's status when the conduct is unwelcome and sufficiently severe or pervasive that it deprives that person of benefits of the University's educational environment.

(31) "Student" means any person who has student status pursuant to OAR 571-021-0115.

(32) "Student Organization" means any group of University of Oregon students meeting criteria for group recognition established by the University.

(33) "University" means the University of Oregon and all of its undergraduate, graduate and professional schools, divisions, activities and programs and may be used interchangeably with "institution."

(34) "University Appeals Board" means the person or persons authorized by this Code pursuant to OAR 571-021-0165 to consider an appeal from a determination by Community Standards Hearings Panel that a student has violated the Student Code.

(35) "University Official" means a person having assigned University responsibilities who is performing their University assignment.

(36) "University Premises" includes all land, buildings or grounds owned, leased, operated, controlled or supervised by the University including adjacent sidewalks and streets.

(37) "University Sponsored Activity" means any activity, including activities sponsored or organized by recognized student organizations, on or off University premises that is directly initiated or supervised by the University.

(38) "Unwanted Contact" means repeated or persistent contact or attempts to contact another person when the contacting person knows or should know that the contact is unwanted by the other person; and

(a) The contact would cause a reasonable person fear of physical harm; or

(b) The contacting person knows or should know that the contact substantially impairs the other person's ability to perform the activities of daily life.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0110

### Delegations and Authority

Pursuant to ORS 352.010, the faculty is responsible for student discipline. The faculty of the University delegates authority for administering this Code and the Student Conduct Program as provided below:

(1) The Director of Student Conduct and Community Standards shall develop policies for the administration of the student conduct system and procedural rules for the conduct of Community Standards Hearing Board hearings that are consistent with provisions of the Student Conduct Code.

(a) The Director of Student Conduct and Community Standards and the Community Standards Committee may authorize a Community Standards Administrator to serve simultaneously as a Community Standards Administrator and as a member of the Community Standards Hearing Board. The Director may authorize the same Community Standards Administrator to impose sanctions in all cases.

(b) Consistent with OAR 571-021-0205(1)(d), the Vice President for Student Affairs or designee may serve ad hoc in place of the Director of Student Conduct and Community Standards.

(2) The Community Standards Committee shall be responsible for formulating or approving, prior to implementation, regulations and enforcement procedures pertaining to student conduct matters at the University of Oregon, and recommending to the faculty policy or administrative changes in any aspect of the Student Conduct Program.

(a) The Committee shall be appointed by the President and shall consist of four faculty members to be recommended by the Committee on Committees and four student members to be recommended by the ASUO. Faculty and student members shall serve staggered, two-year terms and may be reappointed, up to three consecutive terms, or a maximum of six consecutive years. The President may appoint temporary members to assure full Committee membership during summer session or at such other times as are necessary.

(b) The Director of Residence Life or designee, the Director of Student Conduct and Community Standards and the Director of the Office of Student Advocacy shall be non-voting, ex-officio members of the Community Standards Committee.

(3) Sub-delegation of Authority to Minor Tribunals and hearing officers.

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(a) With the consent of the President of the University, the Community Standards Committee may sub-delegate jurisdiction to handle violations of the Student Conduct Code to University officials, committees or minor tribunals. In all instances such sub-delegation shall be defined by the Committee in terms of specific jurisdiction, enforceable regulations, and maximum disciplinary sanctions that may be imposed.

(b) Subject to approval by the President, the Community Standards Committee sub-delegates to the Interfraternity Council, Panhellenic Council, Club Sports Executive Committee, and Residence Hall Association the authority to formulate:

(A) Regulations governing the conduct of their respective organization members;

(B) Hearing procedures and administrative practices to be followed by their respective tribunals;

(C) Disciplinary sanctions exclusive of expulsion, suspension, eviction or negative notation on transcript appropriate to the enforcement of their respective regulations; and

(D) Procedures for publication and notification to affected students of such regulations, hearing procedures and disciplinary sanctions.

(c) All such regulations, hearing procedures, and disciplinary sanctions shall be reduced to writing and approved by the Community Standards Committee prior to implementation.

(d) The authority granted to minor tribunals and their respective governing bodies is conditional and may be withdrawn at any time by the Community Standards Committee when a minor tribunal is either unable or unwilling to assume its responsibilities as part of the University's Student Conduct Program.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0115

### Jurisdiction

(1) Jurisdiction over types of actions and events. The Student Conduct Code applies to actions by Students that materially interfere with:

(a) An educational opportunity of a University community member;

(b) The health and safety of a University community member or campus visitor;

(c) The maintenance or protection of University property or personal property located on campus;

(d) University record keeping;

(e) University living accommodations and other services; or

(f) University sponsorship or supervision of non-classroom activities such as lectures, concerts, athletic events and social functions.

(2) Jurisdictional boundaries.

(a) On-Campus. The Student Conduct Code routinely applies to actions which occur on University Premises or at a University Sponsored Activity.

(b) Off-Campus. The University shall have discretion to extend jurisdiction over conduct that occurs other than on University Premises or at a University Sponsored Activity. In determining whether or not to extend jurisdiction, the University will consider its ability to gather information, including testimony of witnesses. The University may extend jurisdiction if the alleged conduct:

(A) Adversely and significantly affects the learning environment;

(B) Would have violated the Student Conduct Code if the conduct had occurred on campus; and

(C) Involved violence or produced a reasonable fear of physical harm; or

(D) Involved academic work or any records, documents, or identifications of the University.

(3) Student Status. An individual's status as a "student" is established by:

(a) An application for admission, housing, financial aid, or any other service provided by the University which requires student status;

(b) Registration for one or more credit hours; or

(c) Enrollment in a special non-credit program approved by the University.

(4) Jurisdiction over non-enrolled students. Jurisdiction is maintained between periods of enrollment unless the accused individual's official record in the Office of the Registrar shows a complete withdrawal prior to the expiration of the published deadline for registration for the succeeding period of enrollment. For students enrolled in the spring term, jurisdiction is maintained until the expiration on the published deadline for registration for the succeeding fall term. Complaints of academic dishonesty or fraudu-

lently obtaining a degree may be filed at any time, whether or not the student is currently enrolled or registered.

(5) In all cases except academic dishonesty or fraudulently obtaining a degree, the University must file disciplinary complaints under the Student Conduct Code within six months of:

(a) The University's discovery of the student's or student organization's involvement in the alleged violation; and no later than

(b) The student's last date of enrollment or registration, or an organization's recognition.

(6) Allegations of academic dishonesty or fraudulently obtaining a degree may be considered at any time regardless when the alleged misconduct occurred.

(7) Students may be accountable both to civil and criminal authorities and to the University for behavior that constitute violations of the law and the Student Conduct Code. Since the action of civil and criminal authorities is independent from University action, the University may decide whether to initiate or consider an alleged violation of the Student Conduct Code while criminal charges are pending or before they are filed or after they are resolved.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0120

### Violations of Community Standards by Individual Students

The following conduct violates the community standards that are essential to the core educational mission of the University of Oregon and subjects a Student or Student Organization to sanctions under the Student Conduct Code:

(1) Standards Relative to Academic and Personal Integrity. Integrity is a bedrock value of the University community and includes respect for open and honest intellectual exchange as well as respect for University records and for the Student Conduct Code itself. The following conduct violates standards of academic integrity:

(a) Cheating as defined in OAR 571-021-0105(3);

(b) Fabrication as defined in OAR 571-021-0105(14);

(c) Plagiarism as defined in OAR 571-021-0105(6);

(d) Academic misconduct as defined in OAR 571-021-0105(1);

(e) Intentionally furnishing false information to a University Official;

(f) Forgery, alteration or unauthorized use of University documents, records, keys student identification, keycards or services;

(g) Creation or distribution of false identification;

(h) Failure to comply with the terms of any sanction imposed in accordance with the Student Conduct Code; or

(i) Contempt of adjudicative proceedings including impairing or interrupting the due course of proceedings in the presence of any tribunal created under this Code. Adjudication of contempt and imposition of sanctions may be imposed summarily consistent with OAR 571-021-0240.

(2) Standards Relative to Respect for Property and for Shared University Resources. The following conduct violates standards of respect for property and shared University resources:

(a) Engaging in behavior that could reasonably be foreseen to cause disruption of, obstruction of, or interference with the process of instruction, research, administration, student discipline, or any other service or activity provided or sponsored by the University;

(b) Damage, destruction, theft, or unauthorized use of property located on the University campus or property owned or controlled by the University;

(c) Unauthorized entry into or use of University property or University-recognized living units, facilities, residence halls, equipment, or resources;

(d) Disorderly conduct (including that resulting from the use of alcohol), unreasonable noise, or conduct that results in unreasonable annoyance;

(e) Failure to comply with the reasonable directions of public officials acting in performance of their duties on University Premises or at a University Sponsored Activity when such conduct poses a danger to personal safety or property or obstructs or impairs educational or other Institutional activities;

(f) Violation of University Policy on the acceptable use of computing resources. Unacceptable uses of computing resources include, but are not limited to:

(A) Use of electronic forums to violate other sections of the Student Conduct Code;

(B) Sharing of accounts or computer lab passes;

(C) Violation of electronic privacy;

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- (D) Interference with computer use or operations;
- (E) Commercial or illegal use of electronic or computer resources;
- (F) Violation of copyright law; or
- (G) Threats, abuse or Harassment, as defined in OAR 571-021-0105, conduct made or transmitted via electronic forums or electronic mail.

(3) Standards Relative to the Rights of Individuals and to the Welfare of the University Community. An environment conducive to learning is one where the rights, safety, dignity and worth of every individual are respected. The following conduct endangers such an environment, and threatens the welfare of the University community as a whole:

(a) Physical contact that endangers, threatens, or harms the health or safety of any person or behavior that causes a reasonable person to fear such contact;

(b) Hazing, as defined in OAR 571-021-0105(18);

(c) Possession, use, or threatened use of a weapon, ammunition, or any object or substance used as a weapon on University Premises or at a University Sponsored Activity unless expressly authorized by law or University Policy. A concealed weapons permit does not constitute authorization;

(d) Unauthorized possession, use, or threatened use of dangerous chemical or biological substances or explosives;

(e) Tampering with fire-fighting equipment, turning in a false alarm, or engaging in conduct that constitutes a significant fire hazard;

(f) Harassment, as defined in OAR 571-021-0105(17), because of another person's race, ethnicity, color, gender, gender identification, national origin, age, religion, marital status, disability, veteran status, sexual orientation, or for other reasons, including but not limited to harassment prohibited by University Policy.

(g) Unwanted Contact, as defined in OAR 571-021-0105(38);

(h) Sexual Misconduct. A mission of the Student Conduct Code is to encourage good decision-making, personal integrity, and interpersonal behavior that is cooperative rather than coercive and that respects the rights of others. Sexual misconduct violates these values, and is committed when a student engages in sexual behavior described in OAR 571-021-0105(30).

(A) A complaint alleging Sexual Misconduct may be filed whenever Sexual Misconduct:

(i) Materially interferes with another person's academic performance or participation in a University Sponsored Activity, or performance of University employment;

(ii) Is committed on University Premises or at a University Sponsored Activity; or

(iii) Demonstrates reasonable threat to the health or safety of a Member of the University Community or the alleged student survivor.

(B) Sexual gratification or pleasure of any party involved is not relevant to a determination of whether Sexual Misconduct occurred.

(C) A violation of provisions of the alcohol or drug policy in the Student Conduct Code does not affect a person's ability to file a complaint regarding another person's Sexual Misconduct on the same occasion.

(D) Consent to one form of sexual activity does not automatically operate as consent to any other form sexual activity. A "no" always means that consent is not present, whereas a "yes" to one act at one time does not mean "yes" to other acts or to the same act at other times. Voluntarily making oneself incapacitated does not mean one is giving consent to any form of sexual activity.

(j) Prohibited alcohol use, which includes:

(A) Possession or consumption of alcohol by those under 21 years of age on University Premises or at a University Sponsored Activity;

(B) Furnishing of alcohol to a person under 21 years of age; or

(C) Consumption of an alcoholic beverage by a person at least 21 years of age or furnishing of an alcoholic beverage by or to a person at least 21 years of age, except in such areas and at such times as the University authorizes.

(k) Prohibited drug use, which includes:

(A) Manufacture, processing, distribution, or cultivation of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity, except as expressly permitted by law;

(B) Sale of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity; or

(C) Possession of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity except as expressly permitted by law.

(L) Lewd or indecent conduct on University Premises or at a University Sponsored Activity. Lewd or indecent conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record that would be an invasion of privacy pursuant to

ORS 163.700. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(m) Gambling, as defined and prohibited in ORS 167.108 to 167.164 except as authorized by ORS 464.270 to 464.530.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0125

### Violations of Community Standards by Student Organizations

When members of a Student Organization act together in a way that violates University Student Conduct Code, the Student Organization is expected to hold its members responsible for those violations.

(1) When a potential violation of the Student Conduct Code by a Student Organization comes to the University's attention, the Office of Student Conduct and Community Standards may review the incident to determine the appropriate process for resolution. Generally, the University will expect a Student Organization to hold itself accountable for the acts of its members when those acts are related to the Student Organization's activities.

(a) The Student Organization or its governing body will notify the Office of Student Conduct and Community Standards and keep it informed at all stages of the process.

(b) The University, through the Office of Student Conduct and Community Standards, reserves the right to take immediate jurisdiction at its discretion. The student organization or governing body may still hold its members accountable in the situation, but must do so in conjunction with the Office of Student Conduct and Community Standards.

(2) If sufficient action is not taken in a timely manner by the student organization to correct a violation of University standards, individuals may file grievances with the appropriate governing body, or, if none exists, with the Office of Student Conduct and Community Standards.

(3) If, in the judgment of the Vice President of Student Affairs, sufficient action is not taken in a timely manner by the governing body, the case will be referred to the Office of Student Conduct and Community Standards.

(4) In deciding whether the group is responsible for the violation, the University will consider whether the following factors are present:

(a) The violation arises out of a group-sponsored, organized, financed, or endorsed event;

(b) The organization provides the impetus for the violation;

(c) The violation occurs on the premises owned or operated by the group;

(d) A group leader has knowledge of the violation being likely to occur before it occurs and fails to take corrective action; or

(e) A pattern of individual violations is found to have existed without proper and appropriate group control, remedy, or sanction.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0130

### Sanctions

The University utilizes an educational sanctioning model; hearing officers or panels will make every attempt to provide an educational sanction that will help a student to make better choices in the future. The educational sanction applied will become progressively more demanding if the student repeats violations, demonstrating that learning has not taken place. An accumulation of a variety of violations may result in severe sanctions such as suspension, expulsion or negative notation on a transcript. Academic dishonesty and violations affecting the health, safety and well being of the community are deemed the most severe and may result, upon the first violation, in a negative notation being placed on a transcript, suspension, or expulsion.

(1) Forms of Sanctions

(a) Expulsion. Student status is severed permanently. A Student who has been expelled from the University shall not be permitted to participate in any University Sponsored Activity or allowed to reside on University Premises.

(b) Suspension.

(A) Individual Suspension. Student status is severed for a specified period. A student who has been suspended from the University shall not be permitted to participate in any University Sponsored Activity or allowed to reside on University Premises during the period the student is suspended.

(B) Group Suspension. A Student Organization loses University recognition and all privileges associated with such recognition for a specified period. Imposition of this sanction against the ASUO or a recognized

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Student Organization requires approval by the Vice President for Student Affairs.

(c) Negative Notation on Transcript. Entry of the fact of violation on the Student's permanent academic record as the sole or an additional sanction may be imposed at the discretion of the hearing officer or panel. After the expiration of the period of time, if any, set by the hearing officer or panel, the notation shall be removed upon the request of the Student or former Student.

(d) Revocation of Degree. An academic degree previously awarded by the University may be revoked if it was obtained by fraud or a significant part of the work submitted in fulfillment of, and indispensable to, the requirements for such degree constitutes Plagiarism. The Academic Requirements Committee may, upon appeal of a University graduate subjected to degree revocation, stipulate the requirements for obtaining a degree.

(e) Grade Penalty. A Student admitting Academic Misconduct or found responsible for Academic Misconduct is subject to a grade penalty as determined by the instructor in the course in which the violation occurred.

(f) Disciplinary Probation. In lieu of another sanction, a period of probation may be imposed during which any violations of the Student Conduct Code will result in more serious sanctions than might be otherwise imposed. A Student or Student Organization on probation may or may not lose designated privileges during the period of probation. During the time on probation, a Student or Student Organization may, by demonstrating good conduct, avoid additional sanctions. Imposition of this sanction against the ASUO or an ASUO-recognized group requires approval by the Vice President for Student Affairs.

(g) Restitution. The Student or Student Organization is required to replace or restore damaged, stolen, or misappropriated property.

(h) Educational Activity. The Student or Student Organization is required to complete a project or activity designed to help the Student or Student Organization understand why the behavior was inappropriate and encourage future compliance with the Student Conduct Code. The educational activity is designed to correspond to the severity and nature of the violation and to clarify the impact of that behavior on Members of the University Community. Educational activities may include, but are not limited to, assessments of substance abuse and other behaviors, community service, workshops, papers and similar assignments.

(i) Loss of Privileges. The Student or Student Organization is denied specified privileges normally associated with Student Status or recognized Student Organization status, such as participation in or sponsorship of University activities, use of University facilities or services, or living in University-owned or supervised housing. Imposition of this sanction against the ASUO or an ASUO-recognized group requires approval by the Vice President of Student Affairs.

(j) Conduct Reprimand. The Student or Student Organization is given written notice that the conduct engaged in is inconsistent with University standards and expectations and informed that future violations of the Student Conduct Code may result in the imposition of more serious sanctions.

(k) Suspended Sanction. The execution of any sanction authorized under the Student Conduct Code may be suspended. When suspending a sanction, a time limit for the suspension period shall be designated, and subsequent violations of the Student Conduct Code that will terminate the suspension and result in the imposition of the original sanction shall be specified. In the absence of any such violation, the original sanction shall be deemed completed at the end of the suspension period.

(2) Medical Leave. Actions taken pursuant to University policies on medical leave shall not be deemed disciplinary sanctions within the meaning of the Student Conduct Code.

(3) Failure to complete a sanction will be handled pursuant to OAR 571-021-0240(3).

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0140 Student Rights

Procedural fairness is basic to the proper enforcement of all University regulations. Accordingly, no disciplinary action shall be initiated or sanction imposed against a Student or Student Organization until they have been notified in writing of the complaints against them and their rights under this Code, and given the opportunity to be heard.

(1) Regulations and disciplinary sanctions affecting the conduct of all Students shall be based on general principles of equal treatment.

(2) The Director of Student Conduct and Community Standards shall insure that the best interests of Students and Student Organizations are

served, regardless of whether disciplinary action is taken, by making full use of appropriate medical, counseling and other professional services at the University, or if necessary by making referrals to community resources. For purposes of this Division, the Director may authorize another staff member to carry out any of the Director's responsibilities unless expressly prohibited from doing so.

(3) Students shall have an opportunity to participate in the formulation of all regulations and policies pertaining to the Student Conduct Code at the University of Oregon.

(4) All University regulations and policies pertaining to student discipline shall be published, distributed, or posted in such a manner as to furnish adequate notice of their contents to Students or Student Organizations.

(5) Students accused of violations of the Student Conduct Code can expect the following procedural protections:

(a) To be informed of the complaint and alleged misconduct upon which the complaint is based;

(b) To request that the Director of Community Standards resolve the case in an administrative disciplinary conference or to request a panel hearing.

(c) To be allowed reasonable time to prepare for the hearing or conference.

(d) To be informed of the information upon which a complaint is based and accorded an opportunity to offer a relevant response;

(e) To call and confront relevant witnesses;

(f) To be assured of confidentiality, in accordance with the terms of the federal Family Educational Rights and Privacy Act and Oregon law.

(g) To request that any person conducting a disciplinary conference or serving as a hearing board member or hearing officer be disqualified on the ground of personal bias.

(h) To be considered not responsible for the alleged conduct until proven responsible by a preponderance of the information. If expulsion is a possibility, the standard of proof must be clear and convincing information.

(i) To have an adviser of their choice present at the hearing provided that advisor's schedule does not unreasonably delay the hearing. The hearing panel shall determine what constitutes an "unreasonable" delay.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0150 Administration of the Conduct System

(1) Disciplinary Records and Files. Case referrals will result in the development of a disciplinary file in the name of the accused student. If the Student is found not responsible for the complaints, the disciplinary file will become void.

(a) Voided files will be so marked and shall not result in a disciplinary record. Voided files will normally be destroyed after one year. Where a Student files a conduct complaint against another Student, a file shall be created for both Students.

(b) Disciplinary records may be voided by the Director of Conduct and Community Standards for good cause, upon written petition from the student. Factors to be considered in review of such petitions shall include:

(A) The conduct of the Student subsequent to the violation; and

(B) The nature of the violation and the severity of any damage, injury, or harm resulting from it.

(2) Student Conduct Reports.

(a) The Community Standards Committee shall require from University officials, hearings boards, referees, committees and tribunals periodic written reports of the disposition of all student conduct cases dealt with under their jurisdiction. The Committee shall examine such reports for consistency with existing policies and, when necessary, review the reports with the appropriate officials or tribunals.

(b) At the end of each academic year, the Committee shall submit to the President, University Senate, Deans, Department Heads, the ASUO President, and the Office of Student Advocacy, a written report covering the entire Student Conduct Program, including an evaluation of the existing rules, policies, and enforcement procedures. This report shall also detail all Code revisions approved during the previous year and shall be available to any person upon request.

(3) Director of Student Conduct and Community Standards.

(a) The President of the University shall designate a Director of Student Conduct and Community Standards who shall have primary responsibility for administering the Student Conduct Program and coordinating the activities of all University officials, hearing officers, referees, committees, or tribunals that are concerned with the Community Standards Program.

# ADMINISTRATIVE RULES

(b) The Director shall be responsible to the Community Standards Committee for maintaining complete records pertaining to the activities of the Community Standards Program. Those records shall include a summary of the business of the Community Standards Committee and a report of the disposition of each disciplinary case handled by any person or group authorized to impose disciplinary sanctions in the name of the University. For record keeping purposes, the Director may prescribe reporting procedures to be followed, in addition to those in paragraph (2) above by those authorized to impose disciplinary sanctions.

(c) The Director shall serve as non-voting Secretary of the Community Standards Committee and as advisor to all individuals and groups authorized to impose disciplinary sanctions. The Director shall serve as a non-voting, ex-officio member of the Residence Hall Governance Committee and of the residence hall Peer Judicial Board.

(d) The Director shall be responsible for gathering and presenting to the Community Standards Committee the reports required by this code.

(4) Student Conduct Code Adoption, Amendment and Revision.

(a) Code establishment. Upon approval by the University Senate and adoption as an Oregon Administrative Rule, this Student Conduct Code becomes effective and supersedes all previous regulations and policies pertaining to student discipline at the University of Oregon.

(b) Code Amendment. This Code may be amended by the faculty except that the sections on delegation to minor tribunals may also be amended by the Community Standards Committee. Amendments to this Code are effective when adopted as Oregon Administrative Rules.

(c) Code Revision. This Code shall be continuously reviewed in its entirety to make sure it is consistent with best practices.

(d) This Code is adopted as Oregon Administrative Rules. The provisions contained in these rules take precedence over any other versions of the Student Conduct Code regardless of where promulgated.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0160

### University Hearings Board; Student Conduct Hearings Panel

(1) University Hearings Board Membership. The University Hearings Board (Hearings Board) shall consist of eighteen members, all of whom must be appointed by the University President. The Hearings Board shall consist of:

(a) Ten registered students at the University of Oregon that have been recommended to the President by the ASUO. Each student member is appointed for a one-year term and may be reappointed for additional terms;

(b) Four University officers of instruction, all of whom the Committee on Committees of the University Senate shall recommend to the President. Two officers of instruction will serve a one-year term, and the other two will serve a two-year term; and

(c) Four University officers of administration all of whom the Committee on Committees of the University Senate shall recommend to the President. Two officers of administration will serve a one-year term, and the other two will serve a two-year term.

(2) Recruitment and selection of student nominees.

(a) The Office of Student Conduct and Community Standards and Office of Student Advocacy will take responsibility during spring term for the recruitment and receipt of applications for new student members to the Hearings Board. The Office of Student Conduct and Community Standards and Office of Student Advocacy will ensure that the nominated students are representative of the diversity of the University of Oregon. Particular efforts will be made to recruit law students.

(b) A review committee consisting of one member of the Office of Student Conduct and Community Standards, one member of the Office of Student Advocacy, one student from the Residence Hall Association, and two members of the ASUO, one of which will be the University Affairs Director, will review the applications for the Hearings Board. The review committee will make every attempt to ensure that the nominated students are representative of the diversity of the applicant pool.

(c) Preference will be given to up to 5 recommended students wishing to return to the Hearings Board for reappointment.

(d) Names of nominated students will be forwarded to ASUO for formal nomination to the University President pursuant to (1)(a).

(e) New student members of the Hearings Board, once appointed by the President, will be trained by the Office of Student Conduct and Community Standards and the Office of Student Advocacy before the end of the academic year in which they are appointed.

(f) New student members shall be ready and available to assume responsibilities for the Hearings Panel at the beginning of the next academic year after they are appointed.

(3) Student Conduct Hearings Panel (Hearings Panel). Student Conduct Code panel hearings, pursuant to OAR 571-021-0205, are heard by a panel on which officers of instruction, officers of administration and students are represented, drawn from members of the Hearings Board. A Hearings Panel cannot proceed with fewer than four members present.

(a) A party may challenge a Hearings Panel member or the chair on the ground of personal bias. Any member who is incapable of rendering a fair and objective decision based solely upon the facts, information and arguments presented during the hearing with no influence based on the member's familiarity with people, facts or the situation arising from outside the hearing is disqualified from hearing the case.

(b) If a Hearings Panel member is disqualified, the chair of the Hearings Panel will determine whether to fill the position by appointment of another member of the Board or to proceed with fewer members so long as the Hearings Panel consists of no fewer than four qualified members.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0165

### University Appeals Board

(1) The University Appeals Board (Appeals Board) is the final appeals body within the Student Conduct Program. As set forth in OAR 571-021-0250, the Appeals Board shall be responsible for reviewing substantive or procedural appeals from the decisions of a Hearings Panel.

(2) Membership. The Appeals Board shall consist of three faculty members, recommended by the Committee on Committees of the University Senate, and three student members, recommended by the ASUO. Board members shall be appointed by the President and serve for one-year terms. They may be reappointed, but no member may serve for more than two consecutive terms. Temporary members may be appointed to assure full Appeals Board membership during summer session or at such other times as are necessary. The President shall designate one of the members as pro tem chair of the Appeals Board.

(3) The Appeals Board will elect its permanent chair at its first meeting. A quorum shall consist of two students and two faculty members. The Appeals Board shall establish its own rules of procedure.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0200

### Conduct Procedures

(1) Complaint. Any Member of the University Community may file a complaint against a Student for a violation of the Student Conduct Code. A complaint shall be prepared in writing and directed to the Director of Student Conduct and Community Standards. Any complaint should be submitted as soon as possible after the alleged violation takes place, preferably within one year. Jurisdiction is determined pursuant to OAR 571-021-0115. The longer one waits to file a complaint the less information is likely to be available for the hearing, therefore it is important to file a complaint as soon as possible. Once the Office of Community Standards receives a complaint, the Office has six months to send written notice to the accused Student of the complaint.

(2) Notice. Upon receiving a complaint or notice that a Student may have violated the Student Conduct Code, the Director of Student Conduct and Community Standards shall serve a written notice upon the Student, either by electronic mail or by mailing to the latest address of the Student on file at the Office of the Registrar of the University, or, if necessary, by registered or certified mail or by personal service. Such notice shall inform the student of:

(a) The alleged Code violation;

(b) The opportunity for the student to meet with the Director for purposes of discussing the options for disposition of the case;

(c) The Student's right to assistance. At an administrative conference with the Director, or a hearing by a Hearings Panel or before the Appeals Board, a Student may, but need not represent his or her own interests, or be assisted by someone including but not limited to one of the following representatives:

(A) The Office of Student Advocacy;

(B) Another Student;

(C) A member of the faculty or administration;

(D) A member of the Oregon Bar.

# ADMINISTRATIVE RULES

(d) The requirement to respond within 14 calendar days, excluding breaks between terms or when the student is not registered, to arrange a meeting with the hearing officer. The hearing officer will proceed as provided in (3)(b) if the Student does not arrange to meet or fails to meet with the hearing officer as arranged.

(3) Response.

(a) After proper service of written notice as provided in (2), the Student may arrange to meet with the Director for the purpose of selecting an option for the disposition of the case, either through conference with the Director or staff or through hearing by a Hearings Panel pursuant to OAR 571-021-0210.

(b) If after receiving notice, pursuant to this rule, the Student does not arrange to meet with the Director to select an option for disposition of the case within 14 days, excluding breaks between quarters or when the student is not registered, or if the Student arranges to meet with the Director to select an option to dispose of the case but does not attend such a meeting, the Director of Student Conduct and Community Standards may take any of the actions specified in OAR 571-021-0205 or 571-021-0210 for disposition of the case without consultation with or agreement by the Student.

(c) Immediate Referral to Hearings Panel. If the Director of Student Conduct and Community Standards finds that under the circumstances of the case, an immediate referral to a Hearings Panel would be in the best interest of the University or the best interest of the Student, the Director of Student Conduct and Community Standards may make such referral before service of notice upon the student. In such case, the letter sent to the student shall notify the student of the referral to the Hearings Panel and contain the information required in (2)(c).

(4) Conference and Hearing Board Referrals:

(a) The Director of Student Conduct and Community Standards or a designee will conduct a preliminary review to determine whether the alleged misconduct might result in negative notation on transcript, expulsion or suspension from the University. Students not subject to suspension, expulsion or negative notation will be entitled to an administrative disciplinary conference with the Director of Student Conduct and Community Standards pursuant to OAR 571-021-0205 or a hearing with a Hearings Panel pursuant to OAR 571-021-0210. Students who are subject to suspension, expulsion or negative notation will be entitled to a hearing before a Hearings Panel pursuant to OAR 571-021-0210.

(b) Students referred for a hearing by the Director of Student Conduct and Community Standards may elect to have their cases resolved in accordance with OAR 571-021-0210. Such an election must be in writing, affirming that the Student has had an opportunity to consult with an adviser of their choosing, is aware a hearing is being waived and that the full range of sanctions may be imposed, including negative notation on transcript, suspension or expulsion or from the University.

(5) With the consent of an Accused Student, the Director of Student Conduct and Community Standards may defer proceedings for alleged minor violations of this Code for a period not to exceed ninety days. Pending complaints may be withdrawn thereafter at the discretion of the Director of Student Conduct and Community Standards or designee.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0205

### Administrative Conferences

(1) Students accused of violations that may result in penalties less severe than suspension, expulsion or negative notation may choose an administrative conference with the Director of Student Conduct and Community Standards, or designee. The following procedural protections are provided to accused students in disciplinary conferences:

(a) Reasonable access to the case file prior to and during the conference, except to the extent access to such material is prohibited by law. The case file may contain materials that are considered "education records" pursuant to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended and personal notes of University staff members and complainants. Access to these materials may be prohibited by law. Otherwise, to the extent allowed by law, copies of the case file will be provided upon request.

(b) An opportunity to respond to all information provided and to ask the Director or designee hearing the case to contact relevant and necessary witnesses.

(c) The right to be accompanied and assisted by an adviser

(d) The right to have the case referred outside the Office of Community Standards if the Student can articulate a reasonable basis from which to conclude that the Office of Community Standards is biased for

some reason that would prevent the student from receiving a fair hearing by the office. Such cases are referred to the Vice President for Student Affairs or his or her designee.

(2) In cases where the Director of Student Conduct and Community Standards concludes that a Student accused of any offense under the Student Conduct Code lacks the mental capacity to respond to the complaint, the Director shall stay the proceeding until such time that the Director concludes that the Student may adequately respond. A stay granted pursuant to this section shall not in any manner preclude a proceeding for medical leave under OAR chapter 571, division 23. If the student has been accused of Academic Misconduct, no academic sanction may be imposed during a stay granted pursuant to this section, but the faculty member for the coursework out of which the complaint of Academic Misconduct arose shall request the Registrar to assign a grade of "I" until the disciplinary proceeding has been completed.

(3) No sanctions shall be imposed against a Student who acknowledges engaging in the specific conduct alleged and who submits a written statement from a Student Health Center psychiatrist or a Counseling Center psychologist stating that, as a result of mental disorder at the time of the offense, the Student did not appreciate the wrongfulness of the conduct or could not conform his or her behavior to the requirements of the Code. The Student may submit any other supplemental information pertinent to his or her mental condition to the Director of Student Conduct and Community Standards. If, based upon all information received, the Director decides that the conduct of the Student resulted from mental disorder, the Director shall seek professional assistance and advice, and, if appropriate and legally authorized, consult with the Student's parent or guardian or take other measures to assure a fair disposition of the case. If the Student has been accused of Academic Misconduct, the faculty member for the coursework in which the Academic Misconduct took place shall assign an appropriate grade.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0210

### University Hearings Panel Hearings

If a matter cannot be resolved by an administrative conference, if selected or required pursuant to OAR 571-021-0200, resolution will be sought through a hearing before a Hearings Panel. As with all other aspects of the Student Conduct Code, the hearing is primarily for educational purposes. The hearing is an information-gathering process not a criminal proceeding, trial, or litigation.

(1) All complaints shall be presented to the Accused Student in written form. Because the University community values prompt disposition of student conduct matters, a time shall be set for a hearing not less than twenty nor more than thirty calendar days after the Student has been notified. Maximum time limits for scheduling of hearings may be extended at the discretion of the Director of Student Conduct and Community Standards or the Hearings Panel.

(2) The Hearings Panel will select a chair from among the returning members of the hearings board. The chair shall preside at the hearing. The chair may participate in Hearings Panel deliberations and discussions but shall not vote.

(3) The University community values personal responsibility and accountability as an important part of its core educational process. In accord with this value, in a hearing the Accused Student and any Complainant are responsible for responding to inquiries from the Hearings Panel. However, an Accused Student and a Complainant, if any, may each be assisted by one advisor as identified in OAR 571-021-0200. The following rules and standards pertain to any such advisor:

(a) The advisor may, but need not, be an attorney;

(b) A Student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor;

(c) A Student planning to invite an advisor to a hearing must inform both the Director of Student Conduct and Community Standards and the Hearings Panel of this intention at least seven calendar days prior to the hearing. If a matter includes both an Accused Student and a Complainant, the Director shall promptly notify the other Student of the first Student's intent to invite an advisor. The other Student shall be afforded an equal right to invite an advisor even if doing so results in the Director and the Hearings Panel receiving less than seven days prior notice.

(d) Advice provided by an advisor may include advising the student how to answer any question posed by the Hearings Panel;

## ADMINISTRATIVE RULES

(e) In order to preserve the educational tone of the hearing and to avoid an adversarial environment, advisors are generally not permitted to speak or participate directly in any hearing, except in one or more of the following specific ways:

(A) An advisor may provide a written opening summary or statement.

(B) An advisor may provide an oral closing summary or statement.

(C) An advisor may be allotted a limited time-period to ask one or more questions of the Student the advisor is advising and to allow the Student to respond. Questions asked by an advisor are in addition to questions asked by the Hearings Panel.

(D) An advisor may submit to the Hearings Panel in writing any suggested questions for the Hearings Panel to ask of any other participant who is giving information at the hearing.

(E) The Hearings Panel may permit advisors to question a person providing information at the hearing, if both Complainant and Accused Student independently so request at the beginning of the hearing.

(f) The Hearings Panel will automatically add the name of any person filling the advisor function at a hearing to a list of Hearings Panel Advisors who may be available for other students who wish to consult with an advisor.

(g) An advisor should act in accordance with the standards and values of the University community. If an advisor's conduct in a hearing is judged to merit disqualification, the Hearings Panel has the authority to remove a person's name from the Hearings Panel Advisors list and to disqualify that person from serving as an advisor in future hearings.

(4) A Student whose ability to present their own information is hindered either by a language barrier, a documented disability or other serious difficulty with public, oral presentation shall have the right to petition the Hearings Panel to permit someone to speak on the Student's behalf at the formal hearing. Such a spokesperson may be a friend or family member, a professionally-trained translator or interpreter or a member of the University community but may not be an attorney or any other professional receiving a fee for representing or advising the student.

(5) The Hearings Panel, in its sole discretion, has responsibility and authority for deciding the length of time a party is allowed for closing statement or for questioning, if any, by advisors and at what point in the hearing these should occur.

(6) The Director of Student Conduct and Community Standards or designee shall give an Accused Student notice of the hearing date and the specific complaints against them at least 14 calendar days in advance of the hearing date. Notice shall be by personal delivery or by certified mail to the last address provided by the Accused Student to the university.

(7) An Accused Student shall be accorded reasonable access to the case file, but shall not have access to material the disclosure of which is prohibited by law. Upon request to the Director of Student Conduct and Community Standards, an Accused Student will be provided copies of the case file, except to the extent prohibited by law. The original case file will be retained in the Office of the Director of Community Standards.

(8) The chair of the Hearings Panel may require attendance of relevant witnesses after consultation with the Director of Student Conduct and Community Standards. Notice of required attendance must be personally delivered or sent by certified mail. University Students and employees are expected to comply with these requests, unless compliance would result in significant and unavoidable personal hardship, or substantial interference with normal University activities, as determined by the chair of the Hearings Panel, in consultation with the Director of Student Conduct and Community Standards. In addition, in any formal hearing, either the University or the Student may request the University General Counsel to issue a subpoena pursuant to ORS 183.445.

(9) The Hearings Panel will consider an Accused Student who fails to appear after proper notice to have pleaded "not responsible" to the complaints pending against them. A hearing may be conducted without the Accused Student present, if necessary.

(10) All hearings conducted under the authority of the Student Conduct Code are to be closed unless a student has waived in a signed, written and dated document any restrictions on disclosure of documents, exhibits, written statements, interview notes, photographs, or other materials in the Student Conduct case file or in other education records which could be offered, admitted, identified, described, referred to, or generated in the course of the hearing.

(a) A waiver of access to education records shall apply to the entire hearing, unless otherwise agreed to by the University and a student Complainant, if there is one, and the Accused Student.

(b) The chair of the Hearings Panel shall close the hearing unless a waiver is provided to the Director of Student Conduct and Community

Standards prior to the beginning of the hearing. Only participants in the hearing shall be allowed to attend a closed hearing. Participants include but are not limited to, the Hearings Panel, the Director of Student Conduct and Community Standards, the Accused Student and the Accused Student's advisor, interpreter or translator, and appropriate University officials.

(c) With regards to sexual assault as used in 20 U.S.C. § 1092(f)(8)(B)(iv)(I) (2000), a Complainant and an Accused Student are entitled to the same opportunities to have others present during a campus disciplinary proceeding. A Complainant who alleges sexual assault may have an equivalent number of advisors present during the hearing as the Accused Student. If an Accused Student does not have an advisor, a Complainant alleging sexual assault may still have an advisor present during the hearing. A Complainant who alleges sexual assault also has the right to be present during the portion of hearing when information is being presented.

(d) Except as otherwise required, the chair of the Hearings Panel may exclude persons from the hearing as necessary to maintain order.

(e) The Hearings Panel may, on its own initiative, or at the request of a participant, exclude from an otherwise open hearing a prospective witness or witnesses, other than the Complainant and the Accused Student, during the statements of other witnesses.

(11) The chair shall exercise control over the proceedings to avoid needless consumption of time and to achieve completion of the hearing in a timely manner. Any person, including an Accused Student or a Complainant, who disrupts a hearing may be excluded by the Chair.

(12) Procedural questions are subject to final determination by the chair of the Hearings Panel.

(13) Witnesses.

(a) Witnesses shall be required to affirm that their testimony is truthful. Witnesses may be subject to disciplinary sanctions or perjury for knowingly providing a false statement.

(b) Questioning witnesses.

(A) Accused Students (not their advisors) and Complainants, may ask relevant questions of witnesses.

(B) Hearings Panel members may ask questions of the parties and witnesses.

(14) Information and evidence.

(a) The Oregon Evidence Code does not apply except that rules of privilege recognized by Oregon law shall apply.

(b) Irrelevant, immaterial or unduly repetitious material shall be excluded. All other information of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(c) Information may be received in written or oral form.

(d) The Hearings Panel may also take judicial notice of matters which would be within the general experience of University students and faculty members.

(e) Information in hearing alleging Sexual Misconduct Information about the sexual behavior of a student prior to or subsequent to an alleged Sexual Misconduct incident is not admissible in a hearing unless the following conditions apply:

(A) A description of the information regarding specific instances of sexual behavior, whether of the Complainant or of the Accused Student, is submitted to the Hearings Panel chair no fewer than seven days prior to the hearing (unless the information is otherwise deemed essential by the Hearings Panel chair)

(B) The Student whose sexual behavior is at issue has had an opportunity to provide a written response; and

(C) The Hearings Panel chair finds that the probative value of the information outweighs the danger of undue prejudice to the student.

(15) Hearings shall be tape recorded or transcribed.

(16) Allegations of violations of the Student Conduct Code must be established by a preponderance of evidence except a student may be expelled only based on clear and convincing evidence.

(a) The Director shall be responsible for investigating and presenting the case to the Hearings Panel and ensuring that all relevant information is presented on both sides.

(b) For all violations of the Student Conduct Code, it is the complaining party's burden to prove the case by a preponderance of information except as stated above.

(17) A Complainant, an Accused Student, or a witness may identify concerns about personal safety, well-being or fear of confrontation with another hearing participant to the Director of Student Conduct and Community Standards. The Director will determine what, if any, accommodations are appropriate. Examples of accommodations include, but are

# ADMINISTRATIVE RULES

not limited to, separate facilities, visual screens, telephone or remote video participation or written submissions.

(a) If another participant objects to the accommodation, the participant shall submit written objections to the chair of the Hearings Panel. Written objections should include information describing how the accommodations proposed will affect the fairness of the hearing.

(b) The Hearings Panel will decide whether to provide the proposed accommodation.

(c) The Hearings Panel will not consider a request for accommodation or the granting or denial of an accommodation in concluding if an Accused Student violated the Student Conduct Code.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0215

### Academic Misconduct Procedures

(1) Notice. Upon the discovery of suspected Academic Misconduct, as defined in OAR 571-021-0100(1), the University Official with responsibility for the academic matter or the faculty member in whose course the incident occurred shall promptly notify the Student of the incident. This notice shall include a discussion of the option of having the case referred directly to the Director of Student Conduct and Community Standards.

(2) If a Student admits to Academic Misconduct in a course, the faculty member shall impose an appropriate academic sanction up to and including a grade of "N" or "F" and report the incident to the Office of Student Conduct and Community Standards. Written notice of the sanction or resolution without sanction shall be given the Student. If, in the judgment of the faculty member, further disciplinary action is warranted, the report to the Director of Student Conduct and Community Standards shall so indicate. The Student may appeal the academic sanction to the faculty member's department head and, ultimately, to the dean of the college or school in which the incident originated.

(3) If a Student admits to Academic Misconduct in a situation other than a course, the responsible University Official may determine and implement an appropriate response and report the incident to the Office of Student Conduct and Community Standards. Written notice of the sanction or resolution without sanction shall be given the Student. If, in the judgment of the University Official, further disciplinary action is warranted, the report to the Director of Student Conduct and Community Standards shall so indicate. The Student may appeal the academic sanction to the University Official's department head or director.

(4) If a faculty member or University Official and a Student cannot agree as to whether Academic Misconduct has occurred, the University Official or faculty member will, not later than fourteen calendar days during which the University is in session after the date the faculty member or University Official notifies the Student, make a written referral of the case to the Office of Student Conduct and Community Standards for resolution. The case will then be conducted in accordance with the procedures established in this Code.

(a) If there is a finding that the Student engaged in Academic Misconduct in a class, in addition to sanctions imposed through the regular student conduct procedures, the faculty member will assign an appropriate grade.

(b) If there is a finding that the Student did not engage in Academic Misconduct, no academic sanction may be imposed.

(5) Reporting Academic Misconduct. Regardless of the method of resolution, University Officials, including faculty members are required to file a written report of any Academic Misconduct with the Director of Student Conduct and Community Standards. These reports shall be treated as confidential and maintained consistent with the Student Records Policy, OAR 571-020-0100 et seq.

(6) Withdrawing from a Course.

(a) If a Student's Academic Misconduct in a course results in an academic sanction, the student will not be permitted to drop or withdraw from the course, or to change the course's grading option, and shall be reinstated in the course in if they have dropped or withdrawn.

(b) If a Student's Academic Misconduct does not result in an academic sanction, the Student may withdraw from the course or change the course's grading option at the later of:

(A) Expiration of the withdrawal deadline for the course;

(B) Expiration of the deadline for changing grade options; or

(C) Five business days after the student receives notification of the decision or termination of Student Conduct Code proceedings without sanction.

(c) In the event the Student is found not responsible for Academic Misconduct and the Student no longer feels comfortable returning to the class, the Office of Student Conduct and Community Standards will assist the student to attempt to remove the "w" from the transcript.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0220

### Alternative Dispute Resolution

Consistent with the primary mission of the Code to establish community standards and procedures that promote an environment conducive to learning by upholding academic standards and by respecting community members, alternative dispute resolution provides an opportunity for individuals affected by violations or alleged violations of this Code to resolve disciplinary matters among themselves, with or without findings of responsibility. Students who participate in a method of alternative dispute resolution and successfully fulfill their obligations may, upon completion of their obligations, have their student conduct record regarding the matter expunged.

(1) Mediation. Mediation is encouraged as an alternative means to resolve allegations of Student Conduct Code violations. The Director of Student Conduct and Community Standards will inform Complainants and Accused Students about the availability of mediation resources. The Director, in the exercise of the Director's sole discretion, may, except in cases of alleged Academic Misconduct, decline to process a complaint until the parties make a reasonable attempt to achieve a mediated resolution.

(a) To be binding under this Code, any mediated resolution must be approved by the Director of Student Conduct and Community Standards. Any agreement will be enforced by the Office of Student Conduct and Community Standards.

(b) Procedures for Alternative Dispute Resolution. Students wishing to pursue mediation shall notify the Director of Student Conduct and Community Standards within fourteen calendar days of receiving written notice of the violation pursuant to OAR 571-021-0200.

(c) The Director of Student Conduct and Community Standards may determine if an Accused Student must acknowledge responsibility as a condition of the Director's approval of a mediation option. If the Director requires an Accused Student to acknowledge responsibility as a condition to approving the mediation, the Director will not proceed until the Accused Student has provided the Director with that acknowledgement.

(d) The Director of Student Conduct will determine whether others affected by the alleged violation are willing to participate in mediation. Parties agreeing to mediation must sign a waiver allowing the Director to receive information from the mediator regarding the progress of the mediation.

(e) Once the necessary parties agree, the Director of Student Conduct and Community Standards will approve a mediator and set a date for a report from the mediator regarding progress. If the Director, in the Director's sole discretion, determines that mediation is unlikely to be successful, the Director may inform the necessary parties and initiate other procedures.

(2) Restorative Justice. Restorative Justice serves primarily as a diversion program for Accused Students who have acknowledged responsibility for a Code violation and who wish to remedy the effects of the violation.

(a) The Director of Student Conduct and Community Standards will consider approving Restorative Justice in the following circumstances:

(A) The Accused Student acknowledges responsibility for a the Code violation;

(B) There are clearly identifiable negative impacts on either individuals or the community resulting from the violation; and

(C) The Accused Student and those impacted by the incident agree to participate in Restorative Justice.

(b) A Restorative Justice outcome shall not be binding unless approved by the Director of Student Conduct and Community Standards. An agreement reached through Restorative Justice will be enforced by the Office of Student Conduct and Community Standards.

(3) The Director of Student Conduct and Community Standards may initiate procedures to make a determination of responsibility or, in the Director's discretion, to proceed pursuant to OAR 571-021- 0240 if an Accused Student who participates in alternative dispute resolution fails to fulfill an obligation or otherwise fails to comply with the approved resolution.

(4) Upon timely completion of a student's obligation arising from alternative dispute resolution, a student may provide to the Director of Student Conduct and Community Standards documentation of completion.

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If the Director of Student Conduct and Community Standards concludes the student fulfilled the student's obligation in a timely fashion, Director of Student Conduct and Community Standards will remove information regarding the violation from the student's record.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0230

### Emergency Action

(1) The Director of Student Conduct and Community Standards or his or her designee may take emergency action regarding a Student when immediately necessary to secure the health or safety of any persons and there is an alleged violation of the Student Conduct Code.

(2) Emergency Action includes, but is not limited to:

(a) Immediate withdrawal of the Student from the University;

(b) Restrictions on the Student's presence on University Premises or at University Sponsored Activities.

(3) The Director of Student Conduct and Community Standards may request that the Student secure a medical and psychological evaluation through the Student Health Center or at another facility at the Student's own expense. The evaluation may be used to determine the appropriateness of withdrawing the emergency action.

(4) When the emergency action takes place, the Director of Student Conduct and Community Standards or designee will:

(a) Inform the Student of the reason for the emergency action;

(b) Give the Student the opportunity to explain why emergency action need not be taken;

(c) Inform the Student that a preliminary hearing will take place according to Paragraph (5) and that the Student will be informed of its time, place, and date; and

(d) Inform the Student of the possible restrictions that may be imposed prior to a panel hearing.

(5) The preliminary hearing shall take place within two business days of the emergency action. At this hearing the Student shall have a full opportunity to demonstrate to the Director of Conduct and Community Standards that emergency action is not necessary pursuant to Paragraph (1). The Student may be represented by a student advocate or other counsel.

(a) Based on the reasonable evaluation of the information presented at the preliminary hearing, the Director of Student Conduct and Community Standards shall notify the Student within 24 hours of the decision to:

(A) Dissolve the emergency action and take no further action;

(B) Dissolve the emergency action but proceed to a full hearing regarding the Student's conduct pursuant to OAR 571-021-0210 of the Student Conduct Code; or

(C) Sustain or modify the emergency action until such time as a Hearings Panel may hold a hearing regarding the Student's conduct.

(6) An emergency action shall be reviewed by Vice President for Student Affairs or his or her designee at the request of the Student no sooner than the next working day after the preliminary hearing. The review shall provide an opportunity for the Student to explain why an emergency action need no longer be imposed. Subsequent review of the same emergency action may be requested no more frequently than every ten days.

(7) A Hearings Panel hearing subsequent to an emergency action shall occur no sooner than fourteen days after the emergency action is imposed, and shall be administered pursuant to 571-021-0210 of this Code. If the Director for Student Conduct and Community Standards agrees, the Student may waive the fourteen-day notice requirement in order to expedite the hearings process.

(8) If emergency restrictions on a Student's housing or enrollment are removed, the Student will not be assessed any fees for reinstatement.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0240

### Imposition of Sanctions, Adjudication of Contempt and Failure to Complete Assigned Sanctions

(1) A University Official, Hearings Panel or Student Organization that determines that an Accused Student violated the Student Conduct Code may impose sanctions authorized by this Code unless otherwise expressly limited. Sanctions are subject to appeal pursuant to OAR 571-021-0250.

(2) A chair of a Hearings Panel or a University Official responsible for making a determination if a student has violated this Code may declare a Student participant in contempt of adjudicative proceedings pursuant to OAR 571-021-0120(1)(i) and impose sanctions without complying with the procedures otherwise required in this Code. Adjudication of contempt and

sanctions imposed are subject to appeal pursuant to OAR 571-021-0250. Imposition of sanction and the circumstances that gave rise to it shall be reported to the Director of Conduct and Community Standards.

(3) Failure to complete assigned sanctions. The University will use the procedures established by this section to enforce the timely completion of disciplinary sanctions issued under the Student Conduct Code.

(a) A Student who is found responsible for a Student Conduct Code violation and who receives a sanction will be informed orally by the Office of Student Conduct and Community Standards of the consequences of failing to complete the sanction. The Office of Student Conduct and Community Standards will also inform the student in writing of the consequences of failing to complete the sanction as part of the decision letter sent to the Student.

(b) If a Student fails to complete the disciplinary sanction by the assigned deadline, the Office of Student Conduct and Community Standards will send the Student a letter that states:

(A) The Student has five class days after the assigned deadline to provide verification to the Office of Student Conduct and Community Standards that the assigned sanction has been completed or the Student's record ability to register for classes, drop classes, or change grade options will be placed on hold;

(B) Once the Student's record is on hold, the hold will not be removed until the Office of Student Conduct and Community Standards has received verification that the Student has completed the sanction; and

(C) The Student is responsible for ensuring that the Office of Student Conduct and Community Standards receives verification of completion of the sanction.

(c) When a hold is placed on a Student's record, the Office of Student Conduct and Community Standards will inform the Student in a letter that the hold has been placed, the consequences of the hold, and the actions required to have the hold removed.

(d) The hold will be removed immediately once the Student provides verification of completion of the sanction.

(e) A Student who is unable to register because the student has not completed a sanction may seek a waiver from the Office of Student Conduct and Community Standards. The Office of Student Conduct and Community Standards will grant a waiver, allowing the student to register, provided the Student agrees the Student's registration may be cancelled immediately and the hold reinstated if the Student has not completed the sanction by a deadline set by the Office of Student Conduct and Community Standards, in its sole discretion.

Stat. Auth.: ORS 351, 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 3-2006, f. & cert. ef. 10-18-06

## 571-021-0250

### Appeals

The University Appeals Board (Appeals Board) is the final appeals body within the Student Conduct Program. As set forth in OAR 571-021-0165 this Appeals Board shall be responsible for reviewing substantive or procedural appeals from the decisions of a Hearings Panel.

(1) A decision reached by the Hearings Panel may be appealed by the Accused Student or Complainant(s) to the Appeals Board within fourteen calendar days of the decision. Such appeals shall be in writing, state the basis for the appeal and be delivered to the Office of Student Conduct and Community Standards.

(a) An Accused Student who does not attend the hearing of the Hearings Panel may appeal only to show with direct information that the Accused Student did not receive notice of the hearing.

(b) A Complainant(s) who fails to attend the hearing of the Hearings Panel or fails to present information in a format approved by the Hearings Panel may appeal only to show with direct information that the Complainant did not receive notice of the hearing.

(2) Except as the Appeals Board determines necessary to explain the basis of new information, an appeal is limited to a review of the verbatim record of the Hearings Panel and supporting documents:

(a) To determine if the Hearings Panel hearing was conducted fairly in light of the complaint made and information presented and in conformity with procedures required in this Code, giving the Complainant a reasonable opportunity to present information, and giving the Accused Student reasonable notice and an opportunity to prepare and to respond to the allegations. A deviation from procedures required by this Code will not be a basis for sustaining an appeal unless significant prejudice results;

(b) To determine whether the decision reached regarding the Accused Student was based on substantial information, that is, whether there were

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facts that, if believed by the Hearings Panel were sufficient to establish that a violation of the Code occurred;

(c) To determine whether the sanction(s) imposed were commensurate with violation;

(d) To consider new information sufficient to alter a decision or other relevant facts not brought out in the original hearing only if such information or facts were not known to the person appealing at the time of the hearing.

(3) No decision of a Hearings Panel may be overruled except through an affirmative vote of a majority of the Appeals Board members present. If the Appeals Board overrules a decision in whole or in part, it may:

(a) Modify the decision or sanction; or

(b) Remand for further proceeding.

(4) No appeal shall be allowed unless the party appealing cites specifically to the hearing record and states with specificity the grounds under which the appeal shall be allowed.

(5) The University Appeals Board decision may be appealed to the extent provided in ORS chapter 183.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06

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**Rule Caption:** Clarifies that delegation from President authorizes student government full authority to recognize student organizations.

**Adm. Order No.:** UO 4-2006(Temp)

**Filed with Sec. of State:** 11-7-2006

**Certified to be Effective:** 11-7-06 thru 5-4-07

**Notice Publication Date:**

**Rules Amended:** 571-011-0015

**Subject:** The current delegation of authority to student government regarding student organizations has been in effect since 1977. For some time granting of recognition has been used for decisions in addition to use of certain campus facilities. Also, the University has abandoned the category of "registered" student organizations. This amendment makes the rule consistent with current practice and allows the ASUO to continue its review of student organizations to

determine they are eligible to participate in the Incidental Fee process.

**Rules Coordinator:** Connie Tapp—(541) 346-3082

## 571-011-0015

### Delegation of Authority to ASUO

(1) The Associated Students of the University of Oregon (ASUO), acting through the ASUO President, shall exercise the following authority, which is hereby delegated by the University President:

(a) To formulate general policies relating to student organizations and on-campus extra-curricular activities;

(b) To grant recognition to student groups, or to withdraw recognition from them;

(c) To develop criteria to "guide" the University calendar and scheduling officer (who is Director of the Erb Memorial Union) in scheduling campus student events and programs.

(2) The ASUO President may exercise the delegated powers directly, or may appoint an administrative body representative of the University community to assist in the administration of such delegated responsibilities. The ASUO President shall notify the University President in writing of the mechanism by which the ASUO President will exercise these delegated responsibilities.

(3) This delegation is subject to any policies and administrative arrangements which may be subsequently established by the University President or the faculty of the University. The University President reserves the right to revoke and/or exercise any of the powers herein delegated if at any time the University President determines that the responsibilities delegated have not been met.

(4) The student activity regulations (see Memo 17.030) policies governing the EMU facilities and grounds, and scheduling policies (see Memos 18.010 through 18.080) shall remain in full force.

(5) The Director of the Erb Memorial Union is delegated by the University President full authority for the supervision, management, and operation of the EMU, its immediate premises, and its programs, subject to the provisions of any governance document agreed to by the University President.

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.510

Hist.: UOO 28, f. & cert. ef. 10-1-76; UOO 35, f. 8-25-77, ef. 8-26-77; UO 4-2006(Temp), f. & cert. ef. 11-7-06 thru 5-4-07

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125-145-0030(T)	3-13-06	Suspend	4-1-06	125-247-0261	5-31-06	Amend	7-1-06
125-145-0040	3-13-06	Amend(T)	4-1-06	125-247-0270	5-31-06	Amend	7-1-06
125-145-0040(T)	3-13-06	Suspend	4-1-06	125-247-0275	5-31-06	Amend	7-1-06
125-145-0045	3-13-06	Amend(T)	4-1-06	125-247-0280	5-31-06	Amend	7-1-06
125-145-0045(T)	3-13-06	Suspend	4-1-06	125-247-0285	5-31-06	Amend	7-1-06
125-145-0060	3-13-06	Amend(T)	4-1-06	125-247-0287	5-31-06	Amend	7-1-06
125-145-0060(T)	3-13-06	Suspend	4-1-06	125-247-0288	5-31-06	Amend	7-1-06
125-145-0080	3-13-06	Amend(T)	4-1-06	125-247-0290	12-22-05	Adopt(T)	2-1-06
125-145-0080(T)	3-13-06	Suspend	4-1-06	125-247-0291	12-22-05	Adopt(T)	2-1-06
125-145-0090	3-13-06	Amend(T)	4-1-06	125-247-0292	12-22-05	Adopt(T)	2-1-06
125-145-0090(T)	3-13-06	Suspend	4-1-06	125-247-0293	5-31-06	Adopt	7-1-06
125-145-0100	3-13-06	Amend(T)	4-1-06	125-247-0294	5-31-06	Adopt	7-1-06
125-145-0100(T)	3-13-06	Suspend	4-1-06	125-247-0295	5-31-06	Adopt	7-1-06
125-145-0105	3-13-06	Amend(T)	4-1-06	125-247-0296	5-31-06	Amend	7-1-06
125-145-0105(T)	3-13-06	Suspend	4-1-06	125-247-0430	5-31-06	Amend	7-1-06
125-246-0100	5-31-06	Amend	7-1-06	125-247-0450	5-31-06	Amend	7-1-06
125-246-0110	5-31-06	Amend	7-1-06	125-247-0600	5-31-06	Amend	7-1-06
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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
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125-247-0730	5-31-06	Amend	7-1-06	125-700-0012	1-30-06	Adopt	3-1-06
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125-247-0740	5-31-06	Amend	7-1-06	125-700-0020	1-30-06	Adopt	3-1-06
125-248-0100	5-31-06	Amend	7-1-06	125-700-0025	1-30-06	Adopt	3-1-06
125-248-0110	5-31-06	Amend	7-1-06	125-700-0030	1-30-06	Adopt	3-1-06
125-248-0120	5-31-06	Amend	7-1-06	125-700-0035	1-30-06	Adopt	3-1-06
125-248-0130	5-31-06	Amend	7-1-06	125-700-0040	1-30-06	Adopt	3-1-06
125-248-0200	5-31-06	Amend	7-1-06	125-700-0045	1-30-06	Adopt	3-1-06
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125-248-0330	5-31-06	Amend	7-1-06	137-015-0010	5-5-06	Adopt	6-1-06
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125-249-0130	5-31-06	Amend	7-1-06	137-045-0050	1-1-06	Amend	2-1-06
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125-249-0400	5-31-06	Amend	7-1-06	137-046-0480	1-1-06	Amend	2-1-06
125-249-0440	5-31-06	Amend	7-1-06	137-047-0000	1-1-06	Amend	2-1-06
125-249-0450	5-31-06	Amend	7-1-06	137-047-0100	1-1-06	Amend	2-1-06
125-249-0460	5-31-06	Amend	7-1-06	137-047-0250	1-1-06	Amend	2-1-06
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137-047-0800	1-1-06	Amend	2-1-06	137-049-0870	1-1-06	Amend	2-1-06
137-047-0810	1-1-06	Adopt	2-1-06	137-049-0900	1-1-06	Amend	2-1-06
137-048-0100	1-1-06	Amend	2-1-06	137-049-0910	1-1-06	Amend	2-1-06
137-048-0110	1-1-06	Amend	2-1-06	137-055-1020	1-3-06	Amend	2-1-06
137-048-0120	1-1-06	Amend	2-1-06	137-055-1020	7-3-06	Amend	8-1-06
137-048-0130	1-1-06	Amend	2-1-06	137-055-1040	1-3-06	Amend	2-1-06
137-048-0200	1-1-06	Amend	2-1-06	137-055-1060	1-3-06	Amend	2-1-06
137-048-0210	1-1-06	Amend	2-1-06	137-055-1070	1-3-06	Amend	2-1-06
137-048-0220	1-1-06	Amend	2-1-06	137-055-1070(T)	1-3-06	Repeal	2-1-06
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137-048-0240	1-1-06	Amend	2-1-06	137-055-1090	10-2-06	Amend	11-1-06
137-048-0250	1-1-06	Amend	2-1-06	137-055-1100	1-3-06	Amend	2-1-06
137-048-0260	1-1-06	Amend	2-1-06	137-055-1100	10-2-06	Amend	11-1-06
137-048-0300	1-1-06	Amend	2-1-06	137-055-1120	1-3-06	Amend	2-1-06
137-048-0310	1-1-06	Amend	2-1-06	137-055-1120(T)	1-3-06	Repeal	2-1-06
137-048-0320	1-1-06	Amend	2-1-06	137-055-1140	1-3-06	Amend	2-1-06
137-049-0100	1-1-06	Amend	2-1-06	137-055-1140	7-3-06	Amend	8-1-06
137-049-0120	1-1-06	Amend	2-1-06	137-055-1140(T)	1-3-06	Repeal	2-1-06
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137-049-0140	1-1-06	Amend	2-1-06	137-055-1145	7-3-06	Amend	8-1-06
137-049-0150	1-1-06	Amend	2-1-06	137-055-1160	1-3-06	Amend	2-1-06
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137-049-0210	1-1-06	Amend	2-1-06	137-055-1180(T)	1-3-06	Repeal	2-1-06
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137-049-0280	1-1-06	Amend	2-1-06	137-055-2060	1-3-06	Amend	2-1-06
137-049-0290	1-1-06	Amend	2-1-06	137-055-2140	1-3-06	Amend	2-1-06
137-049-0300	1-1-06	Amend	2-1-06	137-055-2160	1-3-06	Amend(T)	2-1-06
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137-049-0380	1-1-06	Amend	2-1-06	137-055-3060	1-3-06	Amend(T)	2-1-06
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137-049-0395	1-1-06	Adopt	2-1-06	137-055-3100	7-3-06	Amend	8-1-06
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137-049-0620	1-1-06	Amend	2-1-06	137-055-3420	1-3-06	Amend	2-1-06
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137-049-0640	1-1-06	Amend	2-1-06	137-055-3420(T)	1-3-06	Repeal	2-1-06
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137-049-0650	1-1-06	Amend	2-1-06	137-055-3430	7-3-06	Amend	8-1-06
137-049-0660	1-1-06	Amend	2-1-06	137-055-3430(T)	1-3-06	Repeal	2-1-06
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
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137-055-4100	1-3-06	Amend	2-1-06	137-087-0010	1-1-06	Adopt	1-1-06
137-055-4110	1-3-06	Amend	2-1-06	137-087-0015	1-1-06	Adopt	1-1-06
137-055-4120	1-3-06	Amend	2-1-06	137-087-0020	1-1-06	Adopt	1-1-06
137-055-4120(T)	1-3-06	Repeal	2-1-06	137-087-0025	1-1-06	Adopt	1-1-06
137-055-4130	1-3-06	Amend	2-1-06	137-087-0030	1-1-06	Adopt	1-1-06
137-055-4160	1-3-06	Amend	2-1-06	137-087-0035	1-1-06	Adopt	1-1-06
137-055-4300	1-3-06	Amend	2-1-06	137-087-0040	1-1-06	Adopt	1-1-06
137-055-4320	1-3-06	Amend	2-1-06	137-087-0045	1-1-06	Adopt	1-1-06
137-055-4420	1-3-06	Amend	2-1-06	137-087-0050	1-1-06	Adopt	1-1-06
137-055-4450	1-3-06	Amend	2-1-06	137-087-0055	1-1-06	Adopt	1-1-06
137-055-4520	1-3-06	Amend	2-1-06	137-087-0060	1-1-06	Adopt	1-1-06
137-055-4540	1-3-06	Amend	2-1-06	137-087-0065	1-1-06	Adopt	1-1-06
137-055-4540	10-2-06	Amend	11-1-06	137-087-0070	1-1-06	Adopt	1-1-06
137-055-4540(T)	1-3-06	Repeal	2-1-06	137-087-0075	1-1-06	Adopt	1-1-06
137-055-4560	1-3-06	Amend	2-1-06	137-087-0080	1-1-06	Adopt	1-1-06
137-055-5020	1-3-06	Amend	2-1-06	137-087-0085	1-1-06	Adopt	1-1-06
137-055-5020(T)	1-3-06	Repeal	2-1-06	137-087-0090	1-1-06	Adopt	1-1-06
137-055-5025	1-3-06	Amend	2-1-06	137-087-0095	1-1-06	Adopt	1-1-06
137-055-5110	1-3-06	Amend	2-1-06	137-087-0100	1-1-06	Adopt	1-1-06
137-055-5110	7-3-06	Amend	8-1-06	141-085-0010	3-27-06	Amend	5-1-06
137-055-5110	10-2-06	Amend	11-1-06	141-085-0020	3-27-06	Amend	5-1-06
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137-055-5420	1-3-06	Amend	2-1-06	141-085-0085	3-27-06	Amend	5-1-06
137-055-5510	1-3-06	Amend	2-1-06	141-085-0115	3-27-06	Amend	5-1-06
137-055-5510(T)	1-3-06	Repeal	2-1-06	141-085-0121	3-27-06	Amend	5-1-06
137-055-5520	1-3-06	Amend	2-1-06	141-085-0126	3-27-06	Amend	5-1-06
137-055-5520	10-2-06	Amend	11-1-06	141-085-0131	3-27-06	Amend	5-1-06
137-055-5520(T)	1-3-06	Repeal	2-1-06	141-085-0136	3-27-06	Amend	5-1-06
137-055-6021	1-3-06	Adopt	2-1-06	141-085-0141	3-27-06	Amend	5-1-06
137-055-6021	7-3-06	Amend	8-1-06	141-085-0151	3-27-06	Amend	5-1-06
137-055-6021(T)	1-3-06	Repeal	2-1-06	141-085-0256	3-27-06	Amend	5-1-06
137-055-6023	10-2-06	Amend	11-1-06	141-085-0263	3-27-06	Amend	5-1-06
137-055-6025	1-3-06	Amend	2-1-06	141-085-0421	3-27-06	Amend	5-1-06
137-055-6040	1-3-06	Amend	2-1-06	141-089-0105	1-3-06	Amend	2-1-06
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137-055-6200	10-2-06	Amend	11-1-06	141-089-0115	1-3-06	Amend	2-1-06
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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
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141-089-0165	1-3-06	Amend	2-1-06	150-305.145(3)-(G)	1-1-06	Repeal	2-1-06
141-089-0170	1-3-06	Amend	2-1-06	150-305.145(3)-(H)	1-1-06	Repeal	2-1-06
141-089-0175	1-3-06	Amend	2-1-06	150-305.145(4)(a)	1-1-06	Am. & Ren.	2-1-06
141-089-0180	1-3-06	Amend	2-1-06	150-305.145(4)(b)	1-1-06	Adopt	2-1-06
141-089-0185	1-3-06	Amend	2-1-06	150-305.145(4)(c)	1-1-06	Am. & Ren.	2-1-06
141-089-0190	1-3-06	Amend	2-1-06	150-305.220(1)	1-1-06	Amend	2-1-06
141-089-0200	1-3-06	Amend	2-1-06	150-305.220(2)	1-1-06	Amend	2-1-06
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141-089-0225	1-3-06	Amend	2-1-06	150-305.230(1)	1-1-06	Repeal	2-1-06
141-089-0230	1-3-06	Amend	2-1-06	150-305.230(2)	1-1-06	Repeal	2-1-06
141-089-0240	1-3-06	Amend	2-1-06	150-305.992	1-1-06	Amend	2-1-06
141-089-0250	1-3-06	Amend	2-1-06	150-306.132	1-1-06	Adopt	2-1-06
141-089-0255	1-3-06	Amend	2-1-06	150-306.135	1-1-06	Adopt	2-1-06
141-089-0265	1-3-06	Amend	2-1-06	150-307.286	7-31-06	Adopt	9-1-06
141-089-0275	1-3-06	Amend	2-1-06	150-307.289	7-31-06	Adopt	9-1-06
141-089-0295	1-3-06	Amend	2-1-06	150-307.475	7-31-06	Amend	9-1-06
141-089-0300	1-3-06	Amend	2-1-06	150-308.215(1)-(A)	7-31-06	Amend	9-1-06
141-089-0310	1-3-06	Amend	2-1-06	150-308.242(3)	1-1-06	Adopt	2-1-06
141-089-0415	1-3-06	Amend	2-1-06	150-308.865	1-1-06	Amend	2-1-06
141-089-0420	1-3-06	Amend	2-1-06	150-308.865(4)	1-1-06	Repeal	2-1-06
141-089-0430	1-3-06	Amend	2-1-06	150-311.507(1)(d)	1-1-06	Am. & Ren.	2-1-06
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141-089-0530	1-3-06	Amend	2-1-06	150-314.280-(N)	7-31-06	Amend	9-1-06
141-089-0555	1-3-06	Amend	2-1-06	150-314.280(3)	1-1-06	Amend	2-1-06
141-089-0560	1-3-06	Amend	2-1-06	150-314.385(1)-(D)	1-1-06	Renumber	2-1-06
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141-089-0580	1-3-06	Amend	2-1-06	150-314.400(4)	7-31-06	Amend	9-1-06
141-089-0595	1-3-06	Amend	2-1-06	150-314.415(1)(b)-(A)	1-1-06	Renumber	2-1-06
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150-317.267-(B)	1-1-06	Amend	2-1-06	165-007-0035	4-18-06	Adopt	6-1-06
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177-036-0080(T)	12-31-05	Repeal	2-1-06	177-040-0310	3-1-06	Adopt	4-1-06
177-036-0090	12-31-05	Adopt	2-1-06	177-040-0320	3-1-06	Adopt	4-1-06
177-036-0090(T)	12-31-05	Repeal	2-1-06	177-046-0020	12-31-05	Amend	2-1-06
177-036-0100	12-31-05	Adopt	2-1-06	177-046-0020(T)	12-31-05	Repeal	2-1-06
177-036-0100(T)	12-31-05	Repeal	2-1-06	177-046-0110	12-31-05	Amend	2-1-06
177-036-0110	12-31-05	Adopt	2-1-06	177-046-0110(T)	12-31-05	Repeal	2-1-06
177-036-0110(T)	12-31-05	Repeal	2-1-06	177-050-0025	12-31-05	Amend	2-1-06
177-036-0115	12-31-05	Adopt	2-1-06	177-050-0025(T)	12-31-05	Repeal	2-1-06
177-036-0115(T)	12-31-05	Repeal	2-1-06	177-050-0027	12-31-05	Amend	2-1-06
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177-036-0120(T)	12-31-05	Repeal	2-1-06	177-050-0037	12-31-05	Amend	2-1-06
177-036-0130	12-31-05	Adopt	2-1-06	177-070-0025	12-31-05	Amend	2-1-06
177-036-0130(T)	12-31-05	Repeal	2-1-06	177-070-0025(T)	12-31-05	Repeal	2-1-06
177-036-0140	12-31-05	Adopt	2-1-06	177-070-0035	12-31-05	Amend	2-1-06
177-036-0140(T)	12-31-05	Repeal	2-1-06	177-070-0035(T)	12-31-05	Repeal	2-1-06

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177-083-0010	4-9-06	Adopt	5-1-06	220-005-0130	12-30-05	Amend(T)	2-1-06
177-083-0020	4-9-06	Adopt	5-1-06	220-005-0130	5-15-06	Repeal	6-1-06
177-083-0030	4-9-06	Adopt	5-1-06	220-005-0135	12-30-05	Amend(T)	2-1-06
177-083-0040	4-9-06	Adopt	5-1-06	220-005-0135	5-15-06	Repeal	6-1-06
177-083-0050	4-9-06	Adopt	5-1-06	220-005-0140	12-30-05	Amend(T)	2-1-06
177-083-0060	4-9-06	Adopt	5-1-06	220-005-0140	5-15-06	Repeal	6-1-06
177-083-0070	4-9-06	Adopt	5-1-06	220-005-0150	12-30-05	Amend(T)	2-1-06
177-085-0005	12-31-05	Amend	2-1-06	220-005-0150	5-15-06	Repeal	6-1-06
177-085-0005(T)	12-31-05	Repeal	2-1-06	220-005-0160	12-30-05	Amend(T)	2-1-06
177-085-0015	12-31-05	Amend	2-1-06	220-005-0160	5-15-06	Repeal	6-1-06
177-085-0015(T)	12-31-05	Repeal	2-1-06	220-005-0170	12-30-05	Amend(T)	2-1-06
177-085-0020	12-31-05	Amend	2-1-06	220-005-0170	5-15-06	Repeal	6-1-06
177-085-0020(T)	12-31-05	Repeal	2-1-06	220-005-0180	5-15-06	Repeal	6-1-06
177-085-0025	12-31-05	Amend	2-1-06	220-005-0210	12-30-05	Amend(T)	2-1-06
177-085-0025(T)	12-31-05	Repeal	2-1-06	220-005-0210	5-15-06	Repeal	6-1-06
177-085-0030	12-31-05	Amend	2-1-06	220-005-0220	12-30-05	Amend(T)	2-1-06
177-085-0030(T)	12-31-05	Repeal	2-1-06	220-005-0220	5-15-06	Repeal	6-1-06
177-085-0035	12-31-05	Amend	2-1-06	220-005-0225	12-30-05	Adopt(T)	2-1-06
177-085-0035(T)	12-31-05	Repeal	2-1-06	220-005-0225	5-15-06	Repeal	6-1-06
177-085-0065	12-31-05	Amend	2-1-06	220-005-0230	12-30-05	Suspend	2-1-06
177-085-0065(T)	12-31-05	Repeal	2-1-06	220-005-0230	5-15-06	Repeal	6-1-06
177-200-0010	6-26-06	Amend(T)	7-1-06	220-005-0240	12-30-05	Suspend	2-1-06
177-200-0010	9-1-06	Amend	10-1-06	220-005-0240	5-15-06	Repeal	6-1-06
177-200-0010(T)	9-1-06	Repeal	10-1-06	220-005-0245	12-30-05	Adopt(T)	2-1-06
177-200-0020	12-31-05	Amend	2-1-06	220-005-0245	5-15-06	Repeal	6-1-06
177-200-0020(T)	12-31-05	Repeal	2-1-06	220-005-0250	12-30-05	Amend(T)	2-1-06
213-001-0000	4-12-06	Amend	5-1-06	220-005-0250	5-15-06	Repeal	6-1-06
213-003-0001	4-12-06	Amend	5-1-06	220-010-0020	12-30-05	Amend(T)	2-1-06
213-005-0002	4-12-06	Amend	5-1-06	220-010-0020	5-15-06	Repeal	6-1-06
213-013-0001	4-12-06	Amend	5-1-06	220-010-0030	12-30-05	Amend(T)	2-1-06
213-017-0005	4-12-06	Amend	5-1-06	220-010-0030	5-15-06	Repeal	6-1-06
213-017-0006	4-12-06	Amend	5-1-06	220-010-0050	12-30-05	Amend(T)	2-1-06
213-017-0007	4-12-06	Amend	5-1-06	220-010-0050	5-15-06	Repeal	6-1-06
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213-018-0020	7-1-06	Amend	8-1-06	220-010-0060	5-15-06	Repeal	6-1-06
213-019-0008	4-12-06	Amend	5-1-06	220-010-0200	12-30-05	Suspend	2-1-06
213-019-0010	4-12-06	Amend	5-1-06	220-010-0200	5-15-06	Repeal	6-1-06
213-019-0012	4-12-06	Amend	5-1-06	220-010-0300	12-30-05	Amend(T)	2-1-06
213-019-0015	4-12-06	Amend	5-1-06	220-010-0300	5-15-06	Repeal	6-1-06
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220-050-0150	12-30-05	Suspend	2-1-06	257-050-0140	3-31-06	Amend	5-1-06
220-050-0150	5-15-06	Repeal	6-1-06	257-050-0145	11-18-05	Adopt	1-1-06
220-050-0300	12-30-05	Amend(T)	2-1-06	257-050-0145	3-31-06	Amend	5-1-06
220-050-0300	5-15-06	Repeal	6-1-06	257-050-0150	11-18-05	Amend	1-1-06
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250-016-0012	1-1-06	Adopt	2-1-06	257-050-0155	3-31-06	Adopt	5-1-06
250-020-0013	7-3-06	Amend	8-1-06	257-050-0157	11-18-05	Adopt	1-1-06
250-020-0102	3-28-06	Amend	5-1-06	257-050-0157	3-31-06	Amend	5-1-06
250-020-0102	9-5-06	Amend(T)	9-1-06	257-050-0160	11-18-05	Repeal	1-1-06
250-020-0161	7-3-06	Amend	8-1-06	257-050-0170	11-18-05	Adopt	1-1-06
250-020-0259	10-12-06	Amend	11-1-06	257-050-0170	3-31-06	Amend	5-1-06
250-020-0265	10-12-06	Repeal	11-1-06	257-050-0180	3-31-06	Adopt	5-1-06
250-020-0266	3-28-06	Amend	5-1-06	257-050-0200	11-18-05	Adopt	1-1-06
250-020-0266	10-12-06	Repeal	11-1-06	257-050-0200	3-31-06	Amend	5-1-06
250-020-0280	10-12-06	Amend	11-1-06	259-008-0005	10-13-06	Amend	11-1-06
250-020-0350	3-28-06	Amend	5-1-06	259-008-0010	2-28-06	Amend	4-1-06
255-015-0003	4-5-06	Amend	5-1-06	259-008-0010	10-13-06	Amend	11-1-06
255-036-0010	4-5-06	Amend	5-1-06	259-008-0045	2-28-06	Amend	4-1-06
255-037-0010	4-5-06	Amend	5-1-06	259-008-0065	8-15-06	Amend(T)	9-1-06
255-060-0011	3-20-06	Amend(T)	5-1-06	259-008-0065	10-13-06	Amend	11-1-06
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255-060-0011	6-15-06	Amend(T)	7-1-06	259-008-0076	12-7-05	Adopt	1-1-06
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255-060-0016	10-30-06	Amend	12-1-06	259-009-0059	5-3-06	Adopt	6-1-06
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259-060-0600	5-15-06	Amend	6-1-06	274-012-0110(T)	4-25-06	Repeal	6-1-06
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259-061-0055	5-15-06	Adopt	6-1-06	274-012-0125(T)	4-25-06	Repeal	6-1-06
259-061-0060	5-15-06	Adopt	6-1-06	274-012-0130	2-23-06	Adopt(T)	4-1-06
259-061-0070	5-15-06	Adopt	6-1-06	274-012-0130	4-25-06	Adopt	6-1-06
259-061-0080	5-15-06	Adopt	6-1-06	274-012-0130(T)	4-25-06	Repeal	6-1-06
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259-061-0130	5-15-06	Adopt	6-1-06	274-030-0600	6-16-06	Adopt	8-1-06
259-061-0140	5-15-06	Adopt	6-1-06	274-030-0600(T)	6-16-06	Repeal	8-1-06
259-061-0150	5-15-06	Adopt	6-1-06	274-030-0605	12-23-05	Adopt(T)	2-1-06
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259-061-0210	5-15-06	Adopt	6-1-06	274-030-0615	12-23-05	Adopt(T)	2-1-06
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309-032-0505	11-1-06	Amend(T)	12-1-06	325-010-0045	10-25-06	Adopt	12-1-06
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309-120-0021(T)	1-1-06	Repeal	2-1-06	330-070-0013	1-1-06	Amend	2-1-06
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309-120-0070(T)	1-1-06	Repeal	2-1-06	330-070-0020	1-1-06	Amend	2-1-06
309-120-0075	1-1-06	Adopt	2-1-06	330-070-0021	1-1-06	Amend	2-1-06
309-120-0075(T)	1-1-06	Repeal	2-1-06	330-070-0022	1-1-06	Amend	2-1-06
309-120-0080	1-1-06	Adopt	2-1-06	330-070-0025	1-1-06	Amend	2-1-06
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309-120-0205	1-1-06	Am. & Ren.	2-1-06	330-070-0045	1-1-06	Amend	2-1-06
309-120-0210	1-1-06	Adopt	2-1-06	330-070-0048	1-1-06	Amend	2-1-06
309-120-0215	1-1-06	Adopt	2-1-06	330-070-0055	1-1-06	Amend	2-1-06
309-120-0220	1-1-06	Adopt	2-1-06	330-070-0059	1-1-06	Amend	2-1-06
309-120-0225	1-1-06	Adopt	2-1-06	330-070-0060	1-1-06	Amend	2-1-06
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309-120-0250	1-1-06	Adopt	2-1-06	330-070-0089	1-1-06	Amend	2-1-06
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309-120-0260	1-1-06	Adopt	2-1-06	330-090-0105	1-1-06	Amend	2-1-06
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309-120-0275	1-1-06	Am. & Ren.	2-1-06	330-090-0110	10-1-06	Amend	11-1-06
309-120-0280	1-1-06	Am. & Ren.	2-1-06	330-090-0120	1-1-06	Amend	2-1-06
309-120-0285	1-1-06	Am. & Ren.	2-1-06	330-090-0130	1-1-06	Amend	2-1-06
309-120-0290	1-1-06	Am. & Ren.	2-1-06	330-090-0130	10-1-06	Amend	11-1-06
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333-061-0043	1-31-06	Amend	3-1-06	333-101-0035	6-16-06	Amend	8-1-06
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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
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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
333-105-0460	6-16-06	Amend	8-1-06	333-106-0365	6-16-06	Amend	8-1-06
333-105-0470	6-16-06	Amend	8-1-06	333-106-0370	6-16-06	Amend	8-1-06
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333-105-0490	6-16-06	Amend	8-1-06	333-106-0405	6-16-06	Repeal	8-1-06
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333-116-0123	6-16-06	Amend	8-1-06	333-116-0573	6-16-06	Amend	8-1-06
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333-116-0583	6-16-06	Amend	8-1-06	333-120-0250	6-16-06	Amend	8-1-06
333-116-0585	6-16-06	Amend	8-1-06	333-120-0260	6-16-06	Amend	8-1-06
333-116-0587	6-16-06	Amend	8-1-06	333-120-0300	6-16-06	Amend	8-1-06
333-116-0590	6-16-06	Amend	8-1-06	333-120-0310	6-16-06	Amend	8-1-06
333-116-0600	6-16-06	Amend	8-1-06	333-120-0320	6-16-06	Amend	8-1-06
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333-116-0640	6-16-06	Amend	8-1-06	333-120-0450	6-16-06	Amend	8-1-06
333-116-0650	6-16-06	Amend	8-1-06	333-120-0460	6-16-06	Amend	8-1-06
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333-116-0683	6-16-06	Adopt	8-1-06	333-120-0540	6-16-06	Amend	8-1-06
333-116-0687	6-16-06	Adopt	8-1-06	333-120-0550	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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333-116-0715	6-16-06	Adopt	8-1-06	333-120-0620	6-16-06	Amend	8-1-06
333-116-0720	6-16-06	Amend	8-1-06	333-120-0630	6-16-06	Amend	8-1-06
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333-122-0425	6-16-06	Adopt	8-1-06	333-162-0270	7-1-06	Repeal	8-1-06
333-122-0450	6-16-06	Adopt	8-1-06	333-162-0280	7-1-06	Amend	8-1-06
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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
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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
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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
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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
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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
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333-175-0101	7-1-06	Amend	8-1-06	333-670-0230	10-6-06	Repeal	11-1-06
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335-001-0000	11-3-06	Amend	12-1-06	340-110-0020	3-15-06	Amend	4-1-06
335-001-0005	11-3-06	Amend	12-1-06	340-110-0061	3-15-06	Amend	4-1-06
335-005-0025	5-8-06	Amend	6-1-06	340-122-0040	3-17-06	Amend	5-1-06
335-005-0030	5-8-06	Adopt	6-1-06	340-122-0045	3-17-06	Repeal	5-1-06
335-005-0030	11-3-06	Amend	12-1-06	340-122-0115	3-17-06	Amend	5-1-06
335-005-0035	5-8-06	Adopt	6-1-06	340-135-0000	8-15-06	Amend	9-1-06
335-010-0060	11-3-06	Amend	12-1-06	340-135-0010	8-15-06	Amend	9-1-06
335-010-0070	11-3-06	Amend	12-1-06	340-135-0020	8-15-06	Amend	9-1-06
335-060-0005	11-3-06	Amend	12-1-06	340-135-0030	8-15-06	Amend	9-1-06
335-070-0020	11-3-06	Amend	12-1-06	340-135-0040	8-15-06	Amend	9-1-06
335-070-0030	11-3-06	Amend	12-1-06	340-135-0042	8-15-06	Repeal	9-1-06
335-070-0040	5-8-06	Amend	6-1-06	340-135-0044	8-15-06	Repeal	9-1-06
335-070-0040	11-3-06	Amend	12-1-06	340-135-0046	8-15-06	Repeal	9-1-06
335-070-0050	11-3-06	Amend	12-1-06	340-135-0050	8-15-06	Amend	9-1-06
335-070-0055	11-3-06	Adopt	12-1-06	340-135-0055	8-15-06	Adopt	9-1-06
335-070-0060	5-8-06	Amend	6-1-06	340-135-0070	8-15-06	Repeal	9-1-06
335-070-0065	5-8-06	Amend	6-1-06	340-135-0080	8-15-06	Repeal	9-1-06
335-080-0005	5-8-06	Amend	6-1-06	340-135-0090	8-15-06	Amend	9-1-06
335-095-0010	5-8-06	Amend	6-1-06	340-135-0100	8-15-06	Repeal	9-1-06
335-095-0030	5-8-06	Amend	6-1-06	340-135-0105	8-15-06	Adopt	9-1-06
335-095-0050	11-3-06	Amend	12-1-06	340-135-0110	8-15-06	Amend	9-1-06
335-095-0055	5-8-06	Amend	6-1-06	340-200-0020	3-14-06	Amend	4-1-06
335-095-0060	11-3-06	Amend	12-1-06	340-200-0040	3-14-06	Amend	4-1-06
337-010-0030	2-6-06	Amend	3-1-06	340-200-0040	3-31-06	Amend	5-1-06
340-011-0605	5-12-06	Adopt	6-1-06	340-216-0060	3-14-06	Amend	4-1-06
340-012-0027	3-31-06	Amend	5-1-06	340-220-0030	6-30-06	Amend	8-1-06
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
340-012-0065	3-31-06	Amend	5-1-06	340-244-0030	3-14-06	Amend	4-1-06
340-012-0066	3-31-06	Amend	5-1-06	340-244-0040	3-14-06	Amend	4-1-06
340-012-0067	3-31-06	Amend	5-1-06	340-244-0220	3-14-06	Amend	4-1-06
340-012-0068	3-31-06	Amend	5-1-06	340-246-0090	8-15-06	Amend	9-1-06
340-012-0071	3-31-06	Amend	5-1-06	340-256-0220	6-29-06	Adopt	8-1-06
340-012-0072	3-31-06	Amend	5-1-06	340-256-0300	7-5-06	Amend(T)	8-1-06
340-012-0073	3-31-06	Amend	5-1-06	340-257-0010	1-1-06	Adopt(T)	2-1-06
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
340-012-0081	3-31-06	Amend	5-1-06	340-257-0020	1-1-06	Adopt(T)	2-1-06
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
340-012-0097	3-31-06	Amend	5-1-06	340-257-0030	1-1-06	Adopt(T)	2-1-06
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
340-012-0135	3-31-06	Amend	5-1-06	340-257-0040	1-1-06	Adopt(T)	2-1-06
340-012-0135	6-29-06	Amend	8-1-06	340-257-0040	6-29-06	Adopt	8-1-06
340-012-0140	3-31-06	Amend	5-1-06	340-257-0040(T)	6-29-06	Repeal	8-1-06
340-012-0140	6-29-06	Amend	8-1-06	340-257-0050	1-1-06	Adopt(T)	2-1-06
340-012-0155	3-31-06	Amend	5-1-06	340-257-0050	6-29-06	Adopt	8-1-06
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340-257-0070	6-29-06	Adopt	8-1-06	407-001-0010	6-1-06	Adopt	6-1-06
340-257-0070(T)	6-29-06	Repeal	8-1-06	407-005-0000	3-1-06	Adopt	4-1-06
340-257-0080	1-1-06	Adopt(T)	2-1-06	407-005-0005	3-1-06	Adopt	4-1-06
340-257-0080	6-29-06	Adopt	8-1-06	407-005-0010	3-1-06	Adopt	4-1-06
340-257-0080(T)	6-29-06	Repeal	8-1-06	407-005-0015	3-1-06	Adopt	4-1-06
340-257-0090	1-1-06	Adopt(T)	2-1-06	407-005-0020	3-1-06	Adopt	4-1-06
340-257-0090	6-29-06	Adopt	8-1-06	407-005-0025	3-1-06	Adopt	4-1-06
340-257-0090(T)	6-29-06	Repeal	8-1-06	407-005-0030	3-1-06	Adopt	4-1-06
340-257-0100	1-1-06	Adopt(T)	2-1-06	407-010-0001	3-1-06	Adopt	4-1-06
340-257-0100	6-29-06	Adopt	8-1-06	407-045-0000	6-1-06	Adopt	7-1-06
340-257-0100(T)	6-29-06	Repeal	8-1-06	407-045-0010	6-1-06	Adopt	7-1-06
340-257-0110	1-1-06	Adopt(T)	2-1-06	407-045-0020	6-1-06	Adopt	7-1-06
340-257-0110	6-29-06	Adopt	8-1-06	407-045-0030	6-1-06	Adopt	7-1-06
340-257-0110(T)	6-29-06	Repeal	8-1-06	407-045-0040	6-1-06	Adopt	7-1-06
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
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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
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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
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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
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350-081-0490	8-1-06	Amend	8-1-06	410-050-0861	7-1-06	Amend	7-1-06
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410-120-1200	1-1-06	Amend	1-1-06	410-122-0320	7-1-06	Amend	7-1-06
410-120-1200	7-1-06	Amend	7-1-06	410-122-0325	7-1-06	Amend	7-1-06
410-120-1210	1-1-06	Amend	1-1-06	410-122-0330	7-1-06	Amend	7-1-06
410-120-1210	7-1-06	Amend	7-1-06	410-122-0340	7-1-06	Amend	7-1-06
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410-120-1260	7-1-06	Amend	7-1-06	410-122-0510	7-1-06	Amend	7-1-06
410-120-1280	1-1-06	Amend	2-1-06	410-122-0515	7-1-06	Adopt	7-1-06
410-120-1280	7-1-06	Amend	7-1-06	410-122-0520	10-1-06	Amend	10-1-06
410-120-1295	1-1-06	Amend	1-1-06	410-122-0525	7-1-06	Amend	7-1-06
410-120-1295	1-1-06	Amend(T)	1-1-06	410-122-0540	10-1-06	Amend	10-1-06
410-120-1295	1-1-06	Amend(T)	2-1-06	410-122-0560	10-1-06	Amend	10-1-06
410-120-1295	6-23-06	Amend	8-1-06	410-122-0620	10-1-06	Amend	10-1-06
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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
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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
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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
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410-121-0100	7-1-06	Amend	7-1-06	410-125-0195	1-1-06	Amend	2-1-06
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410-121-0147	7-1-06	Amend	7-1-06	410-125-0210	1-1-06	Amend	2-1-06
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410-121-0320	1-1-06	Amend	2-1-06	410-130-0190	7-1-06	Amend	7-1-06
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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
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410-136-0350	7-1-06	Amend	7-1-06	410-141-0420	7-1-06	Amend	7-1-06
410-136-0360	7-1-06	Amend	7-1-06	410-141-0480	7-1-06	Amend	7-1-06
410-136-0420	12-1-05	Amend	1-1-06	410-141-0520	12-1-05	Amend	1-1-06
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410-138-0640	2-7-06	Adopt(T)	3-1-06	410-147-0040	7-1-06	Amend	7-1-06
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410-138-0660	2-7-06	Adopt(T)	3-1-06	410-147-0080	7-1-06	Amend	7-1-06
410-138-0660	7-1-06	Adopt	7-1-06	410-147-0085	7-1-06	Amend	7-1-06
410-138-0680	2-7-06	Adopt(T)	3-1-06	410-147-0120	7-1-06	Amend	7-1-06
410-138-0680	7-1-06	Adopt	7-1-06	410-147-0125	7-1-06	Amend	7-1-06
410-138-0700	2-7-06	Adopt(T)	3-1-06	410-147-0140	7-1-06	Amend	7-1-06
410-138-0700	7-1-06	Adopt	7-1-06	410-147-0160	7-1-06	Amend	7-1-06
410-138-0710	2-7-06	Adopt(T)	3-1-06	410-147-0180	7-1-06	Amend	7-1-06
410-138-0710	7-1-06	Adopt	7-1-06	410-147-0200	7-1-06	Amend	7-1-06
410-138-0720	2-7-06	Adopt(T)	3-1-06	410-147-0220	7-1-06	Amend	7-1-06
410-138-0720	7-1-06	Adopt	7-1-06	410-147-0240	7-1-06	Amend	7-1-06
410-138-0740	2-7-06	Adopt(T)	3-1-06	410-147-0280	7-1-06	Amend	7-1-06
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410-140-0180	7-1-06	Amend	7-1-06	410-147-0500	7-1-06	Amend	7-1-06
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436-120-0008	1-1-06	Amend	1-1-06	437-004-3410	9-22-06	Amend	11-1-06
436-120-0320	1-1-06	Amend	1-1-06	437-004-3600	9-22-06	Amend	11-1-06
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437-001-0015	9-6-06	Amend	10-1-06	437-004-9720	9-22-06	Amend	11-1-06
437-001-0057	9-6-06	Amend	10-1-06	437-005-0001	7-24-06	Amend	9-1-06
437-001-0270	9-6-06	Amend	10-1-06	437-005-0001	8-30-06	Amend	10-1-06
437-001-0700	9-6-06	Amend	10-1-06	437-005-0002	8-30-06	Amend	10-1-06
437-001-0765	9-6-06	Amend	10-1-06	437-005-0003	8-30-06	Amend	10-1-06
437-001-0905	9-15-06	Repeal	10-1-06	440-001-0000	5-9-06	Amend	6-1-06
437-001-0910	9-15-06	Repeal	10-1-06	440-001-0005	2-14-06	Amend	3-1-06
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437-002-0005	12-14-05	Amend	1-1-06	441-750-0020	1-9-06	Repeal	2-1-06
437-002-0080	7-24-06	Amend	9-1-06	441-750-0030	1-9-06	Repeal	2-1-06
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437-002-0100	7-24-06	Amend	9-1-06	441-780-0010	1-9-06	Repeal	2-1-06
437-002-0120	7-24-06	Amend	9-1-06	441-780-0020	1-9-06	Repeal	2-1-06
437-002-0220	7-24-06	Amend	9-1-06	441-780-0030	1-9-06	Repeal	2-1-06
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437-002-0280	12-14-05	Amend	1-1-06	441-780-0050	1-9-06	Repeal	2-1-06
437-002-0300	12-14-05	Amend	1-1-06	441-780-0060	1-9-06	Repeal	2-1-06
437-002-0340	7-24-06	Amend	9-1-06	441-780-0070	1-9-06	Repeal	2-1-06
437-002-0360	7-24-06	Amend	9-1-06	441-780-0080	1-9-06	Repeal	2-1-06
437-002-0360	8-30-06	Amend	10-1-06	441-780-0090	1-9-06	Repeal	2-1-06
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437-003-0001	7-24-06	Amend	9-1-06	441-910-0020	1-1-06	Amend	1-1-06
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603-090-0120	9-15-06	Amend	10-1-06	629-605-0170(T)	1-1-06	Repeal	1-1-06
605-010-0010	6-27-06	Adopt	8-1-06	629-605-0173	1-1-06	Adopt	1-1-06
605-010-0020	6-27-06	Adopt	8-1-06	629-605-0173(T)	1-1-06	Repeal	1-1-06
605-010-0030	6-27-06	Adopt	8-1-06	629-605-0175	1-1-06	Amend	1-1-06
605-010-0040	6-27-06	Adopt	8-1-06	629-605-0175(T)	1-1-06	Repeal	1-1-06
605-010-0050	6-27-06	Adopt	8-1-06	629-605-0180	1-1-06	Amend	1-1-06
606-010-0015	12-23-05	Amend	2-1-06	629-605-0180(T)	1-1-06	Repeal	1-1-06
619-001-0010	12-15-05	Adopt	1-1-06	629-605-0190	1-1-06	Amend	1-1-06
619-001-0020	12-15-05	Adopt	1-1-06	629-605-0190(T)	1-1-06	Repeal	1-1-06
619-001-0030	12-15-05	Adopt	1-1-06	629-605-0500	1-1-06	Amend	1-1-06
619-001-0040	12-15-05	Adopt	1-1-06	629-605-0500(T)	1-1-06	Repeal	1-1-06
619-001-0050	12-15-05	Adopt	1-1-06	629-610-0020	1-1-06	Amend	1-1-06
619-001-0060	12-15-05	Adopt	1-1-06	629-610-0020(T)	1-1-06	Repeal	1-1-06
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629-001-0005	3-15-06	Amend	4-1-06	629-610-0030(T)	1-1-06	Repeal	1-1-06
629-001-0010	1-1-06	Amend	1-1-06	629-610-0040	1-1-06	Amend	1-1-06
629-001-0010(T)	1-1-06	Repeal	1-1-06	629-610-0040(T)	1-1-06	Repeal	1-1-06
629-001-0025	1-1-06	Amend	1-1-06	629-610-0050	1-1-06	Amend	1-1-06
629-001-0025(T)	1-1-06	Repeal	1-1-06	629-610-0050(T)	1-1-06	Repeal	1-1-06
629-001-0057	1-13-06	Adopt	2-1-06	629-610-0060	1-1-06	Amend	1-1-06
629-022-0320	5-2-06	Amend(T)	6-1-06	629-610-0060(T)	1-1-06	Repeal	1-1-06
629-023-0410	1-3-06	Amend(T)	2-1-06	629-610-0070	1-1-06	Amend	1-1-06
629-023-0410	6-1-06	Amend	6-1-06	629-610-0070(T)	1-1-06	Repeal	1-1-06
629-023-0410(T)	6-1-06	Repeal	6-1-06	629-610-0090	1-1-06	Amend	1-1-06
629-023-0420	1-3-06	Amend(T)	2-1-06	629-610-0090(T)	1-1-06	Repeal	1-1-06
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629-023-0420(T)	6-1-06	Repeal	6-1-06	629-615-0300(T)	1-1-06	Repeal	1-1-06
629-023-0430	1-3-06	Amend(T)	2-1-06	629-623-0450	1-1-06	Amend	1-1-06
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629-023-0430(T)	6-1-06	Repeal	6-1-06	629-623-0550	1-1-06	Amend	1-1-06
629-023-0440	1-3-06	Amend(T)	2-1-06	629-623-0550(T)	1-1-06	Repeal	1-1-06
629-023-0440	6-1-06	Amend	6-1-06	629-623-0700	1-1-06	Amend	1-1-06
629-023-0440(T)	6-1-06	Repeal	6-1-06	629-623-0700(T)	1-1-06	Repeal	1-1-06

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629-625-0320	1-1-06	Amend	1-1-06	629-670-0010(T)	1-1-06	Repeal	1-1-06
629-625-0320(T)	1-1-06	Repeal	1-1-06	629-670-0015	1-1-06	Amend	1-1-06
629-625-0430	1-1-06	Amend	1-1-06	629-670-0015(T)	1-1-06	Repeal	1-1-06
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629-630-0200	1-1-06	Amend	1-1-06	629-670-0100(T)	1-1-06	Repeal	1-1-06
629-630-0200(T)	1-1-06	Repeal	1-1-06	629-670-0115	1-1-06	Amend	1-1-06
629-630-0600	1-1-06	Amend	1-1-06	629-670-0115(T)	1-1-06	Repeal	1-1-06
629-630-0600(T)	1-1-06	Repeal	1-1-06	629-670-0125	1-1-06	Amend	1-1-06
629-630-0700	1-1-06	Amend	1-1-06	629-670-0125(T)	1-1-06	Repeal	1-1-06
629-630-0700(T)	1-1-06	Repeal	1-1-06	629-670-0210	1-1-06	Amend	1-1-06
629-630-0800	1-1-06	Amend	1-1-06	629-670-0210(T)	1-1-06	Repeal	1-1-06
629-630-0800(T)	1-1-06	Repeal	1-1-06	629-672-0100	1-1-06	Amend	1-1-06
629-635-0100	10-31-06	Amend	12-1-06	629-672-0100(T)	1-1-06	Repeal	1-1-06
629-635-0110	10-31-06	Amend	12-1-06	629-672-0200	1-1-06	Amend	1-1-06
629-635-0130	1-1-06	Amend	1-1-06	629-672-0200(T)	1-1-06	Repeal	1-1-06
629-635-0130(T)	1-1-06	Repeal	1-1-06	629-672-0210	1-1-06	Amend	1-1-06
629-635-0200	10-31-06	Amend	12-1-06	629-672-0210(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	1-1-06	Amend	1-1-06
629-640-0100(T)	1-1-06	Repeal	1-1-06	629-672-0310(T)	1-1-06	Repeal	1-1-06
629-640-0110	1-1-06	Amend	1-1-06	629-674-0100	1-1-06	Amend	1-1-06
629-640-0110(T)	1-1-06	Repeal	1-1-06	629-674-0100(T)	1-1-06	Repeal	1-1-06
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629-640-0200(T)	1-1-06	Repeal	1-1-06	635-001-0005	2-15-06	Amend	3-1-06
629-640-0210	10-1-07	Adopt	12-1-06	635-001-0210	6-9-09	Amend	7-1-06
629-640-0400	1-1-06	Amend	1-1-06	635-001-0215	6-9-09	Amend	7-1-06
629-640-0400(T)	1-1-06	Repeal	1-1-06	635-002-0008	6-14-06	Amend	7-1-06
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629-645-0000(T)	1-1-06	Repeal	1-1-06	635-003-0004	3-15-06	Amend(T)	4-1-06
629-645-0020	1-1-06	Amend	1-1-06	635-003-0004	5-1-06	Amend(T)	6-1-06
629-645-0020(T)	1-1-06	Repeal	1-1-06	635-003-0077	6-16-06	Amend(T)	8-1-06
629-645-0030	1-1-06	Amend	1-1-06	635-003-0077	7-29-06	Amend(T)	9-1-06
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629-660-0040	1-1-06	Amend	1-1-06	635-004-0013	1-1-06	Adopt	1-1-06
629-660-0040(T)	1-1-06	Repeal	1-1-06	635-004-0014	1-1-06	Adopt	1-1-06
629-660-0050	1-1-06	Amend	1-1-06	635-004-0016	1-1-06	Adopt	1-1-06
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629-665-0020(T)	1-1-06	Repeal	1-1-06	635-004-0019	3-1-06	Amend(T)	4-1-06
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635-006-0850	1-1-06	Amend	1-1-06	635-016-0080	1-1-07	Amend	9-1-06
635-006-0850	1-1-06	Amend	1-1-06	635-016-0090	1-1-06	Amend	1-1-06
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635-023-0125	2-15-06	Amend	3-1-06	635-042-0022(T)	5-30-06	Suspend	7-1-06
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635-023-0130	1-1-07	Amend	9-1-06	635-042-0060	10-2-06	Amend(T)	11-1-06
635-023-0134	5-20-06	Amend(T)	7-1-06	635-042-0060	10-8-06	Amend(T)	11-1-06
635-039-0080	1-1-06	Amend	1-1-06	635-042-0060	10-12-06	Amend(T)	11-1-06
635-039-0080	1-1-06	Amend	1-1-06	635-042-0060	10-18-06	Amend(T)	12-1-06
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635-039-0090	11-29-05	Amend(T)	1-1-06	635-042-0110	5-30-06	Amend(T)	7-1-06
635-039-0090	12-30-05	Amend(T)	1-1-06	635-042-0130	1-1-06	Amend(T)	2-1-06
635-039-0090	1-1-06	Amend	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
635-039-0090	7-24-06	Amend(T)	9-1-06	635-042-0133	2-15-06	Amend	3-1-06
635-039-0090	9-22-06	Amend(T)	11-1-06	635-042-0135	1-1-06	Amend(T)	2-1-06
635-039-0090	10-1-06	Amend	8-1-06	635-042-0135	1-27-06	Amend(T)	3-1-06
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635-041-0075	9-11-06	Amend(T)	10-1-06	635-042-0145	5-16-06	Amend(T)	7-1-06
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635-042-0170	9-5-06	Amend(T)	9-1-06	635-067-0015	1-1-06	Amend	1-1-06
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635-042-0180	5-23-06	Amend(T)	7-1-06	635-068-0000	6-14-06	Amend	7-1-06
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690-003-0240	10-6-06	Adopt	11-1-06	690-240-0070	6-20-06	Amend	8-1-06
690-030-0085	1-30-06	Amend	3-1-06	690-240-0220	6-20-06	Amend	8-1-06
690-077-0000	10-2-06	Amend	11-1-06	690-240-0280	6-20-06	Amend	8-1-06
690-077-0010	10-2-06	Amend	11-1-06	690-240-0320	6-20-06	Amend	8-1-06
690-077-0015	10-2-06	Amend	11-1-06	690-240-0330	6-20-06	Amend	8-1-06
690-077-0019	10-2-06	Amend	11-1-06	690-240-0340	6-20-06	Amend	8-1-06
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690-077-0046	10-2-06	Amend	11-1-06	690-240-0580	6-20-06	Amend	8-1-06
690-077-0047	10-2-06	Amend	11-1-06	690-240-0610	6-20-06	Amend	8-1-06
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690-077-0053	10-2-06	Amend	11-1-06	690-315-0040	11-22-05	Amend	1-1-06
690-077-0054	10-2-06	Amend	11-1-06	690-315-0060	11-22-05	Amend	1-1-06
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690-077-0070	10-2-06	Amend	11-1-06	690-315-0080	11-22-05	Amend	1-1-06
690-077-0075	10-2-06	Amend	11-1-06	690-315-0090	11-22-05	Amend	1-1-06
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690-380-2430	10-6-06	Amend	11-1-06	731-035-0050	1-24-06	Adopt	3-1-06
690-380-3000	10-6-06	Amend	11-1-06	731-035-0050(T)	1-24-06	Repeal	3-1-06
690-380-3100	10-6-06	Amend	11-1-06	731-035-0060	11-21-05	Adopt(T)	1-1-06
690-380-3200	10-6-06	Amend	11-1-06	731-035-0060	1-24-06	Adopt	3-1-06
690-380-3220	10-6-06	Amend	11-1-06	731-035-0060(T)	1-24-06	Repeal	3-1-06
690-380-4000	10-6-06	Amend	11-1-06	731-035-0070	11-21-05	Adopt(T)	1-1-06
690-380-4010	10-6-06	Amend	11-1-06	731-035-0070	1-24-06	Adopt	3-1-06
690-380-4020	10-6-06	Amend	11-1-06	731-035-0070(T)	1-24-06	Repeal	3-1-06
690-380-4030	10-6-06	Amend	11-1-06	731-035-0080	11-21-05	Adopt(T)	1-1-06
690-380-4200	10-6-06	Amend	11-1-06	731-035-0080	1-24-06	Adopt	3-1-06
690-380-5000	10-6-06	Amend	11-1-06	731-035-0080(T)	1-24-06	Repeal	3-1-06
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690-380-5040	10-6-06	Amend	11-1-06	731-147-0010	5-25-06	Amend	7-1-06
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690-380-8020	10-6-06	Amend	11-1-06	733-030-0080	6-21-06	Amend	8-1-06
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690-382-0300	10-6-06	Adopt	11-1-06	734-030-0010	1-24-06	Amend	3-1-06
690-382-0400	10-6-06	Adopt	11-1-06	734-030-0025	1-24-06	Amend	3-1-06
690-382-0450	10-6-06	Adopt	11-1-06	734-073-0051	12-14-05	Amend	1-1-06
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690-382-0700	10-6-06	Adopt	11-1-06	734-075-0045	1-1-07	Amend	12-1-06
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731-035-0010	1-24-06	Adopt	3-1-06	735-010-0210	1-1-06	Amend	1-1-06
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735-022-0000(T)	5-25-06	Repeal	7-1-06	735-060-0120	12-14-05	Amend	1-1-06
735-024-0015	1-1-06	Amend(T)	1-1-06	735-060-0120	4-15-06	Amend	5-1-06
735-024-0015	5-25-06	Amend	7-1-06	735-060-0130	12-14-05	Amend	1-1-06
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735-024-0030	1-1-06	Amend(T)	1-1-06	735-062-0020	8-25-06	Amend	10-1-06
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735-024-0070	1-1-06	Amend(T)	1-1-06	735-062-0030(T)	11-18-05	Repeal	1-1-06
735-024-0070	5-25-06	Amend	7-1-06	735-062-0075	4-15-06	Amend	5-1-06
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735-024-0075	1-1-06	Amend(T)	1-1-06	735-062-0080	8-25-06	Amend(T)	10-1-06
735-024-0075	5-25-06	Amend	7-1-06	735-062-0105	11-18-05	Amend	1-1-06
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735-024-0077	1-1-06	Adopt(T)	1-1-06	735-062-0110	11-18-05	Amend	1-1-06
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735-024-0080	1-1-06	Amend(T)	1-1-06	735-062-0115(T)	11-18-05	Repeal	1-1-06
735-024-0080	5-25-06	Amend	7-1-06	735-062-0120	11-18-05	Amend	1-1-06
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735-024-0120	1-1-06	Amend(T)	1-1-06	735-062-0130	1-1-06	Amend(T)	1-1-06
735-024-0120	5-25-06	Amend	7-1-06	735-062-0130	2-15-06	Amend	3-1-06
735-024-0120(T)	5-25-06	Repeal	7-1-06	735-062-0130(T)	2-15-06	Repeal	3-1-06
735-024-0130	1-1-06	Amend(T)	1-1-06	735-062-0135	11-18-05	Amend	1-1-06
735-024-0130	5-25-06	Amend	7-1-06	735-062-0135(T)	11-18-05	Repeal	1-1-06
735-024-0130(T)	5-25-06	Repeal	7-1-06	735-062-0140	8-25-06	Amend(T)	10-1-06
735-024-0170	1-1-06	Amend(T)	1-1-06	735-062-0190	12-14-05	Amend	1-1-06
735-024-0170	5-25-06	Amend	7-1-06	735-062-0190	8-1-06	Amend(T)	9-1-06
735-024-0170(T)	5-25-06	Repeal	7-1-06	735-062-0190	8-25-06	Amend	10-1-06
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735-028-0010	5-25-06	Amend	7-1-06	735-062-0190(T)	8-25-06	Repeal	10-1-06
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735-028-0110	5-25-06	Amend	7-1-06	735-064-0110	2-15-06	Amend	3-1-06
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735-074-0140	5-25-06	Amend	7-1-06	735-152-0031(T)	5-25-06	Repeal	7-1-06
735-074-0150	5-25-06	Repeal	7-1-06	735-152-0034	1-1-06	Adopt(T)	1-1-06
735-074-0180	5-25-06	Amend	7-1-06	735-152-0034	5-25-06	Adopt	7-1-06
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735-074-0210	5-25-06	Amend	7-1-06	735-152-0037	1-1-06	Adopt(T)	1-1-06
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735-076-0007	5-25-06	Am. & Ren.	7-1-06	735-152-0045	1-1-06	Adopt(T)	1-1-06
735-076-0007	5-25-06	Repeal	7-1-06	735-152-0045	5-25-06	Adopt	7-1-06
735-076-0010	5-25-06	Amend	7-1-06	735-152-0045(T)	5-25-06	Repeal	7-1-06
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735-076-0050	5-25-06	Amend	7-1-06	735-152-0070	1-1-06	Adopt(T)	1-1-06
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735-150-0010	1-1-06	Amend(T)	1-1-06	735-152-0090	5-25-06	Adopt	7-1-06
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812-003-0260	9-5-06	Amend	10-1-06	812-006-0250	10-1-06	Am. & Ren.	10-1-06
812-003-0280	6-1-06	Amend	7-1-06	812-006-0300	10-1-06	Am. & Ren.	10-1-06
812-003-0410	9-5-06	Amend	10-1-06	812-006-0350	10-1-06	Am. & Ren.	10-1-06
812-003-0420	1-1-06	Amend	1-1-06	812-006-0400	10-1-06	Adopt	10-1-06
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812-004-0320	1-1-06	Amend	1-1-06	812-008-0078	1-26-06	Repeal	3-1-06
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812-004-0440	1-1-06	Amend	1-1-06	812-009-0320	1-1-06	Amend	1-1-06
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812-004-0470	1-1-06	Amend	1-1-06	812-009-0430	1-1-06	Amend	1-1-06
812-004-0480	1-1-06	Amend	1-1-06	813-001-0000	1-31-06	Repeal	3-1-06
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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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813-001-0066	1-31-06	Repeal	3-1-06	813-013-0045	6-28-06	Adopt	8-1-06
813-001-0068	1-31-06	Repeal	3-1-06	813-013-0045(T)	6-28-06	Repeal	8-1-06
813-001-0069	1-31-06	Repeal	3-1-06	813-013-0050	1-5-06	Adopt(T)	2-1-06
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813-005-0005(T)	1-31-06	Repeal	3-1-06	813-013-0061	6-28-06	Adopt	8-1-06
813-005-0010	1-31-06	Repeal	3-1-06	813-013-0065	6-28-06	Adopt	8-1-06
813-005-0015	1-31-06	Repeal	3-1-06	813-015-0001	11-15-06	Adopt	12-1-06
813-005-0016	1-31-06	Adopt	3-1-06	813-015-0006	11-15-06	Adopt	12-1-06
813-005-0016(T)	1-31-06	Repeal	3-1-06	813-015-0011	11-15-06	Adopt	12-1-06
813-005-0020	1-31-06	Repeal	3-1-06	813-015-0016	11-15-06	Adopt	12-1-06
813-005-0025	1-31-06	Repeal	3-1-06	813-015-0021	11-15-06	Adopt	12-1-06
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813-009-0001	8-28-06	Amend	10-1-06	813-015-0035	11-15-06	Adopt	12-1-06
813-009-0005	2-10-06	Amend(T)	3-1-06	813-015-0040	11-15-06	Adopt	12-1-06
813-009-0005	8-28-06	Amend	10-1-06	813-015-0045	11-15-06	Adopt	12-1-06
813-009-0010	2-10-06	Amend(T)	3-1-06	813-015-0050	11-15-06	Adopt	12-1-06
813-009-0010	8-28-06	Amend	10-1-06	813-040-0005	4-13-06	Amend(T)	5-1-06
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820-010-0635	12-13-05	Amend	1-1-06	836-020-0780	7-20-06	Adopt	9-1-06
836-005-0105	9-26-06	Amend	11-1-06	836-020-0785	7-20-06	Adopt	9-1-06
836-005-0107	4-27-06	Amend	6-1-06	836-020-0791	7-20-06	Adopt	9-1-06
836-005-0400	9-26-06	Amend	11-1-06	836-020-0796	7-20-06	Adopt	9-1-06
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836-031-0610	9-26-06	Amend	11-1-06	836-086-0005	9-26-06	Repeal	11-1-06
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837-012-1330	6-15-06	Amend(T)	7-1-06	839-015-0155	1-1-06	Amend	2-1-06
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837-012-1350	6-15-06	Amend(T)	7-1-06	839-015-0160	1-1-06	Amend	2-1-06
837-012-1360	6-15-06	Amend(T)	7-1-06	839-015-0165	1-1-06	Amend	2-1-06
837-012-1370	6-15-06	Amend(T)	7-1-06	839-015-0200	1-1-06	Amend	2-1-06
837-012-1380	6-15-06	Amend(T)	7-1-06	839-015-0230	1-1-06	Amend	2-1-06
837-012-1390	6-15-06	Amend(T)	7-1-06	839-015-0260	1-1-06	Amend	2-1-06
837-012-1400	6-15-06	Amend(T)	7-1-06	839-015-0300	1-1-06	Amend	2-1-06
837-012-1410	6-15-06	Amend(T)	7-1-06	839-015-0300	3-1-06	Amend	4-1-06
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839-001-0470	1-1-06	Amend	2-1-06	839-025-0020	5-15-06	Amend(T)	6-1-06
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839-003-0020	7-7-06	Amend(T)	8-1-06	839-025-0037	11-10-06	Adopt	12-1-06
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839-006-0131	10-4-06	Amend	11-1-06	839-025-0230	1-1-06	Amend	2-1-06
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839-025-0750	7-18-06	Amend	9-1-06	847-017-0035	10-23-06	Adopt	12-1-06
839-025-0750	8-18-06	Amend	10-1-06	847-017-0040	10-23-06	Adopt	12-1-06
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839-050-0150	3-24-06	Amend	5-1-06	847-020-0150	2-8-06	Amend	3-1-06
839-050-0300	3-24-06	Amend	5-1-06	847-020-0155	9-14-06	Adopt(T)	10-1-06
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845-006-0430	2-1-06	Amend	3-1-06	847-050-0025	5-8-06	Amend	6-1-06
845-006-0498	10-1-06	Adopt	10-1-06	847-050-0026	2-8-06	Amend	3-1-06
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845-015-0120	8-1-06	Amend	9-1-06	847-080-0017	7-25-06	Amend	9-1-06
845-015-0130	8-1-06	Amend	9-1-06	847-080-0018	7-25-06	Amend	9-1-06
845-015-0135	8-1-06	Amend	9-1-06	848-001-0000	1-1-06	Amend	2-1-06
845-015-0145	8-1-06	Amend	9-1-06	848-005-0020	1-1-06	Amend	2-1-06
845-015-0165	3-1-06	Amend	4-1-06	848-005-0030	1-1-06	Amend	2-1-06
845-015-0168	8-1-06	Amend	9-1-06	848-010-0015	1-1-06	Amend	2-1-06
845-015-0170	8-1-06	Amend	9-1-06	848-010-0020	1-1-06	Amend	2-1-06
845-015-0173	8-1-06	Amend	9-1-06	848-010-0026	1-1-06	Amend	2-1-06
845-015-0180	8-1-06	Amend	9-1-06	848-010-0033	1-1-06	Amend	2-1-06
847-001-0000	7-25-06	Amend	9-1-06	848-010-0035	1-1-06	Amend	2-1-06
847-001-0005	7-25-06	Amend	9-1-06	848-010-0044	1-1-06	Amend	2-1-06
847-001-0015	7-25-06	Amend	9-1-06	848-015-0010	1-1-06	Amend	2-1-06
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847-005-0005	7-25-06	Amend	9-1-06	848-020-0060	1-1-06	Amend	2-1-06
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847-008-0055	10-23-06	Amend	12-1-06	848-035-0015	4-14-06	Adopt	5-1-06
847-010-0052	2-8-06	Amend	3-1-06	848-035-0020	4-14-06	Adopt	5-1-06
847-010-0066	10-23-06	Amend	12-1-06	848-035-0030	4-14-06	Adopt	5-1-06
847-010-0073	5-8-06	Amend	6-1-06	848-035-0040	4-14-06	Adopt	5-1-06
847-017-0000	10-23-06	Adopt	12-1-06	848-040-0105	1-1-06	Amend	2-1-06
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848-045-0010	1-1-06	Amend	2-1-06	851-061-0030	5-8-06	Amend	6-1-06
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850-040-0230	10-13-06	Adopt	11-1-06	851-061-0090	5-8-06	Amend	6-1-06
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851-001-0005	5-8-06	Amend	6-1-06	852-020-0070	4-1-06	Amend	5-1-06
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851-031-0080	10-5-06	Amend	11-1-06	852-060-0027	12-8-05	Am. & Ren.	1-1-06
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851-050-0131	10-5-06	Repeal	11-1-06	855-025-0001	6-9-06	Amend	7-1-06
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851-050-0155	10-5-06	Repeal	11-1-06	855-025-0015	6-9-06	Adopt	7-1-06
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851-050-0164	10-5-06	Repeal	11-1-06	855-025-0035	6-9-06	Adopt	7-1-06
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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
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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
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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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860-011-0080	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
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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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860-021-0326	11-30-05	Amend	1-1-06	860-034-0275	2-27-06	Adopt	4-1-06
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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
860-021-0414	11-30-05	Amend	1-1-06	860-038-0410	11-30-05	Amend	1-1-06
860-021-0415	11-30-05	Amend	1-1-06	860-038-0500	5-11-06	Amend	6-1-06
860-021-0420	11-30-05	Amend	1-1-06	860-038-0520	5-11-06	Amend	6-1-06
860-021-0510	2-27-06	Amend	4-1-06	860-038-0560	5-11-06	Amend	6-1-06
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875-015-0000	2-8-06	Repeal	3-1-06	918-008-0010(T)	7-1-06	Repeal	8-1-06
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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
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918-030-0000(T)	10-1-06	Repeal	11-1-06	918-030-0410	7-1-06	Adopt	8-1-06
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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
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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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918-480-0010	7-1-06	Amend	8-1-06	918-695-0330	7-1-06	Suspend	8-1-06
918-500-0021	7-1-06	Amend	8-1-06	918-695-0330	10-1-06	Repeal	11-1-06
918-525-0310	1-1-06	Amend	2-1-06	918-695-0340	7-1-06	Suspend	8-1-06
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